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# ALASKA STATE LEGISLATURE

SENATOR

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Senate  
Senate District F

## Memorandum

**To:** Senator Ralph Seekins / Chairman Senate Judiciary Committee

**From:** Senator Gene Therriault / Sponsor SB 333

**Date:** February 18, 2004

**Re:** Hearing for Senate Bill 333

*Gene Therriault*

.....  
Please accept this memo as my respectful request that your committee take up SB 333 for deliberation.

Thank you.

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## Sponsor Statement Senate Bill 333

### Judicial Extraction From Administrative Review

Senate Bill 333 allows a person (petitioner) who is unable to obtain a final administrative decision from a government agency to ask the Superior Court for assistance.

Under the present system, the agency regulators have the power to keep a petitioner tied up in its process for extended periods of time. Long delays can mean high costs to the state, the petitioner and damage to the integrity of the administrative process itself. High costs are especially onerous to smaller businesses or individuals.

The legislature does not intend that agencies be able to tie up petitioners for unreasonable lengths of time. Since the judiciary requires administrative remedies to be exhausted before taking the matter up in court, abuse of agency authority can actually block or unduly delay due process.

For instance, if a state agency fears losing a contested rule in court, it has the ability to effectively delay judicial review by refusing to issue a final administrative decision.

Senate Bill 333 is an integral part of three-phase regulation reform package.

- Senate Bill 203 reforms the internal administrative hearing process.
- Senate Bill 287 reforms the initial phases of the regulatory process.
- Senate Bill 333 reforms the final phases of the administrative process.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB333-ACS-TC-2-24-04  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title If Unreas. Agency Delay/Ct. Decides BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Senator Therriault  
 Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Senate Bill 333 allows a person proceeding through the administrative adjudication process under AS 44.62.330 - 44.62.630 to move his or her case to the superior court if the person alleges that the agency has unreasonably delayed the process and further delay will cause the person significant and irreparable damage. Once a case is before the court it may either determine the case on its merits, order that the dispute be handled by another form of dispute resolution or establish a deadline for the agency to issue a final administrative decision. This bill changes existing law by allowing a person to bring an administrative adjudication to the superior court prior to the issuance of a final agency decision. The court will be impacted by the number of cases that come before it under this provision. However, estimating the number of such cases is too speculative to support a fiscal note. Should the number of cases prove to be significant then the court may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 2/24/04 9:09 AM  
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/24/2004  
 Agency: Alaska Court System

23-LS1707H  
Bannister  
3/1/04

CS FOR SENATE BILL NO. 333( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state's administrative procedures and to judicial oversight of  
2 administrative matters."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 22.10.020(d) is amended to read:

5 (d) The superior court has jurisdiction in all matters appealed to it from a  
6 subordinate court, or administrative agency, when appeal is provided by law, and has  
7 jurisdiction over petitions for relief in administrative matters under  
8 AS 44.62.305. The hearings on appeal from a final order or judgment of a subordinate  
9 court or administrative agency, except an appeal under AS 43.05.242, shall be on the  
10 record unless the superior court, in its discretion, grants a trial de novo, in whole or in  
11 part. The hearings on appeal from a final order or judgment under AS 43.05.242 shall  
12 be on the record.

13 \* Sec. 2. AS 44.62 is amended by adding a new section to read:

14 Sec. 44.62.305. Judicial relief in administrative matters. (a)

1 Notwithstanding any other provision of law to the contrary and except as provided in  
2 (f) of this section, a person may obtain judicial relief in an administrative matter by the  
3 superior court before the state agency handling the administrative proceeding on the  
4 matter issues a final administrative decision if

5 (1) the person is a party to the administrative proceeding;

6 (2) the person has satisfied the procedural requirements of the  
7 administrative proceeding up to the time that the person petitions for judicial relief  
8 under (b) of this section;

9 (3) the state agency has unreasonably delayed the progress of the  
10 administrative proceeding; and

11 (4) further delay in reaching a final administrative decision will cause  
12 the person significant and irreparable damage.

13 (b) A person may seek judicial relief under (a) of this section by filing a  
14 petition in the superior court.

15 (c) In a proceeding begun under (b) of this section, if the superior court  
16 determines that the person is eligible for judicial relief under (a) of this section, the  
17 superior court may

18 (1) enjoin the administrative proceeding and determine the  
19 administrative matter in the superior court;

20 (2) order that the administrative matter be handled by another form of  
21 dispute resolution; or

22 (3) establish a deadline for the state agency to issue a final  
23 administrative decision.

24 (d) After a person files a petition under (b) of this section, the state agency  
25 shall continue with the administrative proceeding unless the superior court

26 (1) enjoins the administrative proceeding under (c)(1) of this section;

27 or

28 (2) issues an order under (c)(2) of this section.

29 (e) If the superior court decides that a person is not eligible for judicial relief  
30 under (a) of this section, a party to the administrative proceeding may exercise any  
31 right of appeal allowed under law for the final administrative decision as if the person

1 had not filed a petition under (b) of this section.

2 (f) A person may not obtain judicial relief under this section in a personnel  
3 decision by a state agency.

4 (g) In this section,

5 (1) "administrative matter" means the subject matter of an  
6 administrative proceeding;

7 (2) "administrative proceeding" means

8 (A) a proceeding subject to AS 44.62.330 - 44.62.630; and

9 (B) a proceeding that is not subject to AS 44.62.330 -  
10 44.62.630, that is authorized by statute for the adjudication of a state agency  
11 matter by the state agency handling the matter or by a person appointed by the  
12 state agency, and that involves a matter that directly affects the personal,  
13 professional, or business interests of a specific person who is named in the  
14 adjudication;

15 (3) "damage" means damage to the personal, professional, or business  
16 interests of a person;

17 (4) "party" means a specific person whose personal, professional, or  
18 business interests are the subject of an administrative proceeding and who is named in  
19 the administrative proceeding;

20 (5) "person" does not include a state agency or other governmental  
21 agency;

22 (6) "state agency" means a department, an institution, a board, a  
23 commission, a division, an authority, and any other administrative unit of the  
24 executive branch of state government, except a public corporation; the term includes  
25 the University of Alaska.