

**ALASKA LEGISLATURE**

**2696**

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

# FISCAL NOTE

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

Fiscal Note Number: 20  
 Bill Version: CSSB 203(FIN)  
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Office of Administrative Hearings RDU Revenue Programs & Services  
 Component Permanent Fund Dividend  
 Sponsor Rules Committee  
 Requester Senate Finance Component No. 981

**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	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(52.4)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1050 Permanent Fund Dividend Fund	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
<b>TOTAL</b>	<b>(52.4)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>

Estimate of any current year (FY2004) cost: 0.0

Check 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 Permanent Fund Dividend division currently contracts with the Department of Revenue Commissioner's Office for hearing officer services. The cost to PFD is \$104.8 for FY 2004. Under this legislation, these hearing officers would be transferred to the new Office of Administrative Hearings. This fiscal note reflects the change in effective date from July 1, 2004, to January 1, 2005.

Prepared by: Sharon Barton Phone 465-4785  
 Division Permanent Fund Dividend Date/Time 3/2/04 9:50 AM  
 Approved by: Steve Porter, Deputy Commissioner Date 3/2/2004  
 Agency Department of Revenue

# FISCAL NOTE

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

Fiscal Note Number: 21  
Bill Version: HCS CSSB 203(JUD)  
(H) Publish Date: 3/22/04

Revision Date/Time (Note if correction):  
Title Office of Administrative Hearings  
Sponsor Rules by Request  
Requester Senate Finance  
Dept. Affected: DCED  
RDU Occupational Licensing (117)  
Component Occupational Licensing  
Component No. 2360

**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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
<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: 153.9  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	-2					
Part-time						
Temporary						

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

CSSB 203 (JUD) establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 03-1038) to the Department of Administration, included in the FY05 budget request.

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office on or after January 1, 2005, it is anticipated that receipts from licensing fees (RSS) totaling \$77.0 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
Division Occupational Licensing Date/Time 3/1/04 4 08 PM  
Approved by: Edgar Blatchford, Commissioner Date 3/1/2004  
Agency Department of Community and Economic Development

4.30.04 Adopted

HCS CSSB 203 (version M)

#1

Reg. Review amendment # 1

Page 31, lines 6-10

Delete all existing language and replace with:

\* Sec 67. AS 43.05.420 is amended to read:

(b) A person conducting a proceeding

authorized under AS 43.05.405 – AS 43.05.499.

shall have at least four years of professional experience as a tax

attorney, or be a certified public accountant practicing in the area of tax, or a tax

administrator.

This amendment is being offered to insure that the high quality of standards of expertise developed in the original tax appeals office remain in place as the Central Panel absorbs and executes those adjudicatory functions.

Adopted  
4.30.04

HCS CSSB203 (version m)

# 2

Reg. Review amendment # 2

Add a new section that reads as follows and re-number all other sections accordingly:

Code of conduct

The following fundamental canons of conduct shall be included in the code adopted by the Chief Administrative Law Judge:

An administrative law judge or hearing officer shall in the carrying out of their official duties:

- 1) uphold the integrity and independence of the office.
- 2) avoid impropriety and the appearance of impropriety.
- 3) shall perform the duties of the office impartially and diligently.
- 4) shall conduct unofficial activities so as to minimize the risk of conflict with the obligations of the office.
- 5) shall refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

Adopted

4.30.04

HCS CSSB 203 (version M)

#3

Reg. Review amendment # 3

Page 30, line 29,

After the word "section" remove the period and add:

"however AS.44.64.070 does apply to such hearings."

Adopted  
4.30.04

23-LS0903VM  
Cook  
4/7/04

HOUSE CS FOR CS FOR SENATE BILL NO. 203( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative hearings, to hearing officers, and to administrative  
2 law judges; establishing the office of administrative hearings and relating to that office;  
3 and providing for an effective date."

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

5 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
6 to read:

7 PURPOSE. The purpose of this Act is to increase the separation between the  
8 adjudicatory functions of executive branch agencies and the agencies' investigatory,  
9 prosecutory, and policy-making functions.

10 \* Sec. 2. AS 44 is amended by adding a new chapter to read:

11 Chapter 64. Hearing Officers and Office of Administrative Hearings.

12 Sec. 44.64.010. Office created. (a) There is created in the Department of  
13 Administration an independent office of administrative hearings under the direction of  
14 the chief administrative law judge.

L

1 (b) The chief administrative law judge must

- 2 (1) be a resident of the state;
- 3 (2) have experience in administrative law;
- 4 (3) be licensed to practice law in this state and have been admitted to
- 5 practice law in this state for at least five years; and
- 6 (4) have experience representing clients in administrative or judicial
- 7 proceedings.

8 (c) The chief administrative law judge is appointed to a five-year term of

9 office by the governor and is subject to confirmation by the legislature. An individual

10 may serve not more than three full or partial terms as chief administrative law judge.

11 The governor may remove the chief administrative law judge from office only for

12 good cause. The basis for removal shall be stated in writing. A vacancy in the office

13 of chief administrative law judge shall be filled by the governor and the individual

14 appointed serves for the remainder of the term to which appointed.

15 (d) The chief administrative law judge shall receive a monthly salary that is

16 not less than Step A nor more than Step F, Range 27, of the salary schedule in

17 AS 39.27.011(a) for Juneau, Alaska. The chief administrative law judge is in the

18 partially exempt service.

19 **Sec. 44.64.020. Powers and duties of chief administrative law judge. (a)**

20 The chief administrative law judge shall

- 21 (1) supervise the office;
- 22 (2) employ administrative staff, who shall be in the classified service;
- 23 (3) employ administrative law judges, who shall be in the partially
- 24 exempt service;
- 25 (4) preside over administrative hearings handled by the office or, based
- 26 upon the qualifications and expertise of the administrative law judges, assign
- 27 administrative law judges to preside over hearings, and protect, support, and enhance
- 28 the decisional independence of the administrative law judges;
- 29 (5) establish and implement performance standards, including
- 30 provision for timeliness, and peer review programs for administrative law judges
- 31 employed or retained by the office;

1 (6) make available and facilitate training and continuing education  
2 programs and services in administrative procedure, administrative adjudication,  
3 substantive law, alternate dispute resolution, and technical matters for administrative  
4 law judges and other administrative adjudicators;

5 (7) survey administrative hearing participants and use other methods to  
6 monitor the quality of administrative hearings held by the office and other state  
7 agencies, and submit to the governor and the legislature on January 31 of each year the  
8 results of the survey along with a report that includes a description of the activities of  
9 the office and recommendations for statutory changes that may be needed in relation  
10 to the administrative hearings held by the office or other state agencies;

11 (8) review and comment on regulations proposed by state agencies to  
12 govern procedures in administrative hearings;

13 (9) enter into contracts as necessary to carry out the functions of the  
14 office;

15 (10) annually prepare and submit to the commissioner of  
16 administration a budget for the office for the next fiscal year that shall include and  
17 separately identify funding for training and continuing education; a copy of the budget  
18 submitted to the commissioner under this paragraph shall also be submitted to the  
19 Finance Committee of each house of the legislature; and

20 (11) after consulting with affected agencies, adopt regulations under  
21 AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and  
22 implement this chapter.

