

**ALASKA LEGISLATURE**

**2611**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

accelerate the eventual production of shallow natural gas from the lease.

\* Sec. 28. AS 38.05.177(l) is amended to read:

(l) A lessee holding [OBTAINING] a lease modified under AS 38.05.180(n)(2)(A) [THIS SECTION] may exercise the rights authorized by this section and the lease. The rights granted by the lease must be exercised in a manner that does not unreasonably interfere with eventual development of other mineral deposits on the land leased. However, in a lease entered into under AS 38.05.150 for land that is already subject to a lease covered [LEASED] under this section, coal may not be mined or extracted by the coal lessee from the coal lease without prior agreement with the lessee holding the lease covered [ISSUED] under this section.

\* Sec. 29. AS 38.05.180(a) is amended to read:

(a) The legislature finds that

(1) the people of Alaska have an interest in the development of the state's oil and gas resources to

(A) maximize the economic and physical recovery of the resources;

(B) maximize competition among parties seeking to explore and develop the resources;

(C) maximize use of Alaska's human resources in the development of the resources;

(2) it is in the best interests of the state

(A) to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases to

(i) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(ii) minimize the adverse impact of exploration, development, production, and transportation activity; and

(B) to offer acreage for oil and gas leases or for gas only leases, specifically including

(i) state acreage that has been the subject of a best

1 interest finding at annual areawide lease sales; and

2 (ii) land in areas that, under (d) of this section, may be  
3 leased without having been included in the leasing program prepared  
4 and submitted under (b) of this section.

5 \* Sec. 30. AS 38.05.180(b) is amended to read:

6 (b) The commissioner shall biennially prepare and, between the first and the  
7 15th day of the first regular session of each legislature, notify the legislature of the  
8 availability of, a five-year proposed oil and gas leasing program consisting of a  
9 schedule of proposed lease sales and specifying as precisely as practicable the location  
10 of tracts proposed to be offered for oil and gas leasing or for leasing of gas only  
11 during the calendar year in which the proposed program is made available to the  
12 legislature and the following four calendar years.

13 \* Sec. 31. AS 38.05.180(c) is amended to read:

14 (c) Except as provided in (d) and (w) of this section, an oil and gas lease sale  
15 or gas only lease sale may not be held unless it was included in the proposed leasing  
16 programs submitted to the legislature during the two calendar years preceding the year  
17 in which the sale is held. A lease sale, whether for oil and gas or for gas only, may  
18 not be held before the date it is scheduled in the proposed oil and gas leasing program.

19 \* Sec. 32. AS 38.05.180(d) is amended to read:

20 (d) The commissioner

21 (1) may annually offer leases for oil and gas or leases for gas only  
22 [LEASES] of the acreage described in AS 38.05.035(e)(6)(F);

23 (2) may issue [OIL AND GAS] leases in an area that has not been  
24 included in a leasing program prepared, in accordance with (b) of this section, if the  
25 land to be leased

26 (A) was previously subject to a valid state oil and gas lease, a  
27 valid state gas lease, or a valid federal oil and gas lease;

28 (B) is contiguous to land already under state, federal, or private  
29 lease and the commissioner makes a written finding, after hearing, that leasing  
30 of the land would result in a substantial probability of early evaluation and  
31 development of the land to be leased;

1 (C) is adjacent to land owned or controlled by another party on  
 2 which a discovery of commercial quantities of oil or gas has been made, and  
 3 the commissioner finds, after hearing, that there is a reasonable probability that  
 4 the land to be leased contains oil or gas in communication with the oil or gas  
 5 discovered on the land of the other party;

6 (D) is adjacent to land included in the federal five-year Outer  
 7 Continental Shelf leasing program under 43 U.S.C. 1344, and the  
 8 commissioner makes a written finding, after hearing, that coordinated or  
 9 simultaneous leasing with the federal government is in the public interest; or

10 (E) is the subject of an [OIL AND GAS] exploration license  
 11 issued under AS 38.05.131 - 38.05.134; however, if the license issued was  
 12 for exploration for and recovery of gas only, then the lease issued under  
 13 this subsection shall be limited to exploration for and recovery of gas only.

14 \* Sec. 33. AS 38.05.180(f) is amended to read:

15 (f) Except as provided by AS 38.05.131 - 38.05.134 [AND 38.05.177], the  
 16 commissioner may issue oil and gas leases or leases for gas only on state land to the  
 17 highest responsible qualified bidder as follows:

18 (1) the commissioner shall issue an oil and gas lease or a gas only  
 19 lease, as appropriate, to the successful bidder determined by competitive bidding  
 20 under regulations adopted by the commissioner; bidding may be by sealed bid or  
 21 according to any other bidding procedure the commissioner determines is in the best  
 22 interests of the state;

23 (2) whenever, under any of the leasing methods listed in this  
 24 subsection, a royalty share is reserved to the state, it shall be delivered in pipeline  
 25 quality and free of all lease or unit expenses, including but not limited to separation,  
 26 cleaning, dehydration, gathering, salt water disposal, and preparation for transportation  
 27 off the lease or unit area;

28 (3) following a pre-sale analysis, the commissioner may choose at least  
 29 one of the following leasing methods:

30 (A) a cash bonus bid with a fixed royalty share reserved to the  
 31 state of not less than 12.5 percent in amount or value of production

1 removed or sold from the lease;

2 (B) a cash bonus bid with a fixed royalty share reserved to the  
3 state of not less than 12.5 percent in amount or value of the production  
4 removed or sold from the lease and a fixed share of the net profit derived from  
5 the lease of not less than 30 percent reserved to the state;

6 (C) a fixed cash bonus with a royalty share reserved to the state  
7 as the bid variable but no less than 12.5 percent in amount or value of the  
8 production removed or sold from the lease;

9 (D) a fixed cash bonus with the share of the net profit derived  
10 from the lease reserved to the state as the bid variable;

11 (E) a fixed cash bonus with a fixed royalty share reserved to the  
12 state of not less than 12.5 percent in amount or value of the production  
13 removed or sold from the lease with the share of the net profit derived from the  
14 lease reserved to the state as the bid variable;

15 (F) a cash bonus bid with a fixed royalty share reserved to the  
16 state based on a sliding scale according to the volume of production or other  
17 factor but in no event less than 12.5 percent in amount or value of the  
18 production removed or sold from the lease;

19 (G) a fixed cash bonus with a royalty share reserved to the state  
20 based on a sliding scale according to the volume of production or other factor  
21 as the bid variable but not less than 12.5 percent in amount or value of the  
22 production removed or sold from the lease;

23 (4) notwithstanding a requirement in the leasing method chosen of a  
24 minimum fixed royalty share, on and after March 3, 1997, the lessee under a lease  
25 issued in the Cook Inlet sedimentary basin who is the first to file with the  
26 commissioner a nonconfidential sworn statement claiming to be the first to have  
27 drilled a well discovering oil or gas in a previously undiscovered oil or gas pool and  
28 who is certified by the commissioner within one year of completion of that discovery  
29 well to have drilled a well in that pool that is capable of producing in paying quantities  
30 shall pay a royalty of five percent on all production of oil or gas from that pool  
31 attributable to that lease for a period of 10 years following the date of discovery of that

1 pool, and thereafter. The royalty payable on all production of oil or gas from the pool  
2 attributable to that lease shall be determined and payable as specified in the lease; for  
3 purposes of this paragraph, the reduced royalty authorized by this paragraph is subject  
4 to the following:

5 (A) only one reduction of royalty authorized by this paragraph  
6 may be allowed on each lease that qualifies for reduction of royalty under this  
7 paragraph;

8 (B) if, under this paragraph, application is made for a royalty  
9 reduction for a lease that was entered into before March 3, 1997, the  
10 commissioner may approve the application only if, on that date, the lease was a  
11 nonproducing lease that was not committed to a unit approved by the  
12 commissioner under (m) of this section, that is not part of a unit under (p) or  
13 (q) of this section, and that has not been made part of a unit under AS 31.05;

14 (C) if application for a royalty reduction is made under this  
15 paragraph for a lease on which a discovery royalty was claimed or may be  
16 claimed under the discovery royalty provisions of former AS 38.05.180(a) in  
17 effect before May 6, 1969, the commissioner shall disallow the application  
18 under this paragraph unless the applicant waives the right to claim the right to  
19 a reduced royalty under the discovery royalty provisions of former  
20 AS 38.05.180(a) in effect before May 6, 1969; and

21 (D) the commissioner shall adopt regulations setting out the  
22 standards, criteria, and definitions of terms that apply to implement the filing  
23 of applications for, and the review and certification of, discovery [OIL AND  
24 GAS ROYALTY] certifications under this paragraph;

25 (5) notwithstanding and in lieu of a requirement in the leasing method  
26 chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases  
27 unitized as described in (p) of this section, leases subject to an agreement described in  
28 (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of  
29 an oil or gas field identified in this section that has been granted approval of a written  
30 plan submitted to the Alaska Oil and Gas Conservation Commission under  
31 AS 31.05.030(i) shall, subject to (dd) of this section, pay a royalty of five percent on

1 the first 25,000,000 barrels of oil and the first 35,000,000,000 cubic feet of gas  
 2 produced for sale from that field that occurs in the 10 years following the date on  
 3 which the production for sale commences; the fields eligible for royalty reduction  
 4 under this paragraph, all of which are located within the Cook Inlet sedimentary basin,  
 5 were discovered before January 1, 1988, and have been undeveloped or shut in from at  
 6 least January 1, 1988, through December 31, 1997, are

- 7 (A) Falls Creek;
- 8 (B) Nicolai Creek;
- 9 (C) North Fork;
- 10 (D) Point Starichkof;
- 11 (E) Redoubt Shoal; and
- 12 (F) West Foreland;

13 (6) notwithstanding and in lieu of a requirement in the leasing method  
 14 chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases  
 15 unitized as described in (p) of this section, leases subject to an agreement described in  
 16 (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of  
 17 an oil field located offshore in Cook Inlet on which an oil production platform  
 18 specified in (A), (C), or (E) of this paragraph operates, or the lessee of all or part of the  
 19 field located offshore in Cook Inlet and described in (G) of this paragraph,

20 (A) shall pay a royalty of five percent on oil produced from the  
 21 platform if oil production that equaled or exceeded a volume of 1,200 barrels a  
 22 day declines to less than that amount for a period of at least one calendar  
 23 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for  
 24 as long as the volume of oil produced from the platform remains less than  
 25 1,200 barrels a day; the provisions of this subparagraph apply to

- 26 (i) Dolly;
- 27 (ii) Grayling;
- 28 (iii) King Salmon;
- 29 (iv) Steelhead; and
- 30 (v) Monopod;

31 (B) shall pay a royalty calculated under this subparagraph if the

1 volume of oil produced from the platform that was certified by the Alaska Oil  
2 and Gas Conservation Commission under (A) of this paragraph later increases  
3 to 1,200 or more barrels a day and remains at 1,200 or more barrels a day for a  
4 period of at least one calendar quarter; until the royalty rate determined under  
5 this subparagraph applies, the royalty continues to be calculated under (A) of  
6 this paragraph; on and after the first day of the month following the month the  
7 increased production exceeds the period specified in this subparagraph, the  
8 royalty payable under this subparagraph is

9 (i) for production of at least 1,200 barrels a day but not  
10 more than 1,300 barrels a day - seven percent;

11 (ii) for production of more than 1,300 barrels a day but  
12 not more than 1,400 barrels a day - 8.5 percent;

13 (iii) for production of more than 1,400 barrels a day but  
14 not more than 1,500 barrels a day - 10 percent; and

15 (iv) for production of more than 1,500 barrels a day -  
16 12.5 percent;

17 (C) shall pay a royalty of five percent on oil produced from the  
18 platform if oil production that equaled or exceeded a volume of 975 barrels a  
19 day declines to less than that amount for a period of at least one calendar  
20 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for  
21 as long as the volume of oil produced from the platform remains less than 975  
22 barrels a day; the provisions of this subparagraph apply to

23 (i) Baker;

24 (ii) Dillon;

25 (iii) XTO.A; and

26 (iv) XTO.C;

27 (D) shall pay a royalty calculated under this subparagraph if the  
28 volume of oil produced from the platform that was certified by the Alaska Oil  
29 and Gas Conservation Commission under (C) of this paragraph later increases  
30 to 975 or more barrels a day and remains at 975 or more barrels a day for a  
31 period of at least one calendar quarter; until the royalty rate determined under

1 this subparagraph applies, the royalty continues to be calculated under (C) of  
2 this paragraph; on and after the first day of the month following the month the  
3 increased production exceeds the period specified in this subparagraph, the  
4 royalty payable under this subparagraph is

5 (i) for production of at least 975 barrels a day but not  
6 more than 1,100 barrels a day - seven percent;

7 (ii) for production of more than 1,100 barrels a day but  
8 not more than 1,200 barrels a day - 8.5 percent;

9 (iii) for production of more than 1,200 barrels a day but  
10 not more than 1,350 barrels a day - 10 percent; and

11 (iv) for production of more than 1,350 barrels a day -  
12 12.5 percent;

13 (E) shall pay a royalty of five percent on oil produced from the  
14 platform if oil production that equaled or exceeded a volume of 750 barrels a  
15 day declines to less than that amount for a period of at least one calendar  
16 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for  
17 as long as the volume of oil produced from the platform remains less than 750  
18 barrels a day; the provisions of this subparagraph apply to