23 (b) In carrying out the responsibilities of the office, the chief administrative  
24 law judge shall seek to accomplish the following goals:

25 (1) provide for the delivery of high quality adjudication services in a  
26 timely, efficient, and cost-effective manner;

27 (2) ensure respect for the privacy and dignity of the individuals whose  
28 cases are being adjudicated and protect them from threats, intimidation, and  
29 harassment;

30 (3) foster open and clearly explained agency decisions and improve  
31 public access to the process of administrative adjudication;

1 (4) guarantee protection of all parties' due process rights, increase the  
2 public parties' perception of fairness in administrative adjudication, and foster  
3 acceptance of final administrative decisions by the public and affected parties;

4 (5) protect the integrity of the process of administrative adjudication  
5 and decisional independence of administrative adjudicators; and

6 (6) increase consistency in administrative procedures and decisions.

7 \* Sec. 3. AS 44.64 is amended by adding new sections to read:

8 **Sec. 44.64.030. Jurisdiction of the office.** (a) The office shall conduct all  
9 adjudicative administrative hearings required under the following statutes or under  
10 regulations adopted to implement the statutes:

11 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);

12 (2) AS 05.15 (charitable gaming);

13 (3) AS 05.20 (recreational devices);

14 (4) AS 05.90.001 (special racing events);

15 (5) AS 06 (banks and financial institutions);

16 (6) AS 08 (occupational licensing), other than AS 08.08 and  
17 AS 08.62.046;

18 (7) AS 10.06 (Alaska Corporations Code);

19 (8) AS 10.13 (Alaska BIDCO Act);

20 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);

21 (10) AS 10.50.408 (limited liability companies);

22 (11) AS 14.11.016 (education-related facility grants);

23 (12) AS 14.18 (discrimination in public education);

24 (13) AS 14.48 (postsecondary educational institutions);

25 (14) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than  
26 AS 17.20.060 and 17.20.360;

27 (15) AS 18.18.030 (hospice licenses);

28 (16) AS 18.20 (hospitals and nursing facilities), other than  
29 AS 18.20.180;

30 (17) AS 18.35.040 (tourist accommodations);

31 (18) AS 21.09, AS 21.22.190, AS 21.27, AS 21.34, AS 21.36,

- 1 AS 21.69, AS 21.86.200, AS 21.87, and AS 21.89 (insurance);
- 2 (19) AS 25.27 (child support enforcement);
- 3 (20) AS 32.06 (Uniform Partnership Act);
- 4 (21) AS 34.45 (unclaimed property);
- 5 (22) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
- 6 (23) AS 36.30 (State Procurement Code), other than
- 7 AS 36.30.627(a)(2);
- 8 (24) AS 38.05.065 (contracts for sale of state land);
- 9 (25) AS 39.52 (Alaska Executive Branch Ethics Act);
- 10 (26) AS 43.23 (permanent fund dividends);
- 11 (27) AS 43.70 (Alaska Business License Act);
- 12 (28) AS 44.50 (notaries public);
- 13 (29) AS 44.77 (claims against the state);
- 14 (30) AS 45.30.040 (mobile homes);
- 15 (31) AS 45.55 (Alaska Securities Act);
- 16 (32) AS 45.57 (Takeover Bid Disclosure Act);
- 17 (33) AS 47.33 (assisted living homes);
- 18 (34) AS 47.35 (child care);
- 19 (35) AS 47.55 (longevity bonuses).

20 (b) An agency may request the office to conduct an administrative hearing or

21 other proceeding of that agency or to conduct several administrative hearings or other

22 proceedings under statutes not listed in (a) of this section. The office may provide the

23 service after entering into a written agreement with the agency describing the services

24 to be provided and providing for reimbursement by the agency to the office of the

25 costs incurred by the office in providing the services.

26 (c) To the extent otherwise permitted by law, the agency may delegate to the

27 administrative law judge assigned to conduct the hearing on behalf of the agency the

28 authority to make a final agency decision in the matter. The final decision may be

29 appealed to the superior court by any party.

30 (d) Nothing in this chapter may be construed to create a right to a hearing or to

31 require a hearing that is not required under other law.

1            **Sec. 44.64.040. Administrative law judges.** (a) An administrative law judge  
2 must be admitted to practice law in this state and must have been admitted to practice  
3 in this state for at least two years before being employed or retained with the office.  
4 The chief administrative law judge shall establish additional qualifications for  
5 administrative law judges employed or retained by the office and for those  
6 administrative law judges that may be assigned to particular types of cases. An  
7 administrative law judge is in the partially exempt service. Notwithstanding  
8 AS 39.25.120(b), full-time administrative law judges employed by the office are  
9 subject to the personnel rules adopted under AS 39.25.150(7), (15), and (16).

10            (b) An administrative law judge employed or retained by the office may, in  
11 conducting an administrative hearing for an agency, exercise the powers authorized by  
12 law for exercise by that agency in the performance of its duties in connection with the  
13 hearing. An administrative law judge may

14            (1) engage in alternative dispute resolution under regulations adopted  
15 by the chief administrative law judge that is in addition to any alternate dispute  
16 resolution procedure used by an agency before the case is referred to the office;

17            (2) order a party, a party's attorney, or another authorized  
18 representative of a party to pay reasonable expenses, including attorney fees, incurred  
19 by another party as a result of actions done in bad faith or as a result of tactics used  
20 frivolously or solely intended to cause unnecessary delay;

21            (3) perform other necessary and appropriate acts in the performance of  
22 official duties.

23            (c) An administrative law judge employed by the office must devote full time  
24 to the duties of the office unless appointed to a position that is less than full-time. An  
25 administrative law judge employed by the office may not perform duties inconsistent  
26 with the duties and responsibilities of an administrative law judge.

27            (d) The office may enter into a contract with an individual who meets the  
28 qualifications established in (a) of this section to serve as an administrative law judge  
29 in a particular administrative hearing or in several hearings of the same type. The  
30 individual is subject to AS 39.52 (Alaska Executive Branch Ethics Act).  
31 Notwithstanding AS 36.30.015(d), the office may contract for or hire an

1 administrative law judge without notifying or securing the approval of the Department  
2 of Law.

3 **Sec. 44.64.050. Hearing officer conduct.** (a) An administrative law judge  
4 employed full time by the office or a hearing officer employed full time by an agency  
5 may not serve in any other judicial or quasi-judicial capacity or engage in the private  
6 practice of law.

7 (b) The chief administrative law judge shall, subject to AS 39.52.920 and by  
8 regulation, adopt a code of hearing officer conduct. The code shall apply to the chief  
9 administrative law judge, administrative law judges of the office, and hearing officers  
10 of each other agency.

11 (c) Except as provided in (e) of this section, the chief administrative law judge  
12 shall receive and consider all complaints against administrative law judges or hearing  
13 officers employed or retained by the office or another agency alleging violations of (a)  
14 of this section or of the code of hearing officer conduct. The chief administrative law  
15 judge shall deliver the complaint to the attorney general when the chief administrative  
16 law judge determines that the conduct alleged, if true, would constitute a violation of

17 (1) subsection (a) of this section; or

18 (2) the code and would warrant disciplinary action under the  
19 regulations adopted under (b) of this section.

20 (d) If the attorney general determines that a violation has occurred, the  
21 attorney general shall submit written findings to the agency that employed or retained  
22 the administrative law judge or hearing officer who is the subject of the complaint  
23 together with recommendations for corrective or disciplinary action. If the  
24 administrative law judge is employed or retained by the office, the chief administrative  
25 law judge shall take appropriate corrective or disciplinary action.

26 (e) The attorney general shall, by regulation, establish procedures to  
27 implement (d) of this section, including procedures for investigating and holding  
28 hearings on complaints. The attorney general shall receive and consider any  
29 complaint filed against the chief administrative law judge under this section, and may  
30 investigate or hold a hearing on the complaint in compliance with the regulations  
31 adopted under this subsection.

1           **Sec. 44.64.055. Reimbursement agreements.** The office may enter into  
2 agreements for reimbursement for services related to an administrative hearing from a  
3 school district, municipality, or other governmental entity if the reimbursement is  
4 authorized by other law.

5           **Sec. 44.64.060. Procedure for hearings.** (a) The chief administrative law  
6 judge shall, by regulation, establish procedures for administrative hearings conducted  
7 by the office. Each administrative hearing under the jurisdiction of the office or that  
8 has been transferred to the office by an agency shall be conducted in accordance with  
9 statutes that apply to that hearing, including, if applicable, AS 44.62 (Administrative  
10 Procedure Act). In case of conflict between this section and another applicable statute  
11 establishing procedures for administrative hearings, the other statute prevails.  
12 However, to the extent regulations adopted by an agency for the conduct of an  
13 administrative hearing conflict with regulations adopted by the chief administrative  
14 law judge under this subsection, the regulations adopted by the chief administrative  
15 law judge control to the maximum extent possible without conflicting with applicable  
16 statutes.

17           (b) When an agency receives a request for a hearing that is subject to  
18 AS 44.64.030, the agency shall, within 10 days and in writing, deny the request for  
19 reasons provided by law or grant the request and refer the case to the office. The  
20 agency shall immediately give notice of the denial or referral to the requestors and the  
21 office. If the request is denied, the denial may be appealed to the superior court as  
22 provided by other law. If the request is granted, the agency shall, within 15 days after  
23 receiving the request, compile and transmit to the office a copy of the request for a  
24 hearing, the names, addresses, and telephone numbers of all parties and their  
25 representatives, and the agency's decision, if any, together with the record relied on to  
26 support the decision. Any information provided to the office that is confidential by  
27 law shall be identified by the agency as confidential and shall be kept confidential by  
28 the office.

29           (c) The agency may, with materials transmitted under (b) of this section,  
30 request the chief administrative law judge to permit the individual, board, or  
31 commission that will make the final decision to participate with the assigned

1 administrative law judge in the conduct of the administrative hearing. The chief  
2 administrative law judge shall determine the degree and manner of participation and  
3 may terminate that participation at any time. However, the individual, board, or  
4 commission that participates under this subsection may not serve as the administrative  
5 law judge or preside during the hearing and may not take action on behalf of the  
6 agency in the agency's capacity as a party to the proceedings.

7 (d) An administrative law judge employed or retained by the office shall,  
8 within 120 days after the date the agency received the request for a hearing, prepare a  
9 proposed decision, unless another time period is provided by law or agreed to by the  
10 parties and the chief administrative law judge. The administrative law judge shall  
11 immediately submit the proposed decision to the agency.

12 (e) A proposed decision in an administrative hearing shall be in a form that  
13 may be adopted as the final decision by the agency with authority to make the final  
14 decision. The proposed decision is a public record, except as otherwise provided by  
15 statute. A copy of the proposed decision shall be served by the office on each party in  
16 the case or on the attorneys representing those parties in the hearing. Unless the office  
17 has established a shorter time period or another statute has established a different time  
18 period, within 30 days after the proposed decision is served, a party may file with the  
19 agency a proposal for action under (1) - (5) of this subsection. The agency with  
20 authority to make a final decision in the case retains agency discretion in the final  
21 disposition of the case and shall, within 45 days after the date the proposed decision is  
22 served or at the next regularly scheduled meeting that occurs at least 45 days after the  
23 proposed decision is served, do one or more of the following:

24 (1) adopt the proposed decision as the final agency decision;

25 (2) return the case to the administrative law judge to take additional  
26 evidence or make additional findings or for other specific proceedings, in which case  
27 the administrative law judge shall complete the additional work and return the revised  
28 proposed decision to the agency within 45 days after the original decision was  
29 returned under this paragraph;

30 (3) exercise its discretion by revising the proposed enforcement action,  
31 determination of best interests, order, award, remedy, sanction, penalty, or other

1 disposition of the case, and adopt the proposed decision as revised;

2 (4) in writing, reject, modify, or amend a factual finding in the  
3 proposed decision by specifying the affected finding and identifying the testimony and  
4 other evidence relied on by the agency for the rejection, modification, or amendment  
5 of the finding, and issue a final agency decision;

6 (5) in writing, reject, modify, or amend an interpretation or application  
7 in the proposed decision of a statute or regulation directly governing the agency's  
8 actions by specifying the reasons for the rejection, modification, or amendment, and  
9 issue a final agency decision.

10 (f) If a final decision is not issued timely in accordance with (e) of this section,  
11 the administrative law judge's proposed decision is the final agency decision.

12 **Sec. 44.64.070. Disqualification of administrative law judge.** (a) The chief  
13 administrative law judge or an administrative law judge employed or retained by the  
14 office is disqualified from a case in which the administrative law judge cannot accord  
15 a fair and impartial hearing or for other reasons established in the code of hearing  
16 officer conduct.

17 (b) A party may request the disqualification of the chief administrative law  
18 judge or another administrative law judge by filing an affidavit, before the taking of  
19 evidence at a hearing, stating with particularity the grounds upon which it is claimed  
20 that a fair and impartial hearing cannot be accorded by that administrative law judge.  
21 Notwithstanding AS 44.62.450(c), upon receipt of the affidavit, the administrative law  
22 judge assigned to the administrative hearing shall make a determination. If the affiant  
23 objects to the decision, the matter shall be decided by the chief administrative law  
24 judge, whose decision is final, or if the hearing is assigned to the chief administrative  
25 law judge, by the attorney general, whose decision is final.