19 (i) Granite Point;

20 (ii) Anna; and

21 (iii) Bruce;

22 (F) shall pay a royalty calculated under this subparagraph if the  
23 volume of oil produced from the platform that was certified by the Alaska Oil  
24 and Gas Conservation Commission under (E) of this paragraph later increases  
25 to 750 or more barrels a day and remains at 750 or more barrels a day for a  
26 period of at least one calendar quarter; until the royalty rate determined under  
27 this subparagraph applies, the royalty continues to be calculated under (E) of  
28 this paragraph; on and after the first day of the month following the month the  
29 increased production exceeds the period specified in this subparagraph, the  
30 royalty payable under this subparagraph is

31 (i) for production of at least 750 barrels a day but not

1 more than 850 barrels a day - seven percent;

2 (ii) for production of more than 850 barrels a day but  
3 not more than 1,000 barrels a day - 8.5 percent;

4 (iii) for production of more than 1,000 barrels a day but  
5 not more than 1,200 barrels a day - 10 percent; and

6 (iv) for production of more than 1,200 barrels a day -  
7 12.5 percent;

8 (G) shall pay a royalty of five percent on oil produced from the  
9 field if oil production that equaled or exceeded a volume of 750 barrels a day  
10 declines to less than that amount for a period of at least one calendar quarter,  
11 as certified by the Alaska Oil and Gas Conservation Commission, for as long  
12 as the volume of oil produced from the field remains less than 750 barrels a  
13 day; the provisions of this subparagraph apply to the West McArthur River  
14 field;

15 (H) shall pay a royalty calculated under this subparagraph if the  
16 volume of oil produced from the field that was certified by the Alaska Oil and  
17 Gas Conservation Commission under (G) of this paragraph later increases to  
18 750 or more barrels a day and remains at 750 or more barrels a day for a period  
19 of at least one calendar quarter; until the royalty rate determined under this  
20 subparagraph applies, the royalty continues to be calculated under (G) of this  
21 paragraph; on and after the first day of the month following the month the  
22 increased production exceeds the period specified in this subparagraph, the  
23 royalty payable under this subparagraph is

24 (i) for production of at least 750 barrels a day but not  
25 more than 850 barrels a day - seven percent;

26 (ii) for production of more than 850 barrels a day but  
27 not more than 1,000 barrels a day - 8.5 percent;

28 (iii) for production of more than 1,000 barrels a day but  
29 not more than 1,200 barrels a day - 10 percent; and

30 (iv) for production of more than 1,200 barrels a day -  
31 12.5 percent; and

1 (I) may obtain the benefits of the royalty adjustments set out in  
2 (A) - (H) of this paragraph only if the commissioner determines that the  
3 reduction in production from the platform or the field is

4 (i) based on the average daily production during the  
5 calendar quarter based on reservoir conditions; and

6 (ii) not the result of short-term production declines due  
7 to mechanical or other choke-back factors, temporary shutdowns or  
8 decreased production due to environmental or facility constraints, or  
9 market conditions.

10 \* Sec. 34. AS 38.05.180(h) is amended to read:

11 (h) The commissioner may include terms in any [OIL AND GAS] lease  
12 imposing a minimum work commitment on the lessee. These terms shall be made  
13 public before the sale, and may include appropriate penalty provisions to take effect in  
14 the event the lessee does not fulfill the minimum work commitment. If it is  
15 demonstrated that a lease has been proven unproductive by actions of adjacent lease  
16 holders, the commissioner may set aside a work commitment. The commissioner may  
17 waive for a period not to exceed one two-year period any term of a minimum work  
18 commitment if the commissioner makes a written finding either that conditions  
19 preventing drilling or exploration were beyond the lessee's reasonable ability to  
20 foresee or control or that the lessee has demonstrated through good faith efforts an  
21 intent and ability to drill or develop the lease during the term of the waiver.

22 \* Sec. 35. AS 38.05.180(i) is amended to read:

23 (i) The commissioner may provide for the establishment of an exploration  
24 incentive credit system under which a lessee of state land drilling an exploratory well  
25 on that land may earn credits based upon the footage drilled and the region in which  
26 the well is situated. The commissioner may also provide for credits to be earned by  
27 persons performing geophysical work on state land, if that work is performed during  
28 the two seasons immediately preceding an announced lease sale and on land included  
29 within the sale area and the geophysical information is made public following the sale.  
30 Credits may not exceed 50 percent of the cost of the drilling or geophysical work.  
31 Credits may be used during a limited period established by the commissioner and may

1 be assigned during that period. Credits may be applied against (1) [OIL AND GAS]  
 2 royalty and rental payments for oil and gas or for gas only payable to the state or (2)  
 3 taxes payable under AS 43.55. A credit may not exceed 50 percent of the payment  
 4 toward which it is being applied. Amounts due the Alaska permanent fund  
 5 (AS 37.13.010) shall be calculated before the application of credits under this  
 6 subsection.

7 \* **Sec. 36.** AS 38.05.180(j) is amended to read:

8 (j) The commissioner

9 (1) may provide for modification of royalty on individual leases, leases  
 10 unitized as described in (p) of this section, leases subject to an agreement described in  
 11 (s) or (t) of this section, or interests unitized under AS 31.05

12 (A) to allow for production from an oil or gas field or pool if

13 (i) the oil or gas field or pool has been sufficiently  
 14 delineated to the satisfaction of the commissioner;

15 (ii) the field or pool has not previously produced oil or  
 16 gas for sale; and

17 (iii) oil or gas production from the field or pool would  
 18 not otherwise be economically feasible;

19 (B) to prolong the economic life of an oil or gas field or pool as  
 20 per barrel or barrel equivalent costs increase or as the price of oil or gas  
 21 decreases, and the increase or decrease is sufficient to make future production  
 22 no longer economically feasible; or

23 (C) to reestablish production of shut-in oil or gas that would  
 24 not otherwise be economically feasible;

25 (2) may not grant a royalty modification unless the lessee or lessees  
 26 requesting the change make a clear and convincing showing that a modification of  
 27 royalty meets the requirements of this subsection and is in the best interests of the  
 28 state;

29 (3) shall provide for an increase or decrease or other modification of  
 30 the state's royalty share by a sliding scale royalty or other mechanism that shall be  
 31 based on a change in the price of oil or gas and may also be based on other relevant

1 factors such as a change in production rate, projected ultimate recovery, development  
2 costs, and operating costs

3 (4) may not grant a royalty reduction for a field or pool

4 (A) under (1)(A) of this subsection if the royalty modification  
5 for the field or pool would establish a royalty rate of less than five percent in  
6 amount or value of the production removed or sold from a lease or leases  
7 covering the field or pool;

8 (B) under (1)(B) or (1)(C) of this subsection if the royalty  
9 modification for the field or pool would establish a royalty rate of less than  
10 three percent in amount or value of the production removed or sold from a  
11 lease or leases covering the field or pool;

12 (5) may not grant a royalty reduction under this subsection without  
13 including an explicit condition that the royalty reduction is not assignable without the  
14 prior written approval, which may not be unreasonably withheld, by the  
15 commissioner; the commissioner shall, in the preliminary and final findings and  
16 determinations, set out the conditions under which the royalty reduction may be  
17 assigned;

18 (6) shall require the lessee or lessees to submit, with the application for  
19 the royalty reduction, financial and technical data that demonstrate that the  
20 requirements of this subsection are met; the commissioner

21 (A) may require disclosure of only the financial and technical  
22 data related to development, production, and transportation of oil and gas or  
23 gas only from the field or pool that are reasonably available to the applicant;  
24 and

25 (B) shall keep the data confidential under AS 38.05.035(a)(9)  
26 at the request of the lessee or lessees making application for the royalty  
27 reduction; the confidential data may be disclosed by the commissioner to  
28 legislators and to the legislative auditor and as directed by the chair or vice-  
29 chair of the Legislative Budget and Audit Committee to the director of the  
30 division of legislative finance, the permanent employees of their respective  
31 divisions who are responsible for evaluating a royalty reduction, and to agents

1 or contractors of the legislative auditor or the legislative finance director who  
2 are engaged under contract to evaluate the royalty reduction, if they sign an  
3 appropriate confidentiality agreement;

4 (7) may

5 (A) require the lessee or lessees making application for the  
6 royalty reduction under (1)(A) of this subsection to pay for the services of an  
7 independent contractor, selected by the lessee or lessees from a list of qualified  
8 consultants compiled by the commissioner, to evaluate hydrocarbon  
9 development, production, transportation, and economics and to assist the  
10 commissioner in evaluating the application and financial and technical data; if,  
11 under this subparagraph, the commissioner requires payment for the services of  
12 an independent contractor, the total cost of the services to be paid for by the  
13 lessee or lessees may not exceed \$150,000 for each application, and the  
14 commissioner shall determine the relevant scope of the work to be performed  
15 by the contractor; selection of an independent contractor under this  
16 subparagraph is not subject to AS 36.30;

17 (B) with the mutual consent of the lessee or lessees making  
18 application for the royalty reduction under (1)(B) or (1)(C) of this subsection,  
19 request payment for the services of an independent contractor, selected from a  
20 list of qualified consultants to evaluate hydrocarbon development, production,  
21 transportation, and economics by the commissioner to assist the commissioner  
22 in evaluating the application and financial and technical data; if, under this  
23 subparagraph, the commissioner requires payment for the services of an  
24 independent contractor, the total cost of the services that may be paid for by  
25 the lessee or lessees may not exceed \$150,000 for each application, and the  
26 commissioner shall determine the relevant scope of the work to be performed  
27 by the contractor; selection of an independent contractor under this  
28 subparagraph is not subject to AS 36.30;

29 (8) shall make and publish a preliminary findings and determination on  
30 the royalty reduction application, give reasonable public notice of the preliminary  
31 findings and determination, and invite public comment on the preliminary findings

1 and determination during a 30-day period for receipt of public comment;

2 (9) shall offer to appear before the Legislative Budget and Audit  
3 Committee, on a day that is not earlier than 10 days and not later than 20 days after  
4 giving public notice under (8) of this subsection, to provide the committee a review of  
5 the commissioner's preliminary findings and determination on the royalty reduction  
6 application and administrative process; if the Legislative Budget and Audit Committee  
7 accepts the commissioner's offer, the committee shall give notice of the committee's  
8 meeting to all members of the legislature;

9 (10) shall make copies of the preliminary findings and determination  
10 available to

11 (A) the presiding officer of each house of the legislature;

12 (B) the chairs of the legislature's standing committees on  
13 resources; and

14 (C) the chairs of the legislature's special committees on oil and  
15 gas, if any;

16 (11) shall, within 30 days after the close of the public comment period  
17 under (8) of this subsection,

18 (A) prepare a summary of the public response to the  
19 commissioner's preliminary findings and determination;

20 (B) make a final findings and determination; the  
21 commissioner's final findings and determination prepared under this  
22 subparagraph regarding a royalty reduction is final and not appealable to the  
23 court;

24 (C) transmit a copy of the final findings and determination to  
25 the lessee;

26 (D) with the applicant's consent, amend the applicant's lease or  
27 unitization agreement consistent with the commissioner's final decision; and

28 (E) make copies of the final findings and determination  
29 available to each person who submitted comment under (8) of this subsection  
30 and who has filed a request for the copies;

31 (12) is not limited by the provisions of AS 38.05.134(3) or (f) of this

1 section in the commissioner's determination under this subsection.

2 \* **Sec. 37.** AS 38.05.180(l) is amended to read:

3 (l) Subject to the provisions of AS 31.05, the commissioner has discretion to  
4 enter into an agreement whereby, with the consent of the lessee, the state's royalty  
5 share of [OIL AND GAS] production of oil and gas or gas only may be stored or  
6 retained in storage by the lessee, or the commissioner may enter into an agreement  
7 with one or more of the affected field lease holders to trade current royalty production  
8 from a field for a like amount, kind, and quality of future production, on the condition  
9 that the state receives back its stored or traded royalty share during the first half of the  
10 estimated field life or no later than 15 years after start of production, whichever is  
11 sooner.

12 \* **Sec. 38.** AS 38.05.180(m) is amended to read:

13 (m) An oil and gas lease or a gas only lease must cover a reasonably compact  
14 area not exceeding 5,760 acres, and may be for a maximum period of 10 years, except  
15 that the commissioner may issue a lease for a period not less than five years upon a  
16 finding that it is in the best interests of the state. An oil and gas lease shall be  
17 automatically extended if and for so long thereafter as oil or gas is produced in paying  
18 quantities from the lease or if the lease is committed to a unit approved by the  
19 commissioner, and a gas only lease shall be automatically extended if and for so  
20 long thereafter as gas is produced in paying quantities from the lease or if the  
21 lease is committed to a unit approved by the commissioner. A lease issued under  
22 this section covering land on which there is a well capable of producing oil or gas in  
23 paying quantities does not expire because the lessee fails to produce oil or gas unless  
24 the lessee is allowed reasonable time to place the well on a producing status. Upon  
25 extension, the commissioner may increase lease rentals so long as the increased rental  
26 rate does not exceed 150 percent of the rate for the preceding year. If drilling has  
27 commenced on the expiration date of the primary term of the lease and is continued  
28 with reasonable diligence, including such operations as redrilling, sidetracking, or  
29 other means necessary to reach the originally proposed bottom hole location, the lease  
30 continues in effect until 90 days after drilling has ceased and for so long thereafter as  
31 oil or gas is produced in paying quantities. An oil and gas lease or a gas only lease

1 issued under this section which is subject to termination by reason of cessation of  
 2 production does not terminate if, within 60 days after production ceases, reworking or  
 3 drilling operations are commenced on the land under lease and are thereafter  
 4 conducted with reasonable diligence during the period of nonproduction.