26 (c) In addition to disqualification of an administrative law judge under (a) and  
27 (b) of this section, each side is entitled to change the assigned administrative law judge  
28 once. Two or more parties aligned on the same side of an action shall be treated as  
29 one side for purposes of this subsection, but the chief administrative law judge may  
30 allow an additional change to a party whose interests are adverse to the interests of  
31 another party on the same side. A party wishing to exercise the right to change the

1 administrative law judge shall give notice to the chief administrative law judge within  
2 five days after notice is given that the case has been assigned. A party waives the  
3 right to a change in the assigned administrative law judge by participating before that  
4 administrative law judge in any proceeding or conference involving the case.

5 **Sec. 44.64.080. Agency cooperation.** (a) All agencies shall cooperate with  
6 the chief administrative law judge and with other administrative law judges of the  
7 office in the matters involving the duties of the office.

8 (b) Except as provided under AS 44.64.070 or by regulation adopted under  
9 this chapter, an agency may not select or reject a particular administrative law judge  
10 for assignment to an administrative hearing.

11 (c) After an administrative hearing is referred by an agency to the office for  
12 hearing, the agency may not take further adjudicatory action in the case, except as a  
13 party litigant or to render a final decision as provided by law. This subsection does  
14 not otherwise limit the agency's authority to take action affecting a party to the case.

15 **Sec. 44.64.090. Administrative hearing records.** (a) The office shall  
16 acquire and organize statistical and other information relating to administrative  
17 hearings of the office and of other agencies. The office shall acquire and organize  
18 copies of proposed and final agency decisions in administrative hearings and copies of  
19 court decisions resulting from those administrative hearings. The information and  
20 decisions shall be made available to the public, agencies, and the legislature. The  
21 office shall make final agency decisions reached after administrative hearings  
22 available online through an electronic data base.

23 (b) This section does not apply to records that are confidential or privileged.

24 **Sec. 44.64.095. Federal requirements.** Federal requirements applicable to an  
25 administrative hearing prevail to the extent they conflict with any provision of  
26 AS 44.64.010 - 44.64.200.

27 **Sec. 44.64.200. Definitions.** In this chapter,

28 (1) "administrative hearing" means a quasi-judicial hearing before an  
29 agency; it does not include an informal conference or review held by an agency before  
30 a final decision is issued or a rate-making proceeding or other nonadjudicative public  
31 hearing;

1 (2) "administrative law judge" means a hearing officer who is retained  
2 or employed by the office;

3 (3) "agency" means an agency of the executive branch of state  
4 government, including an officer, a division, or another subunit of an agency, a board  
5 or commission, a public corporation, and the University of Alaska;

6 (4) "hearing officer" means an individual who presides over the  
7 conduct of an administrative hearing and who is retained or employed by an agency  
8 for that purpose;

9 (5) "office" means the office of administrative hearings established in  
10 AS 44.64.010.

11 \* Sec. 4. AS 04.11.510(b) is amended to read:

12 (b) The board may review an application for the issuance, renewal, transfer of  
13 location, or transfer to another person of a license without affording the applicant  
14 notice or hearing, except

15 (1) if an application is denied, the notice of denial shall be furnished  
16 the applicant immediately in writing stating the reason for the denial in clear and  
17 concise language; the notice of denial must inform the applicant that the applicant is  
18 entitled to an informal conference with either the director or the board, and that, if not  
19 satisfied by the informal conference, the applicant is then entitled to a formal hearing  
20 conducted by the office of administrative hearings (AS 44.64.010) [BEFORE THE  
21 BOARD]; if the applicant requests a formal hearing, the office of administrative  
22 hearings [BOARD] shall adhere to AS 44.62.330 - 44.62.630 (Administrative  
23 Procedure Act); all interested persons may be heard at the hearing and unless waived  
24 by the applicant and the board, the formal hearing shall be held in the area for which  
25 the application is requested;

26 (2) the board may, on its own initiative or in response to an objection  
27 or protest, hold a hearing to ascertain the reaction of the public or a local governing  
28 body to an application if a hearing is not required under this subsection; the board  
29 shall send notice of a hearing conducted under this paragraph 20 days in advance of  
30 the hearing to each community council established within the municipality and to each  
31 nonprofit community organization entitled to notification under AS 04.11.310(b);

1 (3) if a petition containing the signatures of 35 percent of the adult  
2 residents having a permanent place of abode outside of but within two miles of an  
3 incorporated city or an established village is filed with the board, the board shall hold  
4 a public hearing on the question of whether the issuance, renewal, or transfer of the  
5 license in the city or village would be in the public interest;

6 (4) if a protest to the issuance, renewal, transfer of location or transfer  
7 to another person of a license made by a local governing body is based on a question  
8 of law, the board shall hold a public hearing.

9 \* Sec. 5. AS 05.20.080 is amended to read:

10 Sec. 05.20.080. Application of Administrative Procedure Act. The  
11 procedure for review of the orders or actions of the department, its agents or  
12 employees, is the same as that contained in AS 44.62 (Administrative Procedure Act).  
13 Administrative hearings on contested cases shall be conducted by the office of  
14 administrative hearings (AS 44.64.010).

15 \* Sec. 6. AS 06.01.030(f) is amended to read:

16 (f) Hearings required or authorized under this title are not subject to  
17 AS 44.62.330 - 44.62.630, except as required by AS 44.62.560 and 44.62.570. The  
18 department shall adopt regulations, consistent with the provisions of this title,  
19 establishing procedures for hearings held under this section. Administrative  
20 hearings on contested cases shall be conducted by the office of administrative  
21 hearings (AS 44.64.010).

22 \* Sec. 7. AS 08.01.075(c) is amended to read:

23 (c) A board may summarily suspend a licensee from the practice of the  
24 profession before a final hearing is held or during an appeal if the board finds that the  
25 licensee poses a clear and immediate danger to the public health and safety. A person  
26 is entitled to a hearing conducted by the office of administrative hearings  
27 (AS 44.64.010) [BEFORE THE BOARD] to appeal the summary suspension within  
28 seven days after the order of suspension is issued. A person may appeal an adverse  
29 decision of the board on an appeal of a summary suspension to a court of competent  
30 jurisdiction.