5 \* Sec. 39. AS 38.05.180(n) is amended to read:

6 (n) The commissioner may establish by regulation that after a well has been  
 7 plugged and abandoned, the rental rate which was in effect during the year of  
 8 abandonment is maintained for the remainder of the term. Rental is payable in  
 9 advance and continues until income to the state from royalty or net profit share  
 10 exceeds rental income to the state for that year. Under this subsection,

11 (1) [OIL AND GAS] leases for oil and gas or for gas only shall  
 12 provide for payment to the state of rental on the following basis:

13 (A) [(1)] for the first year \$1.00 per acre;

14 (B) [(2)] for the second year, \$1.50 per acre;

15 (C) [(3)] for the third year, \$2.00 per acre;

16 (D) [(4)] for the fourth year, \$2.50 per acre;

17 (E) [(5)] for the fifth and following years, \$3.00 per acre;

18 (2) if the lessee under a gas only lease demonstrates to the  
 19 commissioner that the potential resources underlying the lease are reasonably  
 20 estimated to be only nonconventional gas,

21 (A) the rental payment is \$1.00 per acre until the lease  
 22 expires or paying quantities of conventional oil or gas are discovered  
 23 underlying the lease; and

24 (B) if the nonconventional gas produced will not be in  
 25 direct competition with gas on which a royalty at a rate of at least 12.5  
 26 percent is payable, then the royalty share payable to the state on all  
 27 production of gas from the pool attributable to that lease shall be 6.25  
 28 percent based upon production delivered in pipeline quality and free of all  
 29 lease expenses, including separation, cleaning, dehydration, gathering, salt  
 30 water disposal, and preparation for transportation off the lease.

31 \* Sec. 40. AS 38.05.180(p) is amended to read:

1 (p) To conserve the natural resources of all or a part of an oil or gas pool,  
 2 field, or like area, the lessees and their representatives may unite with each other, or  
 3 jointly or separately with others, in collectively adopting or operating under a  
 4 cooperative or a unit plan of development or operation of the pool, field, or like area,  
 5 or a part of it, when determined and certified by the commissioner to be necessary or  
 6 advisable in the public interest. The commissioner may, with the consent of the  
 7 holders of leases involved, establish, change, or revoke drilling producing, and  
 8 royalty requirements of the leases and adopt regulations with reference to the leases,  
 9 with like consent on the part of the lessees, in connection with the institution and  
 10 operation of a cooperative or unit plan as the commissioner determines necessary or  
 11 proper to secure the proper protection of the public interest. The commissioner may  
 12 not reduce royalty on leases in connection with a cooperative or unit plan except as  
 13 provided in (j) of this section. The commissioner may require a lease [OIL AND  
 14 GAS LEASES] issued under this section to contain a provision requiring the lessee to  
 15 operate under a reasonable cooperative or unit plan, and may prescribe a plan under  
 16 which the lessee must operate. The plan must adequately protect all parties in interest,  
 17 including the state.

18 \* **Sec. 41.** AS 38.05.180 is amended by adding new subsections to read:

19 (ff) The provisions of this section that authorize oil and gas leases also apply  
 20 to authorize the commissioner to issue leases for the production of gas only, subject to  
 21 the following:

22 (1) in authorizing and managing leases under this subsection, the terms  
 23 "oil and gas" or "oil or gas" as they are used in this chapter may be read and applied as  
 24 appropriate as referring to gas only;

25 (2) when a lease is authorized as a gas only lease, the lease does not  
 26 give the lessee the right to produce oil; if a well drilling for gas under a gas only lease  
 27 authorized by this subsection penetrates a formation capable of producing oil, the  
 28 owner or operator

29 (A) shall notify the department and the Alaska Oil and Gas  
 30 Conservation Commission; and

31 (B) may not conduct further operations in the drilled well until

1 the facility complies with all applicable laws and regulations relating to oil and  
2 gas exploration and production; however, this subparagraph does not prevent  
3 the owner or operator from conducting activities that may be required by the  
4 Alaska Oil and Gas Conservation Commission to plug, plug-back, or abandon  
5 a well;

6 (3) the provisions of this subsection do not apply to authorize a lease  
7 for the recovery of nonconventional gas on land that is held under an existing coal  
8 lease entered into under AS 38.05.150 that has an active permit for exploration or  
9 mining unless the lessee under this subsection is also the lessee under AS 38.05.150 of  
10 that land.

11 (gg) For an activity or operation related to the extraction of coal bed methane,

12 (1) for which the department by regulation requires submission and  
13 approval of a plan of operations before activities or operations may be undertaken, the  
14 director shall, as a condition for determining a bond requested under AS 38.05.130,  
15 after notice and an opportunity to be heard, review the plan of operations to determine  
16 if use of the owner's land is reasonably necessary to extract the coal bed methane; a  
17 bond determined under AS 38.05.130 and this paragraph may, at the discretion of the  
18 director, be imposed against a statewide bond that has been posted by the person  
19 initiating the request for determination of the bond if the statewide bond remains in  
20 effect, and an additional bond is not required;

21 (2) before approving operations for the development of coal bed  
22 methane under AS 38.05.134, 38.05.177, or this section, the director shall ensure that  
23 the approval is conditioned upon

24 (A) reasonable and appropriate setbacks governing the  
25 placement by the operator of compressor stations; setbacks approved under this  
26 subparagraph must be determined with reference to the population density and  
27 general character of the parcels surrounding the proposed compressor station  
28 site; and

29 (B) reasonable and appropriate measures to mitigate the noise  
30 of compressors, engines, and other noise generating equipment operated by  
31 the operator on the lease or license; measures approved under this

#1  
deleted  
language  
  
#1

1           subparagraph must be determined with reference to the population density and #1  
 2           general character of the parcels surrounding the proposed compressor, engine,  
 3           or other noise generating equipment.

4   \* Sec. 42. AS 38.05.860(a) is amended to read:

5           (a) The commissioner may require an applicant seeking the sale, lease, or  
 6           other disposal of land or an interest in land, other than under an oil and gas lease, gas  
 7           only lease, or mineral lease, to deposit an amount covering the estimated cost of an  
 8           appraisal, survey, and other costs necessary to offer the land or interest in land,  
 9           including advertising. All deposited funds not expended shall be refunded to the  
 10          applicant. If the land or interest in land is awarded to a person other than the applicant  
 11          making the deposit, the person awarded the land shall pay the total actual cost incurred  
 12          by the department in making the disposal, and the deposit shall be returned to the  
 13          original applicant. In lieu of requiring the deposit under this subsection, the  
 14          commissioner may enter into an agreement with an applicant seeking land or an  
 15          interest in land requiring the applicant to reimburse the department for costs incurred  
 16          in the disposal if the applicant is awarded the land or interest in land.

17   \* Sec. 43. AS 38.05.860(c) is amended to read:

18          (c) The commissioner shall require each bidder for the competitive leasing of  
 19          [OIL AND GAS] land for oil and gas, or for gas only, to submit with each bid a  
 20          deposit of money equal to 20 percent of the bonus.

21   \* Sec. 44. AS 38.05.945(a) is amended to read:

22          (a) This section establishes the requirements for notice given by the  
 23          department for the following actions:

24               (1) classification or reclassification of state land under AS 38.05.300  
 25               and the closing of land to mineral leasing or entry under AS 38.05.185;

26               (2) zoning of land under applicable law;

27               (3) issuance of a

28                       (A) preliminary written finding under AS 38.05.035(e)(5)(A)  
 29               regarding the sale, lease, or disposal of an interest in state land or resources for  
 30               oil and gas, or for gas only, subject to AS 38.05.180(b);

31                       (B) [REPEALED]

1 (C)] written finding for the sale, lease, or disposal of an interest  
 2 in state land or resources under AS 38.05.035(e)(6), except a [AN OIL OR  
 3 GAS] lease sale described in AS 38.05.035(e)(6)(F) for which the director  
 4 must provide opportunity for public comment under the provisions of that  
 5 subparagraph;

6 (4) a competitive disposal of an interest in state land or resources after  
 7 final decision under AS 38.05.035(e);

8 (5) a preliminary finding under AS 38.05.035(e) concerning sites for  
 9 aquatic farms and related hatcheries;

10 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,  
 11 lease, or disposal of an interest in state land or resources.

12 \* Sec. 45. AS 38.05.965 is amended by adding a new paragraph to read:

13 (25) "nonconventional gas" means coal bed methane, gas contained in  
 14 shales, or gas hydrates.

15 \* Sec. 46. AS 38.06.080(2) is amended to read:

16 (2) "state lease" means an oil and gas lease or gas only lease on state  
 17 land.

18 \* Sec. 47. AS 38.35.020(a) is amended to read:

19 (a) Rights-of-way on state land including rights-of-way over, under, along,  
 20 across, or upon the right-of-way of a public road or highway or the right-of-way of a  
 21 railroad or other public utility, or across, upon, over, or under a river or other body of  
 22 water or land belonging to or administered by the state may be granted by  
 23 noncompetitive lease by the commissioner for pipeline purposes for the transportation  
 24 of oil, products, or natural gas under those conditions prescribed by law or by  
 25 administrative regulation. Except to the extent authorized by an oil and gas lease, a  
 26 gas only lease, or an oil and gas or gas only unit agreement approved by the state, no  
 27 person may engage in any construction or operation of any part of an oil, products, or  
 28 natural gas pipeline, which in whole or in part is or is proposed to be on state land  
 29 unless that person has obtained from the commissioner a right-of-way lease of the land  
 30 under this chapter.

31 \* Sec. 48. AS 43.20.072(c) is amended to read:

1 (c) A taxpayer's business income shall be apportioned to this state by  
 2 multiplying the taxpayer's income determined under (b) of this section by the  
 3 apportionment factor applicable to the taxpayer among the following factors:

4 (1) the apportionment factor of a taxpayer subject to this section but  
 5 not engaged in the production of oil and gas, or of gas only, as appropriate, from a  
 6 lease or property in this state during the tax period is a fraction, the numerator of  
 7 which is the sum of the property factor under AS 43.19 (Multistate Tax Compact) and  
 8 the sales factor under (d) of this section for the taxpayer for that tax period, and the  
 9 denominator of which is two;

10 (2) the apportionment factor of a taxpayer subject to this section but  
 11 not engaged in the pipeline transportation of oil or gas in this state during the tax  
 12 period is a fraction, the numerator of which is the sum of the property factor under (e)  
 13 of this section and the extraction factor under (f) of this section for the taxpayer for the  
 14 tax period, and the denominator of which is two;

15 (3) the apportionment factor of a taxpayer engaged both in the  
 16 production of oil or gas from a lease or property in this state and in the pipeline  
 17 transportation of oil or gas in this state during the tax period is a fraction, the  
 18 numerator of which is the sum of the sales factor under (d) of this section, the property  
 19 factor under (e) of this section, and the extraction factor under (f) of this section for  
 20 the taxpayer for the tax period, and the denominator of which is three.

21 \* Sec. 49. AS 43.55.025(a) is amended to read:

22 (a) Subject to the terms and conditions of this section, on oil and gas produced  
 23 from an oil and gas lease, or on gas produced from a gas only lease, on or after  
 24 July 1, 2004, a credit against the tax due under this chapter is allowed in an amount  
 25 equal to

26 (1) 20 percent of the total exploration expenditures that qualify under  
 27 (b) and (c) of this section, 20 percent of the total exploration expenditures that qualify  
 28 under (b) and (d) of this section, or both, for a total credit that does not exceed 40  
 29 percent of the total exploration expenditures; or

30 (2) 40 percent of the total exploration expenditures that qualify under  
 31 (b) and (e) of this section, for a total production tax credit that does not exceed 40

1 percent of the total qualified exploration expenditures.

2 \* Sec. 50. AS 43.55.900(9) is amended to read:

3 (9) "lease or property" means any right, title, or interest in or the right  
4 to produce or recover oil or gas including:

5 (A) a mineral interest,

6 (B) a leasehold interest,

7 (C) a working interest, royalty interest, overriding royalty  
8 interest, production payment, net profit interest or any other interest in a lease,  
9 concession, joint venture, or other agreement for [OIL AND GAS] exploration,  
10 development, or production of oil and gas or of gas only,

11 (D) a working interest, royalty interest, overriding royalty  
12 interest, production payment, net profit interest or any other interest in an  
13 agreement for unitization or pooling under the provisions of 26 U.S.C.  
14 614(b)(3) (Internal Revenue Code) as defined on January 1, 1974;

15 \* Sec. 51. AS 46.03.100(f) is amended to read:

16 (f) This section does not apply to discharges of solid or liquid waste material  
17 or water discharges from the following activities if the discharge is incidental to the  
18 activity and the activity does not produce a discharge from a point source, as that term  
19 is defined in regulations adopted under this chapter, directly into any surface water of  
20 the state:

21 (1) mineral drilling, trenching, ditching, and similar activities;

22 (2) landscaping;

23 (3) water well drilling and [,] geophysical drilling [, OR COAL BED  
24 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER  
25 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE  
26 SURFACE]; or

27 (4) drilling, ditching, trenching, and similar activities associated with  
28 facility construction and maintenance or with road or other transportation facility  
29 construction and maintenance; however, the exemption provided by this paragraph  
30 does not relieve a person from obtaining a permit under this section if

31 (A) the drilling, ditching, trenching, or similar activity will

1 involve the removal of the groundwater, stormwater, or wastewater runoff that  
2 has accumulated and is present at an excavation site for facility, road, or other  
3 transportation construction or maintenance; and

4 (B) a permit is otherwise required by this section.

5 \* Sec. 52. AS 46.04.030(b) is amended to read:

6 (b) A person may not cause or permit the operation of a pipeline or an  
7 exploration or production facility in the state unless an oil discharge prevention and  
8 contingency plan for the pipeline or facility has been approved by the department and  
9 the person is in compliance with the plan. This subsection does not apply to an  
10 exploration or production facility used solely to explore for or to develop or produce  
11 nonconventional [SHALLOW NATURAL] gas resources, except that this exemption  
12 does not apply if the Alaska Oil and Gas Conservation Commission determines under  
13 AS 31.05.030(j) that

14 (1) a well drilled for nonconventional [SHALLOW NATURAL] gas  
15 may penetrate a formation capable of flowing oil; and

16 (2) the volume of oil encountered will be of such quantities that a  
17 contingency plan will be required.

18 \* Sec. 53. AS 46.04.040(b) is amended to read:

19 (b) A person may not cause or permit the operation of a pipeline or an  
20 exploration or production facility in the state unless the person has furnished to the  
21 department, and the department has approved, proof of financial ability to respond in  
22 damages. Proof of financial responsibility required for

23 (1) a pipeline or an offshore exploration or production facility is  
24 \$50,000,000 per incident;

25 (2) an onshore production facility is

26 (A) \$20,000,000 per incident if the facility produces over  
27 10,000 barrels per day of oil;

28 (B) \$10,000,000 per incident if the facility produces over 5,000  
29 barrels per day but not more than 10,000 barrels per day of oil;

30 (C) \$5,000,000 per incident if the facility produces over 2,500  
31 barrels per day but not more than 5,000 barrels per day of oil;

1 (D) \$1,000,000 per incident if the facility produces 2,500  
2 barrels per day or less of oil;

3 (3) an onshore exploration facility is

4 (A) \$25,000 per incident for a facility used solely to explore for  
5 nonconventional [SHALLOW NATURAL] gas by means of drilling a well to  
6 explore for the gas [, WHETHER METHANE ASSOCIATED WITH AND  
7 DERIVED FROM COAL DEPOSITS OR OTHERWISE, FROM A FIELD IF  
8 A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE SURFACE]; and

9 (B) except as provided by (A) of this paragraph, \$1,000,000 per  
10 incident.

11 \* Sec. 54. AS 46.04.900 is amended by adding a new paragraph to read:

12 (31) "nonconventional gas" has the meaning given in AS 38.05.965.

13 \* Sec. 55. AS 46.40.205 is amended to read:

14 **Sec. 46.40.205. Consistency determinations for certain activities involving**  
15 **nonconventional [SHALLOW NATURAL] gas.** (a) When conducted under  
16 oversight and regulation of the Alaska Oil and Gas Conservation Commission and the  
17 state's resource agencies, projects for the exploration and development of  
18 nonconventional [SHALLOW NATURAL] gas are consistent with the program  
19 described in this chapter. Persons responsible for activities subject to this section shall  
20 obtain all required permits and approvals from municipal, state, and federal agencies  
21 as otherwise required by law.

22 (b) In this section, "nonconventional [SHALLOW NATURAL] gas" has the  
23 meaning given in AS 38.05.965 [AS 46.04.900].

24 \* Sec. 56. AS 46.40.210(12) is amended to read:

25 (12) "uses of state concern" means those land and water uses that  
26 would significantly affect the long-term public interest; "uses of state concern" include

27 (A) uses of national interest, including the use of resources for  
28 the siting of ports and major facilities that contribute to meeting national  
29 energy needs, construction and maintenance of navigational facilities and  
30 systems, resource development of federal land, and national defense and  
31 related security facilities that are dependent upon coastal locations;

1 (B) uses of more than local concern, including those land and  
 2 water uses that confer significant environmental, social, cultural, or economic  
 3 benefits or burdens beyond a single coastal resource district;

4 (C) the siting of major energy facilities, activities pursuant to a  
 5 state oil and gas lease, a state gas only lease, or a federal oil and gas lease, or  
 6 large-scale industrial or commercial development activities that are dependent  
 7 on a coastal location and that, because of their magnitude or the magnitude of  
 8 their effect on the economy of the state or the surrounding area, are reasonably  
 9 likely to present issues of more than local significance;

10 (D) facilities serving statewide or interregional transportation  
 11 and communication needs; and

12 (E) uses in areas established as state parks or recreational areas  
 13 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat  
 14 areas under AS 16.20.

15 \* Sec. 57. The uncoded law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is  
 16 amended to read:

17 LEGISLATIVE FINDINGS. The legislature finds that

18 (1) [THE DEVELOPMENT OF SHALLOW NATURAL GAS  
 19 RESOURCES IS IN THE BEST INTERESTS OF THE STATE OF ALASKA;

20 (2)] shallow natural gas is abundant and widespread in Alaska and  
 21 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,  
 22 with an inexpensive and clean source of energy if those resources can be economically  
 23 developed;

24 (2) [(3)] the development of shallow natural gas poses significantly  
 25 fewer risks and creates substantially less impact to the environment than traditional  
 26 deep oil and gas projects, which have served as the model for oil and gas industry and  
 27 environmental regulations to date in Alaska;

28 (3) [(4)] the regulatory requirements developed and applied to  
 29 traditional deep oil and gas projects in Alaska are ill-suited and unduly onerous when  
 30 applied to shallow natural gas projects, threatening the economic viability of otherwise  
 31 desirable exploration and development projects;

1           (4) [(5)] there is an immediate state and national need for the  
2 development of clean and economical unconventional energy sources, such as shallow  
3 natural gas resources;

4           (5) [(6)] reform of existing laws and regulations is needed to remove  
5 unnecessary regulatory burdens on the private sector to foster and encourage the  
6 development in Alaska of these necessary resources;

7           (6) [(7)] the legislature is acting in the interest of promoting the active  
8 development of such resources, while ensuring that suitable measures are taken to  
9 protect human health and safety and the natural environment,

10                   (A) to remove impediments to the responsible development of  
11 shallow natural gas; and

12                   (B) to provide the proper state agencies with clear authority and  
13 discretion to adopt regulatory practices appropriate to shallow natural gas  
14 exploration and development projects, in recognition of the lower risks posed  
15 by such projects to human health and safety and the natural environment [;  
16 AND

17                   (C) TO RESERVE ALL RIGHTS AND POWERS NOT  
18 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO  
19 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW  
20 NATURAL GAS].

21 \* **Sec. 58.** AS 31.05.125, 31.05.170(14); AS 38.05.177(b), 38.05.177(c), 38.05.177(e),  
22 38.05.177(f), 38.05.177(g), 38.05.177(h), 38.05.177(j), 38.05.177(k), 38.05.177(m),  
23 38.05.177(n), 38.05.177(o); and AS 46.04.900(25) are repealed.

24 \* **Sec. 59.** The uncodified law of the State of Alaska is amended by adding a new section to  
25 read:

26           CERTAIN SHALLOW NATURAL GAS LEASES AND LEASE APPLICATIONS  
27 TO BE ADMINISTERED UNDER FORMER LAW. The provisions of AS 38.05.177(a),  
28 (d)(1), and (l), amended by secs. 26 - 28 of this Act, as those provisions read on the day  
29 before the effective date of amendment of those subsections, and the provisions of  
30 AS 38.05.177(b), (c), (e) - (h), (j), (k), (m), (n), and (o), repealed by sec. 58 of this Act, as  
31 those provisions read on the day before the effective date of the repeal of those subsections,

1 apply to shallow natural gas leases issued under AS 38.05.177 and in effect on December 31,  
2 2003.

3 \* **Sec. 60.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 **CONVERSION OF EXISTING SHALLOW NATURAL GAS LEASE**  
6 **APPLICATIONS.** (a) The applicant for a shallow natural gas lease under AS 38.05.177  
7 whose application was received by the Department of Natural Resources before the effective  
8 date of this section may, not later than August 31, 2004, or 60 days after the effective date of  
9 this Act, whichever is later, convert the application to an exploration license and lease  
10 application under AS 38.05.131(a), as amended by sec. 14 of this Act. An applicant  
11 converting an application under this subsection

12 (1) may apply for as few as 3,000 acres, notwithstanding the minimum  
13 limitation of acreage set out in AS 38.05.132(c)(2);

14 (2) shall pay the fee required by AS 38.05.132(c)(6);

15 (3) is subject to a three-year work commitment lieu of a work commitment  
16 of any other duration required by AS 38.05.132 and, notwithstanding AS 38.05.132(c)(3), is  
17 under an obligation to perform a specified work commitment of \$1 per acre per year; and

18 (4) may, subject to (b) of this section, convert an exploration license to a lease  
19 under AS 38.05.134, as amended by sec. 22 of this Act.

20 (b) The provisions of AS 38.05.035(e) apply to an application made under (a) of this  
21 section.

22 (c) For an application made under (a) of this section, the director of the division of  
23 lands shall remit to the applicant the application fee paid by the applicant under  
24 AS 38.05.177(b)(2).

25 \* **Sec. 61.** This Act takes effect immediately under AS 01.10.070(c).

# ALASKA STATE HOUSE OF REPRESENTATIVES

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## HOUSE COMMITTEE ON RESOURCES

### SPONSOR STATEMENT

#### S CS CS HB 531 (RES) – Conventional / Non-Conventional Gas Leases

The intent of original shallow gas leasing legislation in 1995, HB 394, was to expand development of our state's marketable natural gas resources, as well as to promote private-sector employment, generate less expensive energy alternatives for rural Alaskan consumers, and enhance local tax bases for municipalities. Shallow gas legislation was inspired by the need to tailor the particular economies of this resource opportunity to available market opportunities. This type of gas extraction does not conform to the same economies of scale as conventional deep-hole oil and gas drilling.

Original legislation provided for leasing on a first-come, first-served basis so that development of the resource in areas away from the energy grid could take place. With a well-known shortage of natural gas development opportunities in South Central Alaska, prospects of leasing on-shore fields in the Cook Inlet Basin became very attractive. Two unintended consequences of this sudden interest materialized. One, it sparked leasing of the state-owned subsurface mineral estate in uneconomic areas, and two, it encouraged leasing in areas where divergent interests between gas development and established local residential and business activities came into conflict.

Without HB 531, a subsequent gas development entity could immediately lease land relinquished by the original lessee. In addition, land not currently leased remains subject to current over-the-counter standards. This bill initiates a permanent solution to these problems. It has been brought forward in response to strong citizen interest in the Mat-Su Valley and on the Kenai Peninsula, with input from several public meetings held at one time or another by the Alaska Department of Natural Resources (DNR), and the Senate Resources Committee.

#### Legislation Highlights

- ~ Eliminates over-the-counter, first-come, first-served shallow gas leases and replaces it with area-wide leasing or exploration licensing.
- ~ Requires a best-interest finding before any oil and gas leasing or exploration licensing. This will give DNR control of what land is leased, avoiding unnecessary surface-owner conflicts. Best-interest finds are a time-tested public process.
- ~ Creates a gas-only section of area-wide leasing and exploration licensing identified in a best-interest finding by DNR.

~

Differentiates conventional and non-conventional gas resources for the purposes of lease rentals.

~

Defines conventional and non-conventional gas development, and treats each distinctly. Recognizes that lease rights should not be determined by a depth criteria only. Enhances production opportunities.

~

Encourages exploration licenses with a best-interest finding as the method for non-conventional gas exploration outside of the area-wide leasing in rural Alaska.

~

Makes leasing and regulatory criteria fit the appropriate activity.

~

Ensures competitive processes, thereby maximizing the state's interests.