31 \* Sec. 8. AS 08.01.087(b) is amended to read:

1 (b) If it appears to the commissioner that a person has engaged in or is about  
2 to engage in an act or practice in violation of a provision of this chapter or a regulation  
3 adopted under it, or a provision of AS 43.70, or a provision of this title or regulation  
4 adopted under this title dealing with an occupation or board listed in AS 08.01.010, the  
5 commissioner may, if the commissioner considers it in the public interest, and after  
6 notification of a proposed order or action by telephone, telegraph, or facsimile to all  
7 board members, if a board regulates the act or practice involved, unless a majority of  
8 the members of the board object within 10 days,

9 (1) issue an order directing the person to stop the act or practice;  
10 however, reasonable notice of and an opportunity for a hearing must first be given to  
11 the person, except that the commissioner may issue a temporary order before a hearing  
12 is held; a temporary order remains in effect until a final order affirming, modifying, or  
13 reversing the temporary order is issued or until 15 days after the person receives the  
14 notice and has not requested a hearing by that time; a temporary order becomes final if  
15 the person to whom the notice is addressed does not request a hearing within 15 days  
16 after receiving the notice; the office of administrative hearings (AS 44.64.010)  
17 [COMMISSIONER OR THE COMMISSIONER'S DESIGNEE] shall conduct [BE  
18 THE HEARING OFFICER AT] the hearing and shall issue a proposed decision  
19 [FINAL ORDER] within 10 days after the hearing; the commissioner shall issue a  
20 final order within five days after the proposed decision is issued;

21 (2) bring an action in the superior court to enjoin the acts or practices  
22 and to enforce compliance with this chapter, a regulation adopted under it, an order  
23 issued under it, or with a provision of this title or regulation adopted under this title  
24 dealing with business licenses or an occupation or board listed in AS 08.01.010;

25 (3) examine or have examined the books and records of a person  
26 whose business activities require a business license or licensure by a board listed in  
27 AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may  
28 require the person to pay the reasonable costs of the examination; and

29 (4) issue subpoenas for the attendance of witnesses, and the production  
30 of books, records, and other documents.

31 \* Sec. 9. AS 08.11.090(c) is amended to read:

1 (c) The department may summarily suspend a license before final hearing or  
2 during the appeals process if the department finds that the licensee poses a clear and  
3 immediate danger to the public welfare and safety if the licensee continues to practice.  
4 An individual whose license is suspended under this subsection is entitled to a hearing  
5 conducted by the office of administrative hearings (AS 44.64.010) not  
6 [DEPARTMENT NO] later than seven days after the effective date of the order. The  
7 individual may appeal the suspension after the hearing to the superior court.

8 \* Sec. 10. AS 08.32.171(c) is amended to read:

9 (c) The board may summarily suspend the license of a licensee who refuses to  
10 submit to a physical or mental examination under AS 08.36.070(b)(1). A person  
11 whose license is suspended under this section is entitled to a hearing conducted by the  
12 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after  
13 the effective date of the order. If, after a hearing, the board upholds the suspension,  
14 the licensee may appeal the suspension to a court of competent jurisdiction.

15 \* Sec. 11. AS 08.36.320(c) is amended to read:

16 (c) The board may summarily suspend the license of a licensee who refuses to  
17 submit to a physical or mental examination under AS 08.36.070(b)(i). A person  
18 whose license is suspended under this section is entitled to a hearing conducted by the  
19 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after  
20 the effective date of the order. If, after a hearing, the board upholds the suspension,  
21 the licensee may appeal the suspension to a court of competent jurisdiction.

22 \* Sec. 12. AS 08.40.170(f) is amended to read:

23 (f) The department may summarily suspend a license before a final hearing is  
24 held or during an appeal if the department finds that the licensee poses a clear and  
25 immediate danger to the public health and safety. A person is entitled to a hearing  
26 conducted by [BEFORE] the office of administrative hearings (AS 44.64.010)  
27 [DEPARTMENT] to appeal the summary suspension within seven days after the order  
28 of suspension is issued. A person may appeal an adverse decision of the department  
29 on an appeal of a summary suspension to a court of competent jurisdiction.

30 \* Sec. 13. AS 08.40.320(f) is amended to read:

31 (f) The department may summarily suspend a license before a final hearing is

1 held or during an appeal if the department finds that the licensee poses a clear and  
2 immediate danger to the public health and safety. A person is entitled to a hearing  
3 conducted by [BEFORE] the office of administrative hearings (AS 44.64.010)  
4 [DEPARTMENT] to appeal the summary suspension within seven days after the order  
5 of suspension is issued. A person may appeal an adverse decision of the department  
6 on an appeal of a summary suspension to a court of competent jurisdiction.

7 \* Sec. 14. AS 08.45.070(c) is amended to read:

8 (c) The division may summarily suspend a license before final hearing or  
9 during the appeals process if the division finds that the licensee poses a clear and  
10 immediate danger to the public health and safety if the licensee continues to practice.  
11 A licensee whose license is suspended under this section is entitled to a hearing  
12 conducted by the office of administrative hearings (AS 44.64.010) not [DIVISION  
13 NO] later than seven days after the effective date of the order. The licensee may  
14 appeal the suspension after a hearing to a court of competent jurisdiction.

15 \* Sec. 15. AS 08.54.710(i) is amended to read:

16 (i) The department may summarily suspend a licensee from practice of the  
17 profession under this chapter, for a period of not more than 30 days, before a final  
18 hearing is held or during an appeal if the department finds that the licensee poses a  
19 clear and immediate danger to the public health and safety. A person is entitled to a  
20 hearing conducted by [BEFORE] the office of administrative hearings  
21 (AS 44.64.010) [DEPARTMENT] to appeal the summary suspension within seven  
22 days after the order of suspension is issued. A person may appeal an adverse decision  
23 of the department on an appeal of summary suspension to a court of competent  
24 jurisdiction.

25 \* Sec. 16. AS 08.55.140(c) is amended to read:

26 (c) The department may summarily suspend a license before final hearing or  
27 during the appeals process if the department finds that the licensee poses a clear and  
28 immediate danger to the public welfare and safety if the licensee continues to practice.  
29 A person whose license is suspended under this subsection is entitled to a hearing  
30 conducted by the office of administrative hearings (AS 44.64.010) not  
31 [DEPARTMENT NO] later than seven days after the effective date of the order. The

1 person may appeal the suspension after the hearing to the superior court.

2 \* Sec. 17. AS 08.64.331(c) is amended to read:

3 (c) The board may summarily suspend a license before final hearing or during  
4 the appeals process if the board finds that the licensee poses a clear and immediate  
5 danger to the public health and safety if the licensee continues to practice. A person  
6 whose license is suspended under this section is entitled to a hearing conducted by the  
7 office of administrative hearings (AS 44.64.010) ~~not~~ [BOARD NO] later than seven  
8 days after the effective date of the order and the person may appeal the suspension  
9 after a hearing to a court of competent jurisdiction.

10 \* Sec. 18. AS 08.65.120(c) is amended to read:

11 (c) The board may summarily suspend a license before final hearing or during  
12 the appeals process if the board finds that the licensee poses a clear and immediate  
13 danger to the public health and safety if the licensee continues to practice. A person  
14 whose license is suspended under this section is entitled to a hearing conducted by the  
15 office of administrative hearings (AS 44.64.010) ~~not~~ [BOARD NO] later than seven  
16 days after the effective date of the order and the person may appeal the suspension  
17 after a hearing to a court of competent jurisdiction.