HB 531 / House Resources Committee / Rp. Beverly Masek / staff: Eleanor Wolfe / 465-6585

HB 531

- Repeals existing over the counter shallow gas leasing program and replace it with current exploration licensing and conventional competitive leasing programs.  
Both these programs require the Department of Natural Resources to do a Best Interest Finding (BIF) prior to leasing. The BIF process has extensive public noticing and public input and requires the Commissioner to balance interests prior to holding a lease sale or issuing a license.
- Includes additional ground water protections involving the production of non-conventional gas through requiring the AOGCC to regulate:
  - Hydraulic fracturing,
  - Disposal of wastes,
  - reinjection of produced water
  - prohibiting the production of gas from aquifers that serve as a source of water for human consumption or agricultural purposes unless it can be demonstrated that it will not adversely affect the aquifer
- Limits the discretion of DNR to extend the existing shallow gas leases
- Gives the Commissioner the discretion to issue either oil and gas or gas only leases
- On a gas-only-lease allows for the lessee to make a showing to DNR that can result in lower rentals and royalties if: The gas doesn't compete with other gas and the lease has only nonconventional gas potential.
- Repeals the HB 69 provisions allowing the Commissioner of DNR override authority over local zoning ordinances
- Gives a one-time opportunity for pending lease applicants to apply for a noncompetitive exploration license with a Best Interest Finding and a work commitment.
- As amended requires the DNR Commissioner to establish setbacks and noise mitigation measures for compressor stations prior to approving coalbed methane operations on any state leases.
- As amended requires the operator design and implement a water well testing program to provide baseline data on water quality and quantity as a condition for approval of a AOGCC permit to drill a coalbed methane well for production or production testing
- As amended specifies bonding requirements on gas-only-leases

Provided by House Committee on Resources

# SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5-4-04

Resources Committee considered CS FOR HOUSE BILL NO. 531(FIN) am

## HB 531 CONVENTIONAL & NONCONVENTIONAL GAS LEASES

"An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date."

and recommends:

- be replaced with S CS CSHB 531 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

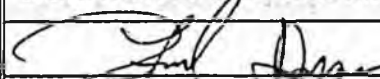
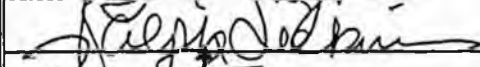
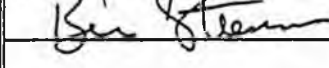
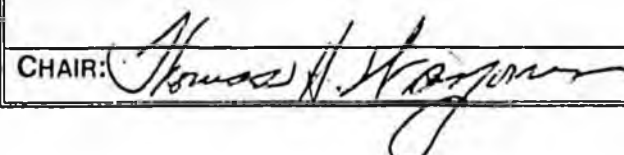
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
ADM	5/5	✓			3

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DNR	4/29/04	✓			2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
Dyson 	✓			
Seelins 	✓			
B. Stevens 	✓			
Wagoner Vice-CHAIR: 	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

HB 531-CONVENTIONAL & NONCONVENTIONAL GAS LEASES

~~NAME: Jim SYKES *Hand to hear* Subject/Bill No: HB 531  
Co./Dept./Title: \_\_\_\_\_ Phone: 907-745-6962  
Address: POB 696 Palmer Zip: 99645  
Do you wish to testify?  Yes  No  Respond To Questions~~

NAME: MARK MYERU Subject/Bill No: HB 531  
Co./Dept./Title: DNR OIL & GAS, Director Phone: 269-8800  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

**HB**

**533**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 29, 2004

FURTHER REFERRALS:

Date of Committee Action: 4-15-04

The FINANCE Committee considered:

HB 533

HOUSE BILL NO. 533

IF UNREAS. AGENCY DELAY, COURT DECIDES

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

Recommends it be replaced with [ ] HCS or [  ] CS for HB 533 (JUD)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_  Same Title [ ] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbreviations for Depts.:

- ADM
- CEC
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
AK Court	#1		✓	
Commercial Fish	#2		✓	
DHSS	#3		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>K. May</i>	Maye	✓			
<i>Michelle Howard</i>	Howard	✓			
<i>Bill Holt</i>	STOLTZ			✓	
<i>Wendell E. Moses</i>	MOSES			X	
<i>Michelle Howard</i>	Howard	✓			
<i>Michelle Howard</i>	Fritz	✓			
<i>Michelle Howard</i>	FOSTER	X			
Chair: <i>Michelle Howard</i>	Williams	✓			
Chair: <i>Michelle Howard</i>	Williams	X			

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB533CS-LAW-L&SA-3:  
Bill Version: CSHB533  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An act relating to the state's administrative procedures and to judicial oversight of administrative matters." RDU CIVIL  
Sponsor House State Affairs Component Labor & State Affairs  
Requester House Judiciary 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	67.3	67.3	67.3	67.3	67.3	67.3
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	8.0	8.0	8.0	8.0	8.0	8.0
Supplies	1.4	1.4	1.4	1.4	1.4	1.4
Equipment	7.4	0.9	0.9	0.9	0.9	0.9
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>84.3</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.3	77.8	77.8	77.8	77.8	77.8
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
<b>TOTAL</b>	<b>84.3</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</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	0.5	0.5	0.5	0.5	0.5	0.5
Part-time						
Temporary						

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

This bill would give the superior court jurisdiction over petitions for relief in administrative matters under AS 44.62.305 in circumstances where an individual, who has otherwise satisfied the procedural requirements of the administrative proceeding, is subject to unreasonable delay and immediate and irreparable damage as a result of such a delay, by a state agency. The bill allows the superior court to enjoin the administrative proceeding and make a determination in the matter, establish a deadline for the state agency to issue a final administrative decision, or order that the matter be handled by another for of dispute resolution.

Passage of this legislation will have an impact on the Department of Law. It is anticipated that Law will need to represent state agencies in instances where individuals seek relief from the superior court.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
Division Administrative Services Date/Time 3/26/04 1:49 PM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/26/2004  
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB533

ANALYSIS CONTINUATION

The Department of Law estimates that the additional workload would amount to one-half of a full time attorney. The cost of such a position is based on the calculated FY 2005 timekeeping and billing rate of \$107.99 per billable hour. Average billable hours per attorney are 1,440 per year. Thus a half time attorney will cost  $\$155,500/2 = \$77,750$ , rounded. The rate includes salary, benefits, support staff, and other overhead costs. A one time cost of \$6,500 for furnishings and equipment is included in the first year.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 533(JUD)  
(H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title If Unreas. Agency Delay/Ct. Decides BRU Alaska Court System  
Sponsor House State Affairs Component Trial Courts  
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>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)  
House Bill 533 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 3/18/04 7:59 AM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/18/2004  
Agency: Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 533(JUD)  
(H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
Title: "An act relating to judicial relief before final RDU Comm. Fish Entry Commission  
administrative decisions of state agencies." Component: Commercial Fisheries Entry  
Sponsor: House State Affairs Committee Commission  
Requester: House Judiciary Committee Component No. 471

**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>	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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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						
1156 Receipt Supported Services						
<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)*

The commission has averaged more than 70 final decisions on applications for limited entry permits each year since 1990 (more than 1,000 total). Seven appeals from these decisions are currently pending in court, representing about 10% of our average yearly final decisions on applications (the commission does additional kinds of cases including transfer cases).

HB 533 will almost certainly increase the number of CFEC court cases the state must defend, though the exact number (and thus, the exact fiscal impact to CFEC) cannot be known at this time. Any increase in the number of cases filed will require additional staff and commissioner time. If 10% of the 321 applicants currently on appeal before our hearing officers or commissioners were to file a case

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960  
Division: Commercial Fisheries Entry Commission Date/Time 3/23/04 10:13 AM  
Approved by: Bruce Twomley, Chairman Date 3/23/2003  
Agency: Commercial Fisheries Entry Commission

FISCAL NOTE #2

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 533(JUD)

ANALYSIS CONTINUATION

under HB 533 without having first exhausted the administrative appeal process available to them, 32 additional lawsuits would be generated. Because gathering and preparing records and assisting the Department of Law with court appeals of CFEC cases is enormously labor intensive and time consuming, if HB 533 results in 10% of the appeals pending before the commission being filed with the courts, the commission will need to add one paralegal position to assist with the additional workload.

The following personal services costs are calculated for a range 15 with salary, benefits and employer costs, including yearly merit increases (based on the current employer costs and XE salary schedule):

FY05: \$54.4  
FY06: \$55.8  
FY07: \$57.5  
FY08: \$59.3  
FY09: \$61.0  
FY10: \$63.0

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
 Bill Version: CSHB 533(JUD)  
 ( H ) Publish Date: 3/29/04  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES  
 RDU: Health Care Services  
 Component: Hearings and Appeals

Sponsor: HOUSE (STA)

Requester: HOUSE (JUD) Component No. 1434

**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>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (0)</b>						

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match	*	*	*	*	*	*
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill would allow parties involved in the administrative hearing and appeals process judicial relief if a party to the proceeding has satisfied all procedural requirements up to the time relief is sought, a state agency unreasonably delays the administrative process, and that delay causes significant and irreparable damage.  
  
 HB 533 would circumvent the federal requirements set forth for the Medicaid Program, Temporary Assistance Program, and Food Stamps Program. 7 CFR 273.15 (Food Stamps), 42 CFR 431.200-250 (Medicaid Program), 45 CFR 205.10(Temporary Assistance) requires this

Prepared by: Dwayne Peoples, Director Phone 465-3355  
 Division: Health Care Services Date/Time 03/13/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 03/23/2004  
 Agency: Department of Health and Social Services

FISCAL NOTE  
FN # 3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

CSHB 533(JUD)

ANALYSIS CONTINUATION

HB533-DHSS-DHCS2-03-23-04

state to provide a fair hearing through the administrative process. These federal regulations require the fair hearing process to be complete within 90 days from the date a person requests a hearing, and in some cases regarding food stamps, within 60 days.

Because federal law provides required completion dates, this bill has no fiscal impact on Health Care Services Hearings and Appeals.

# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

## STATE AFFAIRS COMMITTEE

HB 533

### Judicial Extraction from Administrative Review

HB 533 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.

House Bill 533 is an integral part of three-phase regulation reform package.

- Senate Bill 203 reforms the internal administrative hearing process.
- Senate Bill 287 / House Bill 424 reforms the initial phases of the regulatory process.
- Senate Bill 333 / House Bill 533 reforms the final phases of the administrative process.

# LEGISLATIVE RESEARCH REPORT

APRIL 2, 2004



REPORT NUMBER 04.165

## ADMINISTRATIVE APPEALS OF ONE YEAR OR LONGER DURATION

PREPARED FOR SENATOR GENE THERRIALT

BY PATRICIA YOUNG, MANAGER

You asked our agency to obtain information regarding the duration of the adjudication process from the various agencies that conduct administrative hearings. Specifically, for each such agency, you wished to know the following:

- ◆ The number of current, on-going cases that have been open for one year or longer;
- ◆ The number of cases closed within the past ten years that were open for one year or longer; and
- ◆ The number of cases closed between 1980 and 1993 that were open for one year or longer.

For the purposes of this report, you asked that we define *open* cases to include those cases in which all administrative remedies have not yet been exhausted, as well as those cases that have been remanded from the court for further administrative consideration.

The attached table includes all the responses we received. We note that direct comparisons among agencies are problematic because of the widely disparate nature of cases and the varying levels of hearing officer responsibility. In addition, agencies with limited or incomplete records may have reported only those cases for which they have data, while others estimated totals. We attach additional commentary and explanatory materials provided by the Departments of Fish and Game, Labor and Workforce Development, and Revenue.

---

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

**Table 1: Administrative Appeals of One Year or Longer Duration**

Department	Agency	Open	Closed 1993 - 2003	Closed 1986 - 1992	Comments
Administration	Office of Tax Appeals	3	24	data unavailable	Date available from July 30, 1997 forward. Among the open cases, 2 transferred to OTA from appeal procedures in other agencies; among the closed cases, 13 were tax appeals from the Dept. of Revenue, and 8 transferred from other agencies. It is possible that transferred cases may be reflected in the numbers provided by originating agencies.
	Division of Motor Vehicles	0	0	0	
Community & Economic Development	Division of Occupational Licensing	223	1,648	723	Data available from 1990 forward.
	Regulatory Commission of Alaska	108	962	881	
Fish & Game	Commercial Fisheries Entry Commission	321	748	674	Officials estimate that 75 - 85 percent of all cases involving applications for permanent entry permits in limited fisheries took one year or longer to resolve. The numbers shown here represent 85% and thus may overstate the number of lengthy cases.
Health & Social Services	Division of Medical Assistance	29	118	81	
Labor & Workforce Development	Alaska Labor Relations Agency	45	384	31	Agency created in July 1990.
	Division of Employment Security	0	22	56	
	Division of Workers Compensation	11	119	no data available	Tracking of cases (from the claimant's filing of an affidavit of readiness for hearing) has been available from late 1999 forward. The number of currently open cases is likely overstated because the database cannot distinguish between a single claim lasting over one year and multiple claims (based on a single injury) each lasting less than one year but having been filed serially.
	Division of Labor Standards and Safety	9	354	176	
	Division of Vocational Rehabilitation	0	0	0	Federal regulation requires hearing to be held within 60 days of a request; findings and written decision must be produced within 30 days of the completion of the hearing.

**Table 1: Administrative Appeals of One Year or Longer Duration**

Department	Agency	Open	Closed 1993 - 2003	Closed 1980 - 1992	Comments
Natural Resources	Division of Mining, Land and Water	20	41	110	Early records are incomplete. More than 20 appeals were open for over 4 years pending resolution of the Mental Health Lands Trust Settlement.
	Division of Oil and Gas	1	data unavailable		The division has not kept historical statistics on the length of time needed to resolve appeals on oil and gas issues.
	Division of Forestry	0	1	1	Statutes require the process to be completed within 35 days of a stop work order.
Revenue	Office of the Commissioner	3	500	90	Incompatible format of records for cases before 1995 renders them irretrievable; numbers of closed cases are estimates.
Transportation & Public Facilities	Office of the Commissioner	1	9	4	Data available from 1988 forward.