18 \* Sec. 19. AS 08.68.275(c) is amended to read:

19 (c) The board may summarily suspend a license before final hearing or during  
20 the appeals process if the board finds that the licensee poses a clear and immediate  
21 danger to the public health and safety. A person whose license is suspended under this  
22 section is entitled to a hearing conducted by the office of administrative hearings  
23 (AS 44.64.010) [BOARD] within seven days after the effective date of the order. If,  
24 after a hearing, the board upholds the suspension, the licensee may appeal the  
25 suspension to a court of competent jurisdiction.

26 \* Sec. 20. AS 08.86.204(b) is amended to read:

27 (b) The board may summarily suspend the license of a licensee who refuses to  
28 submit to a physical or mental examination under AS 08.86.075. A person whose  
29 license is suspended under this subsection is entitled to a hearing conducted by the  
30 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after  
31 the effective date of the order. If, after the [A] hearing, the board upholds the

1 suspension, the licensee may appeal the suspension to a court of competent  
2 jurisdiction.

3 \* Sec. 21. AS 08.88.460(b) is amended to read:

4 (b) A copy of a claim filed with the commission under (a) of this section shall  
5 be sent to each real estate licensee alleged to have committed the misconduct resulting  
6 in losses, to the principal real estate broker employing a licensee alleged to have  
7 committed the conduct resulting in losses, and to any other real estate licensee  
8 involved in the transaction at least 20 days before any hearing held on the claim by the  
9 office of administrative hearings (AS 44.64.010) [COMMISSION].

10 \* Sec. 22. AS 08.88.460(d) is amended to read:

11 (d) A claimant under this section shall pay a filing fee of \$250 to the  
12 commission at the time the claim is filed. The filing fee shall be refunded if the

13 (1) [THE] commission makes an award to the claimant from the real  
14 estate surety fund;

15 (2) [THE] claim is dismissed under (c) of this section; or

16 (3) [THE] claim is withdrawn by the claimant before the office of  
17 administrative hearings (AS 44.64.010) [COMMISSION] holds a hearing on the  
18 claim.

19 \* Sec. 23. AS 08.88.472(c) is amended to read:

20 (c) The commission may contract under AS 36.30 (State Procurement Code)  
21 with a person for the person to perform [HEARING AND] legal services for the  
22 commission with regard to a claim against the real estate surety fund. The contract  
23 may cover one or more claims.

24 \* Sec. 24. AS 08.92.040(c) is amended to read:

25 (c) If the department determines that a person is acting as a promoter in  
26 violation of this chapter, the department may order the person to stop the violation.  
27 Upon receipt of the order, the person affected has the right to be heard and to present  
28 proof to the office of administrative hearings (AS 44.64.010) [DEPARTMENT] that  
29 the violation has not occurred. Upon [IN THE DEPARTMENT'S DISCRETION OR  
30 UPON] application made by the recipient of the order, the office of administrative  
31 hearings may [DEPARTMENT SHALL] schedule a hearing at the earliest possible

1 time. After the hearing the department may affirm, modify, or set aside the order.

2 \* **Sec. 25.** AS 10.06.633(b) is amended to read:

3 (b) A corporation may not be dissolved under this section unless the  
4 commissioner has given the corporation written notice of its delinquency, failure, or  
5 noncompliance by mail as provided by (i) of this section. If the corporation fails,  
6 within 60 days after the requirements of (i) of this section have been satisfied, to  
7 contest the alleged neglect, omission, delinquency, or noncompliance by a written  
8 request for a hearing conducted by [BEFORE] the office of administrative hearings  
9 (AS 44.64.010) [COMMISSIONER] or fails to correct the asserted neglect, omission,  
10 delinquency, or noncompliance, it may be dissolved under (d) of this section.

11 \* **Sec. 26.** AS 10.06.865 is amended to read:

12 **Sec. 10.06.865. Cancellation of certificates issued and filings accepted.**

13 The commissioner may, within one year after a filing, and after written notice to the  
14 corporation or individual making the filing, cancel a certificate issued or filing  
15 accepted under this chapter, on any ground existing at the time of issuance or filing for  
16 which the commissioner could have originally refused to issue the certificate or accept  
17 the filing. The notice of cancellation must state the reason for the cancellation. A  
18 corporation or individual may request a hearing conducted by [BEFORE] the office  
19 of administrative hearings (AS 44.64.010) [COMMISSIONER] within 90 days after  
20 receipt of the notice. Cancellation becomes final if the corporation or individual does  
21 not request a hearing within 90 days after receipt of notice. Notice of cancellation  
22 shall be sent by certified mail with return receipt requested. If the return receipt is not  
23 received by the department within a reasonable time and the department has made  
24 diligent inquiry as to the address of the corporation, notice may be made by  
25 publication in a newspaper of general circulation in the vicinity of the registered office  
26 of the corporation or the address of the individual who made the filing, and the  
27 cancellation becomes final 60 days after publication of the notice if the person or  
28 corporation does not request a hearing.

29 \* **Sec. 27.** AS 10.13.770(b) is amended to read:

30 (b) If the department fails to promptly notify the office of administrative  
31 hearings (AS 44.64.010) of the application and the office fails to begin a hearing

1 within 15 business days after the application is filed or within a longer period to which  
2 the licensee or subject person consents, the order shall be considered rescinded.

3 \* Sec. 28. AS 14.11.016(b) is amended to read:

4 (b) A district may appeal an adverse decision of the department under (a) of  
5 this section by filing a written notice of appeal with the commissioner within 15 days  
6 after the date of the department's decision. The notice of appeal must state the legal  
7 and factual basis for the appeal and the precise relief sought. The failure of the district  
8 to include an issue in a notice of appeal constitutes a waiver of the right to have the  
9 issue considered. Not later than 10 days after receipt by the commissioner of a notice  
10 of appeal, the chief administrative law judge of the office of administrative  
11 hearings (AS 44.64.010) [COMMISSIONER] shall appoint an administrative law  
12 judge [A HEARING OFFICER] who is qualified under AS 44.62.350(c) to serve as  
13 hearing officer and consider the appeal. If the hearing officer finds that the notice of  
14 appeal does not raise a reasonable issue of fact or law, the hearing officer shall issue a  
15 written decision denying the appeal. Denial of an appeal by hearing officer is a final  
16 decision that may be appealed under (d) of this section. If the hearing officer finds  
17 that the notice of appeal raises a reasonable issue of fact or law, the hearing officer  
18 shall conduct a hearing on those issues and recommend a decision to the board. The  
19 hearing officer shall issue a decision on the appeal not later than 60 days after being  
20 appointed. The board shall consider the recommended decision of the hearing officer  
21 at its next regularly scheduled meeting and may adopt all, part, or none of the  
22 recommended decision or may remand the issue to the hearing officer for further  
23 hearings. The board shall issue its decision in writing within 10 days after  
24 consideration of the hearing officer's decision.