**NOTES:**

*774 4930 2827 = 8,531*

We urge caution in using these data to compare agencies. For some agencies, counts do not fit precisely within the 1993-2003 and 1980-1992 timeframes. More importantly, the number and complexity of decisions vary enormously across agencies. The Employment Security Division, for example, may hear 2,000 to 3,000 cases a year, while the Division of Forestry currently has no open cases and heard only one between 2000 and 2003. Decisions may be verbal, as are most issued by the Division of Motor Vehicles, or they may be technically complex documents addressing multiple disciplines, as are those issued by the Division of Oil and Gas. In addition, agencies with limited or incomplete records may have reported only those cases for which they have data, while others estimated totals.

For clarifying information on appeals lasting one year or longer, see attached commentary from the following agencies: Department of Fish and Game, Commercial Fisheries Entry Commission (Attachment A); Department of Labor and Workforce Development, Alaska Labor Relations Agency and Division of Workers Compensation (Attachment B and C, respectively); and the Department of Revenue (Attachment D).

**SOURCES:**

Representatives of the various agencies.

*8 of 16 Reporting*

**Attachment A**

"Final CFEC Decisions" and Commentary on CFEC Cases

## FINAL CFEC DECISIONS

YEAR	DECISIONS ON APPLICATIONS (Permanent Entry Permits in Limited Fisheries)	OTHER DECISIONS (Transfers of Entry Permits)	TOTAL DECISIONS
1980	3	0	3
1981	22	1	23
1982	104	0	104
1983	83	6	89
1984	75	24	99
1985	54	49	103
1986	85	54	139
1987	50	54	104
1988	72	57	129
1989	59	61	120
1990	63	38	101
1991	123	13	136
1992	68	47	115
1993	100	54	154
1994	93	54	147
1995	60	66	126
1996	51	59	110
1997	64	55	119
1998	105	53	158
1999	80	47	127
2000	70	33	103
2001	71	37	108
2002	75	29	104
2003	43	38	81
<b>TOTALS (24 years)</b>	<b>1,673 (average 68/year)</b>	<b>929 (average 39/year)</b>	<b>2,602 (average 108/year)</b>

**NOTES:** CFEC's computerized data has proven to be unreliable; CFEC must go to individual files for accurate information about individual cases.

Proceedings regarding applications for permanent entry permits in limited fisheries are timed so as not to interfere with an applicant's fishing, and applicants have the right to fish as long as the case is before the commission or the court. Between 75 to 85 percent of these applications require more than a year to resolve.

With applications for permit transfers, the immediate right to fish is at issue. CFEC normally hears and resolves these cases in a matter of days. None has been open as long as one year.

# MEMORANDUM

STATE OF ALASKA  
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Patricia Young  
Manager  
Alaska Legislature  
Legislative Research Services  
State Capitol  
Juneau, AK 99801

DATE: February 26, 2004

PHONE: (907) 789-6160 VOICE  
(907) 789-6170 FAX

Phone: 465- 3991

FAX: 465-3908

Email: patricia\_young@legis.state.ak.us

FROM: Bruce Twomley, Chairman  
Commercial Fisheries Entry Commission

SUBJECT: Your February 19, 2004  
Information Request Concerning  
Administrative Appeal Cases  
Pending at the Alaska Commercial  
Fisheries Entry Commission

## RESPONSE BY CASE CATEGORY

Your February 19, 2004 request asks for the number of current, on-going cases that have been open for one year or more.

At the Alaska Commercial Fisheries Entry Commission (CFEC) we have two broad categories of cases: (1) applications for transfers (permanent and emergency) of entry permits; and (2) applications for permanent entry permits in limited fisheries.<sup>1</sup>

In the first category, transfer cases, the immediate right to fish is at stake: if a transfer is denied, the proposed recipient loses the opportunity to participate in a fishery. These cases are normally heard and resolved in a matter of days. Final review of these cases is always completed within a year. None of these cases has been open for as long as a year.

The second category, applications for permanent entry permits in limited fisheries, involve applicants who already have the privilege to fish and are seeking to make that privilege permanent in a limited fishery. These applicants have the right to fish as long as they can keep an application alive at the commission or in court. Their cases end when they are finally granted a permanent entry permit, or, when they are finally denied--in which event they can still obtain a permanent entry permit by transfer. The substantial majority of these cases always take longer than a year. Today 321 such permit application cases have been in the appeal process for a year or more. The following paragraphs offer a brief explanation for the time required by these cases.

<sup>1</sup> We are holding 17 fee arrearage cases in abeyance pending resolution of Carlson v. State (the class action challenging non-resident fees), which could render these cases moot.

## EXPLANATION

As noted, all individuals who apply for a permanent entry permit can continue to participate in the fishery (without having to obtain a permit by transfer) until they receive a final denial by the commission or the courts. In turn, the commission is generous in granting applicants' requests for extension of time so that commission proceedings do not unnecessarily interfere with an applicant's fishing season. Our regulations are also designed to allow sufficient time so as not to intrude on a fishing season, and, in addition, we also make every attempt to avoid scheduling a hearing or issuing a decision or an order to which an applicant must respond near or during a fishing season.

When a fishery is limited, many applications are submitted simultaneously and substantial numbers of appeals, therefore, tend to arise at the same time. For example, in Alaska's limited salmon fisheries alone, more than 17,000 individuals applied to CFEC for limited entry permits.

Following the 1984 Ostrosky decision, the Alaska Supreme Court issued a series of decisions substantially increasing the commission's caseload. In 1988, the state settled the Wassillie class action authorizing several hundred additional new applications in the original limited salmon fisheries. Consequently, by 1990, the commission's caseload had almost doubled to nearly 900 cases. As noted, however, the commission has reduced the number of pending cases to 321 despite hundreds of new, incoming appeals. The commission's caseload is a moving bus: from 1990 to the present, the commission has limited an additional 26 fisheries (giving rise to hundreds of new appeals). While the commission has completed well over 1,000 adjudications (during this same time period) and thereby let many individuals off the bus, many new individuals (applicants in more recently limited fisheries) continue to climb on the bus. Our reduction of our caseload shows, during the last 13 years, the commission has decided application cases faster than applicants have filed new appeals (while at the same time hundreds of transfer cases).

As a final consideration, CFEC adjudications require more care than those of many other administrative agencies. In the Byavuk and Cashen cases, our Alaska Supreme Court held reversals of CFEC decisions can be applied retroactively to reopen previously closed cases and to authorize new applications for a limited fishery long after the application deadline. Thus, a CFEC error can literally undermine limitation of fisheries on which almost 12,000 Alaska fishers depend for their livelihood. In the face of this challenge, the commission is pleased to report that, during the last 13 years, the commission has suffered only two partial reversals of its cases by the Alaska Supreme Court.

## CONCLUSION/SUMMARY

In short, in the category of transfer cases where the immediate right to fish is at issue and time is critical, CFEC completes all such the cases within a year. In the category of application cases where the immediate right to fish is not at stake, almost all such cases require more than a year to resolve (321 such cases are currently pending). However, despite hundreds of new appeals having been filed from the limitation of 26 additional fisheries, the commission has reduced its application caseload by almost two-thirds since 1990.

## **Attachment B**

Commentary on Alaska Labor Relations Agency Cases

Alaska Labor Relations Agency

Note: these numbers include cases that have been held in abeyance by a party or parties. Although we do not currently have a precise count of all cases in abeyance, we identified the following:

1. The number of current, on-going cases that have been open for one year or more.

Currently, 45 cases. Three cases are pending in the Alaska Superior or Supreme Courts. Sixteen are unfair labor practices (ULP), 25 are unit clarifications (UC), and 1 is a collective bargaining enforcement (CBA) petition.

- Of the 16 ULPs, one has been dismissed this week, and 7 are in abeyance. The others are awaiting agency action which may include awaiting information from the parties.
- Of the 25 unit clarifications, approximately 50% of them are in abeyance, and 50% are awaiting agency action. Of the latter 50%, some of the positions are vacant. We have previously not taken action when positions become vacant. I am now recommending we dismiss these cases and notify the petitioner to re-file the case when the position is filled.
- The one CBA case is a complex case. The State is the employer and did not provide information for a lengthy period. Then the union (APEA) asked us to hold up on the case so the parties could attempt to settle. There have been several requests to give the parties more time. We recently heard that settlement is imminent.

2. The number of cases closed within the past ten years that were open for one year or more. Answer: 384
3. The number of cases closed since 1980 that were open for one year or more.

Our Agency was created in July 1990. Since then, there have been 415 cases closed that were open for one year or more.

These are the raw data. We did not subtract out any factors that might affect the data. For example, we sometimes put cases in "abeyance" either on our own motion or on request of a party or parties. One example would be: the parties want time to settle their dispute without Agency help. These periods of abeyance mean that the Agency can't take action but the time continues to count. We recently modified our database structure to capture abeyance time.

## **Attachment C**

Commentary on Workers' Compensation Board Cases

February 27, 2004

Dear Ms. Young:

Please find attached a response to your inquiry regarding the Alaska Workers' Compensation Board hearings administered by the Division of Workers' Compensation. As we discussed yesterday by phone most benefits are paid without any need for a hearing. For example, the number of 2003 filings indicative of some sort of dispute (a total of 1,224 workers' compensation claims and petitions) is dwarfed by the 25,981 injuries reported in 2003. When you consider that some of the 2003 claims and petitions involve injuries reported prior to 2003, the percentage of disputes diminishes further.

The attached spreadsheet responds to both definitions of appeals we discussed yesterday. The broader definition starts with the filing of a claim or petition and ignores the statutory requirement that a party file an affidavit of readiness for hearing before the Board schedules a hearing. However, the three columns to the far right on the spreadsheet reflect that limitation and therefore measure only from the earliest date that one of the parties to the dispute felt they were prepared for a hearing and filed the required affidavit. (In many cases the opposing party is not yet ready and a Board hearing is delayed while necessary preparations are completed.) Data for this more refined analysis is only available back to 2000.

Please feel free to call with any further questions or concerns.

Very truly yours,

Paul F. Lisankie,  
Director

Judicial Proceeding By Year

Calendar Year	Proceedings Initiated By Claim or Petition	Proceedings With Hearings Scheduled	Proceedings With Hearings Held	Proceedings Longer Than 1 Year	Percent of Proceedings Longer than 1 Year	Affidavits Received	Resulting Hearings Continuing Longer than 1 Year	Percent of Hearings Continuing Longer than 1 Year
2003	1224	963	877	0	0	266	0	0
2002	1040	906	808	106	10.19%	245	12	4.90%
2001	949	805	720	192	20.23%	251	44	17.53%
2000	805	703	643	158	19.63%	275	63	22.91%

In the Workers' Comp system, a judicial proceeding number (JPN) is established when an initial claim or petition is filed. That JPN number is unique to the associated Alaska Workers' Compensation Board (AWCB) case file number, and subsequent judicial documents filed against the case file.

To track the length of judicial proceedings, we associated the earliest judicial document which created the JPN to the latest scheduled prehearing, hearing, or judicial appeal.

One must keep in mind that there can be – and usually are – multiple claims and petitions associated with any one JPN.

Affidavit Tracking did not become available until late 1999.

# STATE OF ALASKA

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

WORKERS' COMPENSATION DIVISION

FRANK MURKOWSKI, GOVERNOR

P.O. BOX 25512

JUNEAU, AK 99801-5512

PHONE: (907) 465-2790

FAX: (907) 465-2797

March 26, 2004

Ms. Patricia Young  
Manager  
Legislative Research  
State Capitol, Room 305 Terry Miller Bldg.  
Juneau, Alaska 99801-1182

Dear Ms. Young:

We have attempted to further refine our computer search in order to respond to your inquiry. As I have discovered the Division's database is not configured to allow us to distinguish a single benefits claim that took two years to finally determine from two benefits claims (based upon the same injury) that were filed serially and each took only one year to finally determine. We would have to perform a manual examination of each file to make that distinction.

In order to respond to your inquiry, even at the risk of overstating the number of individual claims that actually took more than a year to reach a determination through hearing, we did the following. We performed a computer search for all claim files with an initial prehearing conference in the years from 1999 through 2003. We then generated a list showing those claim files that went on to have a subsequent prehearing conference or hearing more than one year later. If the last conference or hearing date listed was shown as March 2004 or later, we then counted that claim as still open. The results of that effort are reflected below:

<u>Year</u>	<u>Total open more than one year</u>	<u>Number still open</u>
2003	N/A	N/A
2002	8	3
2001	29	1
2000	28	4
1999	26	3

I think that this process has likely overstated the number of individual claims that took more than a year to hear and determine. The hearings we oversee are those of the Alaska Workers' Compensation Board. The Alaska Workers' Compensation Act (AS 23.30.110) specifically requires that a hearing be set within 60 days of a party filing an unopposed affidavit of readiness for hearing. If the affidavit is opposed a prehearing conference is required within 30 days at which a hearing is to be scheduled. Under the Board's

current regulations (8 AAC 45.070) at the prehearing conference considering the opposed affidavit a hearing must be scheduled within 60 days unless the parties all agree otherwise and the conference chair agrees. Once a hearing is completed, and the record closed, a decision must be filed within 30 days. (AS 23.30.110). Consequently, there should be few claims not heard within a year of the parties' readiness and none where a decision has not been reached for a year thereafter.

I can illustrate the situation we face in trying to report based upon our limited computer database capabilities by referring to a claim that appeared on our 1999 list, Cowgill v. State of Alaska. Prior to my appointment as Director in January, I was an assistant attorney general and actually represented the State in that matter.

In early 1999 Ms. Cowgill filed a claim for permanent impairment benefits and the Workers' Compensation Division held an initial prehearing conference. At that conference both parties requested the Board to appoint its own independent medical expert to address a medical dispute over the degree of permanent impairment attributable to Ms. Cowgill's 1998 injury. The Board's expert's report was issued in August 1999. Based upon that opinion the parties entered into settlement negotiations that appeared to have resolved the matter. Therefore no hearing was requested until January 2000 after the apparent settlement fell apart.

The Board heard the claim in July 2000 and published a decision six days later. It resolved Ms. Cowgill's claim for benefits based upon her 1998 injury. However, the decision also directed her counsel to seek additional evidence in support of a possible award for an injury during prior years that he had not pursued at the original hearing. Once that evidence was obtained a second hearing took place in April 2001. In May 2001 the Board issued its decision making a second award based upon the prior injury.

The State then appealed part of that order to the superior court. In April 2002 the court reversed that part of the decision and order and remanded the matter back to the Board. The Board heard the remand in October 2002 and issued a decision in December 2002.

The State appealed again with the superior court affirming most of the Board's decision in December 2003. A further appeal to the Supreme Court is still in progress. In late 2003, while all this was still going on, Ms. Cowgill filed yet another claim (for reemployment benefits) based upon the 1998 injury. A prehearing conference on that additional was recently held in February 2004.

Notwithstanding all of the above, with numerous claims and appeals having been serially filed and timely decided by the Board and the courts, it is not accurate to say that the Division or the Board somehow failed to resolve this matter during the four-year period from 1999 through February 2004. Yet that is the conclusion that one might draw based solely upon the Division's computer system showing an initial prehearing conference in 1999 and the date of the last prehearing conference in February 2004.

Thank you for your understanding and patience in awaiting this delayed response to your inquiry. I hope that you find this letter responsive to your inquiry and helpful in your consideration of this admittedly complex issue. Please feel free to give me a call with any additional questions or concerns.

Sincerely,

Paul F. Lisankie  
Director

## **Attachment D**

Department of Revenue Commentary on Administrative Hearings

## Department of Revenue

In response to your legislative request for information about the length of the Department of Revenue appeals process, Mark Handley, Senior Revenue Hearing Examiner, asked Kimberly Rechin, the paralegal who manages the hearing office data base if she could provide accurate answers to the your specific questions. The answer is *no*, except for question number one.

The reason for this is primarily a data base problem. The hearing section inputs both the date that an individual files an appeal and the date that a final decision is issued in each case. However, they do not have the ability to run a list of cases in a given year where there are more than 12 months between these dates. I am afraid they are still using an old data base system. At one point the department actually got money to convert all files to a newer system, but there was no data processing staff available to do the work. The system they have is a bit inadequate for tracking and retrieving the needed information. It is not flexible at all for retrieving data in new ways. Records for cases before 1995 were in the old WANG data base and are not retrievable. The hearing section currently tracks case aging to monitor compliance with the 20 day rule for CSED and the 6-month rule for other cases.

Mr. Handley has been with the hearing section since 1995, Ms. Rechin started a few months earlier. When they started there were hundreds of Child Support Enforcement Division and Permanent Fund Dividend and tax cases that were at the formal hearing level for over a year before a decision was issued. There was a huge backlog at the formal hearing level and even bigger backlogs at CSED and PFD at their informal conference levels. Even as the hearing section began to clear out old cases, there was a huge temporary increase in the new caseload as the Divisions cleared out their respective back logs. It took the hearing section until about 1999 to get caught up. Now it is only the rare cases, usually those that get remanded back from court that are with the hearing section for more than a year. Almost all departmental cases have a decision issued in less than two months after the hearing.

Here are the best answers that we can give based on hearing section memories and records.

What is the number of current, on-going cases that have been open for one year or more: 3.

What is the number of cases closed within the past ten years that were open for one year or more: probably over 500.

What is the number of cases closed between 1980 and 1992 that were open for one year or more: probably under 100, perhaps 80-90.

# MEMORANDUM

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
OFFICE OF THE COMMISSIONER

TO: Patti Pettijohn  
Legislative Research Services

DATE: April 1, 2004

TELEPHONE: 465-3752

FROM: Mark T. Handley  
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

The following answers to your questions are based on my general estimations and sense of what has happened in the six years I have worked as a Revenue Hearing Examiner. When I first started, there were such huge backlogs both in dividend and child support cases that it took about six months to get through a child support appeal and more than six months to get through a dividend appeal. We do much better now.

In answer to your questions:

*1) From the time of filing an appeal to the time the process is finally completed, what is the average length of time it takes for an appellant to get through the entire process? We understand times could vary wildly, but we are interested in some general sense of the process. We would also like a general estimation of the outliers (for example, perhaps most are done in two weeks but 20% take a month and five each year take six months).*

## Dividends and Child Support

The formal hearing process usually takes about 90 days to get through in dividend appeals (1) and 60 days to get through in child support appeals (2). This is how it breaks down:

After a child support parent requests a formal hearing, the agency forwards the request to the commissioner's hearing section. The division then files its motion for summary adjudication,

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(1) In order to begin the dividend appeal process by requesting a formal hearing, you must first request and go through an informal conference, which is an in-house agency review of your case. Our goal is to issue most of our dividend formal appeal decisions within 30 days after the record closes, but we recently lost the hearing officer who did most of our dividend cases and we fell behind. We have since hired a new dividend hearing officer and we are getting caught up again.

(2) Child support cases are given higher priority because it is generally more important to resolve these cases as expeditiously as possible, as reflected by the 20-day statutory deadline for issuing a decision after the record closes.

motion to dismiss or motion for remand. If no motion is filed, the case is scheduled for a hearing within 15 days. (3)

In dividend appeals, the commissioner's hearing section holds the case until the division files a motion or we receive notice that the division will not be filing one. This usually happens within 30 days of the applicant's request for a hearing. A copy of the division's motion is also sent to the applicant.

The commissioner's hearing section then sends a notice to the parties explaining who will hear the case and giving them 30 days to respond to the motion in dividend cases and 21 days in child support cases. (4) After the deadline for responding to the motion — within about 60 days in the case of most dividend appeals and 20 days in most child support appeals — a decision is issued by the hearing officer either granting the motion, which is the final administrative decision, or denying the motion. If the motion is denied, the order will set the case on for a hearing — usually within 30 days in dividend appeals and 15 days for child support appeals — or remand the case back to the agency with instructions on what should be done. (5)

If the child support agency does not to file a dispositive motion, the hearing section schedules the hearing within 15 days.

After the hearing the record closes, the hearing officer issues a decision usually within 20 days in the case of child support appeals and 60 days in dividend appeals. (6)

### Gaming, Tax and Unclaimed Property

In gaming, tax, and unclaimed property cases it usually takes about 120 days to get through the process. Here is how these cases usually progress.

A pre-hearing conference is scheduled within 30 days of the request for a formal hearing. At the pre-hearing conference, the parties agree to a status conference date if they are in the process of negotiating a settlement (7) or they agree to a hearing date and a schedule of due dates for motions and responses, discovery and depositions, etc that will precede the hearing.

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(3) In about 75% of dividend cases and about 30% of child support cases, a dispositive motion is filed by the agency.

(4) This system is intended to avoid confusing and inconveniencing members of the public. Instead of sending them a notice that a hearing has been scheduled for a specific time and place, and then sending them a notice that the hearing has been cancelled because a dispositive motion has been filed, we just send them notice that a motion has been filed and tell them what they need to do to respond. This way they do not make plans to attend a hearing that will not occur.

(5) About 75% of the dispositive motions filed by the agencies are granted. About 60% of those that are denied are remanded to the agency with instructions that will almost always result in final action favorable to the appealing party. The other 40% of motions that are denied are scheduled for a hearing.

(6) The record closes on the day of the hearing in about 70% of dividend hearings and about 30% of child support hearings. In cases where the record does not close on the day of the hearing, it is because the parties need time to send in more documents. It usually closes within two weeks after hearing.

(7) 80% these cases settle after several status conferences.

If the parties are negotiating, the hearing officer will continue to schedule status conferences to monitor their progress. If the parties reach a settlement, the hearing officer issues an order dismissing the appeal in accordance with the terms of the agreement. If negotiations break down a hearing is scheduled.

After the record closes the hearing officer usually issues a decision within 90 days. (8)

I should note that we have also conducted proceedings as the commissioner's designee for emergency orders prohibiting violations of charitable gaming laws. These special expedited proceedings initiated by the agency under AS 05.15.610 are generally concluded in a few days.

### State Assessment Review Board

Appeals to the State Assessment Review board are all scheduled for the annual meeting of the board, which meets a few weeks after the deadline for filing appeals of tax division assessments under AS 43.56. All of the hearings are completed in a few days. The board decides the cases right after the hearing in executive session. The Senior Hearing Examiner acts as the board's legal counsel and drafts the decisions at their direction. The decisions are issued within 10 days after the hearing as required by statute.

2) In what percentage of these cases does the state prevail? Again, we would welcome specifics but would be satisfied to hear whatever general sense you can provide.

### Dividends

The Dividend Division prevails in about 85% of its cases. This overturn rate increases after significant regulatory or statutory changes and decreases if there have been no recent changes. This is because new issues of law require the division to make new interpretations that have not been reviewed in any formal hearing. A large percentage of the cases are disposed of by motions because the applicant is disqualified as a matter of law based on the undisputed facts of the case. This may be because the law creates many bright line tests for dividend eligibility that can result in a disqualification that may seem harsh or counterintuitive to individual applicants. Applicants are required to pay a \$25 fee for the informal, administrative review of their case at the division. There is no additional fee required to request a formal hearing.

### Child Support

It is difficult to say in child support cases when the agency has "prevailed" because there are many issues involved, and the division usually takes the position that some adjustment is needed to the decision that is being appealed. In less than 30% of the cases the formal hearing decision

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(8) These hearings often involve complex issues with many witnesses. The hearings can last up to a week. It often takes several weeks after the hearing for the record to close because the parties want to file additional documents after the hearing and respond to each other's post hearing submissions.

fails to make any changes to support amounts last set by the agency, but this is partly because new income information is produced before or during the formal hearing process. The division gets most of what it recommends about 80% of the time. The obligors get most of what they want in about 40% of the cases. Custodial parents probably get most of what they want 70% of the time. Many issues brought to the hearing are resolved to the satisfaction of all the parties. Obligor probably get less satisfaction from the formal hearing process because they are the ones who have to pay child support, and this is often not easy to do at the level required by law. It is also not necessarily easy for custodial parents to support children on these amounts.

### Gaming, Tax and Unclaimed Property

These cases usually settle so both parties prevail in most cases. In cases that go to hearing, the agency prevails over 90% of the time.

### State Assessment Review Board

These cases also involve more than one issue. Also the state may be only one party of three, with the taxpayer arguing for a lower valuation and the municipality arguing for a higher valuation. Either one may agree with the state and oppose the valuation of the other. The board can assess a property at a valuation that is between the amount argued by the state or even higher or lower than advocated by any party. I would say the state gets most of what it wants 80% of the time.

#### *3) What percentage of hearings are conducted by in-house personnel and what percentage are conducted by others?*

About 5% of our caseload is handled by contracted hearing officers. In the past we have used outside contract hearing officers to help catch up with backlogs. In dividend cases, this usually means having them review and draft orders in cases where a dispositive motion has been filed or the applicant has asked for a hearing by correspondence. This is because it is not a cost-effective use of their time to have them conduct hearings. In child support cases we have had them conduct hearings because that was where we needed help. In one tax case we contracted with the Department of Administration because there was a conflict created by a disagreement by the parties as to whether the hearing section or the state assessment review board should hear the appeal. The case eventually settled without going to hearing.

# FISCAL NOTE

addressed

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 533  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Pfund Appropriations & Investments RDU AK Permanent Fund Corporation  
 Component AK Permanent Fund Corporation  
 Sponsor House Finance Committee  
 Requester House Finance Committee Component No. 109

**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>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</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)

HB 553 would change the amount available to distribute from the Permanent Fund to conform to a Percent of Market Value payout limit. HB 553 would not change the management or the cost of operations of the Fund.