25 \* Sec. 29. AS 14.18.090(a) is amended to read:

26 (a) The board shall enforce compliance by school districts and regional  
27 educational attendance areas with the provisions of this chapter and the regulations  
28 and procedures adopted under it by appropriate order made in accordance with  
29 AS 44.62. After a hearing conducted by the office of administrative hearings  
30 (AS 44.64.010) and a finding by the board that a district or a regional educational  
31 attendance area is not in compliance with this chapter and is not actively working to

1           come into compliance, the board shall institute appropriate proceedings to abate the  
2           practices found by the board to be a violation of this chapter.

3       \* Sec. 30. AS 14.20.030 is amended by adding a new subsection to read:

4           (c) The commissioner or the Professional Teaching Practices Commission  
5           shall request the chief administrative law judge (AS 44.64.020), to appoint an  
6           administrative law judge employed by the office of administrative hearings to preside  
7           at a hearing conducted under this section. AS 44.64.060 and 44.64.070 do not apply  
8           to the hearing.

9       \* Sec. 31. AS 14.48.130(b) is amended to read:

10           (b) The commission shall investigate the complaint and may attempt to effect  
11           a settlement by persuasion and conciliation. A [THE COMMISSION MAY  
12           CONSIDER A] complaint may be considered after 30 days' [DAYS] written notice  
13           by registered mail to the institution or agent, or both, giving notice of a time and place  
14           for hearing on the complaint. The hearing shall be conducted in accordance with  
15           AS 44.62 (Administrative Procedure Act) by the office of administrative hearings  
16           (AS 44.64.010).

17       \* Sec. 32. AS 18.18.030(b) is amended to read:

18           (b) The department may, without a hearing, summarily suspend a license of a  
19           hospice program if it finds that the actions or deficiencies of the program have caused,  
20           or present an immediate threat of causing, serious injury to a hospice program client.  
21           A licensee is entitled to a hearing conducted by the office of administrative  
22           hearings (AS 44.64.010) [BEFORE THE DEPARTMENT] to appeal the summary  
23           suspension within seven days after the order of suspension is issued. A licensee may  
24           appeal an adverse decision of the department on an appeal of a summary suspension to  
25           the superior court. A summary suspension remains in effect until the department finds  
26           that the actions or deficiencies are corrected, the license is revoked, or the licensee is  
27           successful in appealing the suspension.

28       \* Sec. 33. AS 18.18.030(c) is amended to read:

29           (c) The department may, without a hearing, reduce a hospice license to a  
30           provisional license for a period of time established by the department if the department  
31           finds that the licensee is temporarily unable to comply with 18.18.005 - 18.18.390 or

1 is in the process of becoming decertified under the Medicare program but is taking  
2 appropriate steps to bring the program into compliance with 18.18.005 - 18.18.390 or  
3 Medicare certification requirements. A licensee is entitled to a hearing conducted by  
4 the office of administrative hearings [BEFORE THE DEPARTMENT] to appeal a  
5 reduction to a provisional license under this subsection within seven days after the  
6 order to reduce the license is issued. A licensee may appeal an adverse decision of the  
7 department on an appeal of the order reducing the license to a provisional license to  
8 the superior court. A program with a provisional license under this subsection may  
9 not accept new clients. If the program fails to correct its deficiencies and does not  
10 successfully appeal the order reducing the license to provisional status within the  
11 period stipulated in the provisional license, the department shall revoke the license.

12 \* Sec. 34. AS 18.60.093 is amended by adding a new subsection to read:

13 (g) The board shall request the chief administrative law judge (AS 44.64.020)  
14 to appoint an administrative law judge employed or retained by the office of  
15 administrative hearings to preside at a hearing conducted under this section.  
16 AS 44.64.060 and 44.64.070 do not apply to the hearing. The administrative law  
17 judge who presided at the hearing shall be present during the consideration of the case  
18 and, if requested by board, shall assist and advise the board. A member of the board  
19 who has not heard all of the evidence may not vote on the decision.

20 \* Sec. 35. AS 18.67.020(f) is amended to read:

21 (f) After obtaining consent from the chief administrative law judge  
22 (AS 44.64.020), the [THE] board may appoint one or more administrative law  
23 judges employed or retained by the office of administrative hearings [HEARING  
24 OFFICERS, WHO MUST BE LICENSED TO PRACTICE LAW IN THE STATE,]  
25 to conduct hearings and take testimony in proceedings under this chapter, but final  
26 determinations of any matter shall be only by the board. AS 44.64.060 and 44.64.070  
27 do not apply to proceedings under this chapter. An administrative law judge [A  
28 HEARING OFFICER] acting under this section shall report findings of fact and  
29 conclusions of law to the board, together with the reasons for the findings and  
30 conclusions. The board shall act only after consideration of the report and other  
31 evidence that it considers appropriate.

1 \* Sec. 36. AS 18.80.120 is amended by adding a new subsection to read:

2 (b) The commission shall request the chief administrative law judge  
3 (AS 44.64.020) to appoint an administrative law judge employed or retained by the  
4 office of administrative hearings to preside at a hearing conducted under this section.  
5 AS 44.64.060 and 44.64.070 do not apply to the hearing.

6 \* Sec. 37. AS 18.80.145(b) is amended to read:

7 (b) If, within the period allowed, [THE COMMISSION CONDUCTS] a  
8 hearing is conducted and [REACHES] a decision is reached under AS 18.80.120 and  
9 18.80.130, the decision of the commission is binding on the parties to the court action  
10 as to all issues resolved in the hearing but not as to any issues not resolved in the  
11 hearing.

12 \* Sec. 38. AS 18.80.145(c) is amended to read:

13 (c) When proceedings in the superior court are deferred for a hearing and  
14 decision [BY THE COMMISSION] under this section, the plaintiff may proceed, after  
15 the decision [BY THE COMMISSION], as an aggrieved party for the purpose of obtaining  
16 judicial review under AS 18.80.135, whether or not the person was a party to, or  
17 complainant in, the administrative [COMMISSION] proceedings.

18 \* Sec. 39. AS 21.06.170(a) is amended to read:

19 (a) With respect to the subject of an examination, investigation, or hearing  
20 being conducted by the director or an examiner, if general written authority has been  
21 given the examiner by the director, the director or the examiner may subpoena  
22 witnesses and administer oaths or affirmations and examine any person under oath,  
23 and may compel the production of records, books, papers, contracts, and other  
24 documents by attachments, if necessary. If, in connection with an examination of an  
25 insurer, the director desires to examine an officer, director, or manager who is then  
26 outside this state, the director is authorized to conduct and to enforce by appropriate  
27 and available means an examination under oath in another state or a territory of the  
28 United States in which the officer, director, or manager may then presently be, to the  
29 full extent permitted by the laws of the other state or territory, this special  
30 authorization considered. An administrative law judge from the office of  
31 administrative hearings (AS 44.64.010) conducting a hearing under this title may,

1 in the course of the hearing, exercise the powers granted to the director under  
2 this subsection.