Prepared by: Robert D. Storer, Executive Director Phone 465-2047  
 Division Alaska Permanent Fund Corporation Date/Time 4/12/2003  
 Approved by: Steve Porter, Deputy Commissioner Date 4/12/2004  
 Agency Department of Revenue

**HB**

**533**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 04 2004
SENATE FINANCE COMMITTEE
DATE TURNED IN TO OFFICE: <u>May 4, 2004</u>

DATE: 04/29/04

FURTHER:

DATE TURNED  
IN TO OFFICE:

Finance Committee considered CS FOR HOUSE BILL NO. 533(JUD)

HB 533 IF UNREAS. AGENCY DELAY, COURT DECIDES

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

and recommends:

- be replaced with S CS CS HB 533 (FIN)
- adopt previous \_\_\_\_\_ CS CS FORTHCOMING (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DLAW	3/26/04	84.3			4
DHSS	3/23/04			✓	3
DFSG	3/23/04		X		2
Court System	3/18/04		X		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

MAY 04 2004

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

(H) Publish Date:

CSHB-533(JUD)

3/29/04

Revision Date/Time (Note if correction):

Title If Unreas. Agency Delay/Ct. Decides

Dept. Affected:

BRU Alaska Court System

Component Trial Courts

Sponsor House State Affairs

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>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)

House Bill 533 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

Division: Alaska Court System

Approved by: Stephanie Cole Administrative Director by Doug Wooliver

Agency: Alaska Court System

Phone 463-4750

Date/Time 3/18/04 7:59 AM

Date 3/18/2004

MAY 04 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 533(JUD)  
(H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
Title "An act relating to judicial relief before final RDU Comm. Fish Entry Commission  
administrative decisions of state agencies." Component Commercial Fisheries Entry  
Sponsor House State Affairs Committee Commission  
Requester House Judiciary Committee Component No. 471

**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>	*	*	*	*	*	*

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
<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*)

The commission has averaged more than 70 final decisions on applications for limited entry permits each year since 1990 (more than 1,000 total). Seven appeals from these decisions are currently pending in court, representing about 10% of our average yearly final decisions on applications (the commission does additional kinds of cases including transfer cases).

HB 533 will almost certainly increase the number of CFEC court cases the state must defend, though the exact number (and thus, the exact fiscal impact to CFEC) cannot be known at this time. Any increase in the number of cases filed will require additional staff and commissioner time. If 10% of the 321 applicants currently on appeal before our hearing officers or commissioners were to file a case

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960  
Division Commercial Fisheries Entry Commission Date/Time 3/23/04 10:13 AM  
Approved by: Bruce Twomley, Chairman Date 3/23/2003  
Agency Commercial Fisheries Entry Commission

FISCAL NOTE #2

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 533(JUD)

ANALYSIS CONTINUATION

under HB 533 without having first exhausted the administrative appeal process available to them, 32 additional lawsuits would be generated. Because gathering and preparing records and assisting the Department of Law with court appeals of CFEC cases is enormously labor intensive and time consuming, if HB 533 results in 10% of the appeals pending before the commission being filed with the courts, the commission will need to add one paralegal position to assist with the additional workload.

The following personal services costs are calculated for a range 15 with salary, benefits and employer costs, including yearly merit increases (based on the current employer costs and XE salary schedule):

FY05: \$54.4  
FY06: \$55.8  
FY07: \$57.5  
FY08: \$59.3  
FY09: \$61.0  
FY10: \$63.0

# FISCAL NOTE

**REPORTED OUT**  
 MAY 14 2004  
 SENATE FINANCE COMMITTEE

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

Fiscal Note Number: 3  
 Bill Version: CSHB 533(JUD)  
 ( H ) Publish Date: 3/29/04  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES

RDU Health Care Services  
 Component Hearings and Appeals

Sponsor HOUSE (STA)

Requester HOUSE (JUD)

Component No. 1434

**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>	0.0	0.0	0.0	0.0	0.0	0.0

**CAPITAL EXPENDITURES**

**CHANGE IN REVENUES (0)**

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match	.	.	.	.	.	.
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would allow parties involved in the administrative hearing and appeals process judicial relief if a party to the proceeding has satisfied all procedural requirements up to the time relief is sought, a state agency unreasonably delays the administrative process, and that delay causes significant and irreparable damage.

HB 533 would circumvent the federal requirements set forth for the Medicaid Program, Temporary Assistance Program, and Food Stamps Program. 7 CFR 273.15 (Food Stamps), 42 CFR 431.200-250 (Medicaid Program), 45 CFR 205.10(Temporary Assistance) requires this

Prepared by: Dwavne Peoples, Director Phone 465-3355  
 Division Health Care Services Date/Time 03/13/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 03/23/2004  
 Agency Department of Health and Social Services

COMMITTEE COPY

FISCAL NOTE  
FN # 3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

CSHB 533(JUD)

ANALYSIS CONTINUATION

HB533-DHSS-DHCS2-03-23-04

state to provide a fair hearing through the administrative process. These federal regulations require the fair hearing process to be complete within 90 days from the date a person requests a hearing, and in some cases regarding food stamps, within 60 days.

Because federal law provides required completion dates, this bill has no fiscal impact on Health Care Services Hearings and Appeals.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSHB 533(JUD)  
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An act relating to the state's administrative procedures and to judicial oversight of administrative matters." RDU: CIVIL  
Sponsor: House State Affairs Component: Labor & State Affairs  
Requester: House Judiciary 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	67.3	67.3	67.3	67.3	67.3	67.3
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	8.0	8.0	8.0	8.0	8.0	8.0
Supplies	1.4	1.4	1.4	1.4	1.4	1.4
Equipment	7.4	0.9	0.9	0.9	0.9	0.9
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>84.3</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.3	77.8	77.8	77.8	77.8	77.8
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
<b>TOTAL</b>	<b>84.3</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</b>	<b>77.8</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	0.5	0.5	0.5	0.5	0.5	0.5
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill would give the superior court jurisdiction over petitions for relief in administrative matters under AS 44.62.305 in circumstances where an individual, who has otherwise satisfied the procedural requirements of the administrative proceeding, is subject to unreasonable delay and immediate and irreparable damage as a result of such a delay, by a state agency. The bill allows the superior court to enjoin the administrative proceeding and make a determination in the matter, establish a deadline for the state agency to issue a final administrative decision, or order that the matter be handled by another for of dispute resolution.  
  
Passage of this legislation will have an impact on the Department of Law. It is anticipated that Law will need to represent state agencies in instances where individuals seek relief from the superior court.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673  
Division: Administrative Services Date/Time 3/26/04 1:49 PM  
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 3/26/2004  
Agency: Department of Law

FISCAL NOTE #4

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 533(JUD)

ANALYSIS CONTINUATION

The Department of Law estimates that the additional workload would amount to one-half of a full time attorney. The cost of such a position is based on the calculated FY 2005 timekeeping and billing rate of \$107.99 per billable hour. Average billable hours per attorney are 1,440 per year. Thus a half time attorney will cost  $\$155,500/2 = \$77,750$ , rounded. The rate includes salary, benefits, support staff, and other overhead costs. A one time cost of \$6,500 for furnishings and equipment is included in the first year.

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1833\I  
Bannister  
4/29/04

SENATE CS FOR CS FOR HOUSE BILL NO. 533( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

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)

L

1 Notwithstanding any other provision of law to the contrary and except as provided in  
2 (f) and (g) of this section, a person may obtain judicial relief in an administrative  
3 matter by the superior court before the state agency handling the administrative  
4 proceeding on the 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 immediate 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. A person may not file the petition until 30 days after the  
15 person has filed with the state agency handling the administrative proceeding a written  
16 notice that the person intends to file the petition.

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

20 (1) enjoin the administrative proceeding and determine the  
21 administrative matter in the superior court;

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

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

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

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

29 or

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

31 (e) If the superior court decides that a person is not eligible for judicial relief

1 under (a) of this section, a party to the administrative proceeding may exercise any  
2 right of appeal allowed under law for the final administrative decision as if the person  
3 had not filed a petition under (b) of this section.

4 (f) A person may not obtain judicial relief under this section in a personnel  
5 proceeding by a state agency. In this subsection, "personnel proceeding" includes a  
6 proceeding under AS 39.25 (State Personnel Act) and a proceeding in a grievance  
7 arbitration procedure under a collective bargaining agreement.

8 (g) This section does not apply to an administrative proceeding of a state  
9 agency if another statute of this state establishes a deadline for the state agency to  
10 make a final decision in the administrative proceeding.

11 (h) In this section,

12 (1) "administrative matter" means the subject matter of an  
13 administrative proceeding;

14 (2) "administrative proceeding" means

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

16 (B) a proceeding that is not subject to AS 44.62.330 -  
17 44.62.630, that is authorized by statute for the adjudication of a state agency  
18 matter by the state agency handling the matter or by a person appointed by the  
19 state agency, and that involves a matter that directly affects the personal,  
20 professional, or business interests of a specific person who is named in the  
21 adjudication;

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

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

27 (5) "person" does not include a state agency or other governmental  
28 agency;

29 (6) "state agency" means a department, an institution, a board, a  
30 commission, a division, an authority, and any other administrative unit of the  
31 executive branch of state government, except a public corporation; the term includes

1

the University of Alaska.

Bill packet

# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

## STATE AFFAIRS COMMITTEE

HB 533

### Judicial Extraction from Administrative Review

HB 533 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.

House Bill 533 is an integral part of three-phase regulation reform package.

- Senate Bill 203 reforms the internal administrative hearing process.
- Senate Bill 287 / House Bill 424 reforms the initial phases of the regulatory process.
- Senate Bill 333 / House Bill 533 reforms the final phases of the administrative process.

# LEGAL SERVICES

MAR 25 2004

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99501-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 25, 2004

**SUBJECT:** HB 533, relating to the state's administrative procedures  
(Work Order No. 23-LS1833\A)

**TO:** Representative Bruce Weyhrauch  
Chair, House State Affairs Committee

**FROM:**  Theresa L. Lannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** States that the superior court has jurisdiction over petitions for relief in administrative matters under the new provision in bill sec. 2.

**Section 2.** Provides judicial relief in certain administrative matters.

Sec. 44.62.305(a) allows a person to obtain judicial relief in an administrative matter before a state agency issues a final administrative decision if four listed conditions are met.

Sec. 44.62.305(b) states that the person may seek the judicial relief by filing a petition in the superior court.

Sec. 44.62.305(c) lists what the superior court may do if it determines that a person is eligible for judicial relief under this section.

Sec. 44.62.305(d) requires the state agency to continue with an administrative proceeding after a petition is filed unless the court enjoins the administrative proceeding or issues an order that the matter be handled by another form of dispute resolution.

Sec. 44.62.305(e) allows (when the court decides a person is not eligible for the judicial relief under this section) a party to the administrative proceeding to exercise any right of appeal allowed under law for the final administrative decision as if the petition had not been filed.

Sec. 44.62.305(f) exempts personnel decisions from this section.

Representative Bruce Weyhrauch  
Chair, House State Affairs Committee  
March 25, 2004  
Page 2

Sec. 44.62.305(g) defines certain terms for the bill.

If I may be of further assistance, please advise.

TLB:lmb  
04-083.lmb

# ALASKA STATE LEGISLATURE

Sen. Gene Therriault, Chair  
Rep. Bruce Weyhrauch, Vice-Chair  
Sen. Lyda Green  
Sen. Hollis French  
Rep. Tom Anderson  
Rep. Les Gara



State Capitol, Room 429  
Juneau, AK 99801-1182  
(907) 465-3444  
Interim  
119 N. Cushman St. Suite 101  
Fairbanks, AK 99701  
(907) 488-0857 fax: 488-4271

## Administrative Regulation Review Committee

### Memorandum

**To:** Senator Gene Therriault / Chair – Administrative Regulation Review Committee

**From:** Dave Stancliff / Committee Staff

**Date:** March 29<sup>th</sup>

**Re:** Inaccurate fiscal notes for SB 333 and HB 533

---

I am concerned that inaccurate fiscal notes generated by some of the agencies regarding these measures will be misleading.

HB 533 and SB 333 (companion to HB 533) will allow citizens who have been held in the administrative review process for unreasonable periods of time, to the point of being severely damaged, the opportunity to petition Superior Court for relief.

The standards for granting such relief are stringent. Only the most egregious cases will be extracted from the state administrative process and taken up by the court. Additionally, only a small percentage of those will prevail in their case against the state.

Fiscal notes that fail to reflect agency savings when protracted administrative proceedings are reduced or eliminated are not accurate. Agencies should include positive fiscal impacts when protracted administrative cases are reduced.

It is entirely possible, if not probable in many instances, that agency fiscal increments will be more than offset when through HB 533 or SB 333 irresponsible administrative processes are reduced.

While indeterminate fiscal notes are in order both for costs and savings, those failing to reflect both sides of the equation, or attempting to project a hypothetical cost should be set aside as incomplete.

# LEGISLATIVE RESEARCH REPORT

APRIL 2, 2004



REPORT NUMBER 04.165

## ADMINISTRATIVE APPEALS OF ONE YEAR OR LONGER DURATION

PREPARED FOR SENATOR GENE THERRIAULT

BY PATRICIA YOUNG, MANAGER

You asked our agency to obtain information regarding the duration of the adjudication process from the various agencies that conduct administrative hearings. Specifically, for each such agency, you wished to know the following:

- ◆ The number of current, on-going cases that have been open for one year or longer;
- ◆ The number of cases closed within the past ten years that were open for one year or longer; and
- ◆ The number of cases closed between 1980 and 1993 that were open for one year or longer.

For the purposes of this report, you asked that we define *open* cases to include those cases in which all administrative remedies have not yet been exhausted, as well as those cases that have been remanded from the court for further administrative consideration.

The attached table includes all the responses we received. We note that direct comparisons among agencies are problematic because of the widely disparate nature of cases and the varying levels of hearing officer responsibility. In addition, agencies with limited or incomplete records may have reported only those cases for which they have data, while others estimated totals. We attach additional commentary and explanatory materials provided by the Departments of Fish and Game, Labor and Workforce Development, and Revenue.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.