3 \* Sec. 40. AS 21.06.170(d) is amended to read:

4 (d) If a person disobeys or resists a lawful order of the administrative law  
5 judge or director, refuses to respond to a subpoena, refuses to take oath or affirmation  
6 as a witness, refuses to be examined, or is guilty of misconduct at a hearing or so near  
7 the hearing as to obstruct the proceeding, the administrative law judge or director  
8 shall certify the facts to the superior court where the hearing is held, and, upon  
9 certification, the court shall issue an order directing the person to appear before the  
10 court and show cause why the person should not be punished for contempt.

11 \* Sec. 41. AS 21.06.180(b) is amended to read:

12 (b) The office of administrative hearings (AS 44.64.010) [DIRECTOR] shall  
13 conduct [HOLD] a hearing on behalf of the director if required under  
14 AS 44.64.030. Otherwise, the director shall conduct a hearing if required by a  
15 provision of this title, or upon written demand to the director by a person aggrieved  
16 by an act, threatened act, or failure of the director to act, or by a report, regulation, or  
17 order of the director (other than an order for the holding of a hearing, or an order on  
18 hearing or under it). A demand must specify the grounds to be relied upon at the  
19 hearing as a basis for the relief. Unless postponed by mutual consent or for good  
20 cause shown, the hearing shall be held within 30 days after receipt by the director of  
21 the written demand.

22 \* Sec. 42. AS 21.06.200 is amended to read:

23 Sec. 21.06.200. Notice of hearing. Not less than 20 days in advance, the  
24 administrative law judge or director shall give notice of the time and place of the  
25 hearing, stating the matters to be considered at the hearing. If the persons to be given  
26 notice are not specified in the provision under which the hearing is held, the  
27 administrative law judge or director shall give notice to all persons whose pecuniary  
28 interests are to be directly and immediately affected by the hearing.

29 \* Sec. 43. AS 21.06.210(a) is amended to read:

30 (a) The administrative law judge or director shall allow a party to the  
31 hearing to appear in person and by counsel, to be present during the giving of all

1 evidence, to have a reasonable opportunity to inspect all documentary evidence and to  
2 examine witnesses, to present evidence in support of the party's interest, and to have  
3 subpoenas issued by the administrative law judge or director to compel attendance  
4 of witnesses and production of evidence in the party's behalf.

5 \* Sec. 44. AS 21.06.210(b) is amended to read:

6 (b) The administrative law judge or director shall permit to become a party  
7 to the hearing by intervention, if timely, any person who was not an original party to  
8 the proceeding and whose pecuniary interests are to be directly and immediately  
9 affected by the director's order made upon the hearing.

10 \* Sec. 45. AS 21.06.210(d) is amended to read:

11 (d) Upon written request seasonably made by a party to the hearing and at that  
12 person's expense, the administrative law judge or director shall cause a full  
13 stenographic record of the proceedings to be made by a competent reporter. If  
14 transcribed, a copy of the stenographic record shall be furnished to the director,  
15 without cost to the director or the state, and shall be a part of the director's record of  
16 the hearing. If transcribed, a copy of the stenographic record shall be furnished to any  
17 other party to the hearing at the request and expense of the other party. If no  
18 stenographic record is made or transcribed, the administrative law judge or director  
19 shall prepare an adequate record of the evidence and of the proceedings.

20 \* Sec. 46. AS 21.06.210(f) is amended to read:

21 (f) If the parties agree, the administrative law judge or director may conduct  
22 a hearing under this section by teleconference.

23 \* Sec. 47. AS 21.06.210(h) is amended to read:

24 (h) The administrative law judge or director may close a hearing to the  
25 public when the administrative law judge or director finds the closure is necessary to  
26 protect a person against unwarranted injury or is in the public interest.

27 \* Sec. 48. AS 21.06.220(a) is amended to read:

28 (a) In conducting the hearing, the administrative law judge or director shall  
29 sit in a quasi-judicial capacity. Within 45 [30] days after termination of the hearing,  
30 rehearing, or reargument, the director shall make an order on hearing, covering matters  
31 involved in the hearing, rehearing, or reargument, and shall give a copy of the order to

1 the same persons given notice of the hearing.

2 \* Sec. 49. AS 24.60.030 is amended by adding a new subsection to read:

3 (i) Except for supplying information requested by the hearing officer or the  
4 individual, board, or commission with authority to make the final decision in the case,  
5 or when responding to contacts initiated by the hearing officer or the individual, board,  
6 or commission with authority to make the final decision in the case, a legislator or  
7 legislative employee may not attempt to influence the outcome of an administrative  
8 hearing by directly or indirectly contacting or attempting to contact the hearing officer  
9 assigned to the hearing or the individual, board, or commission with authority to make  
10 the final decision in the case unless the

11 (1) contact is made in the presence of all parties to the hearing or the  
12 parties' representatives and the contact is made a part of the record; or

13 (2) fact and substance of the contact is promptly disclosed by the  
14 legislator or legislative employee to all parties to the hearing and the contact is made a  
15 part of the record.

16 \* Sec. 50. AS 34.45.400(c) is amended to read:

17 (c) At the formal hearing, the administrative law judge from the office of  
18 administrative hearings (AS 44.64.010) [DEPARTMENT] may subpoena witnesses  
19 and may administer oaths and make inquiries necessary to determine the validity of  
20 the claim. The person aggrieved may present arguments and evidence relevant to the  
21 decision or action of the department. If, after the hearing, the department determines  
22 that a correction is warranted, the department shall make the correction.

23 \* Sec. 51. AS 36.30.015(d) is amended to read:

24 (d) An agency may not contract for the services of legal counsel without the  
25 approval of the attorney general. An agency may not contract for the services of a  
26 hearing officer or administrative law judge for a administrative, quasi-judicial  
27 hearing without the approval of the attorney general and the chief administrative  
28 law judge of the office of administrative hearings (AS 44.64.010).

29 \* Sec. 52. AS 36.30.615 is amended to read:

30 **Sec. 36.30.615. Hearing on protest appeal.** A hearing on a protest appeal  
31 shall be conducted in accordance with AS 36.30.670 and regulations adopted by the

1 commissioner to the extent the regulations do not conflict with regulations  
2 adopted under AS 44.64.060.

3 \* Sec. 53. AS 36.30.630(a) is amended to read:

4 (a) Except as provided in (b) of this section, a hearing shall be conducted  
5 according to AS 36.30.670 and, to the extent they do not conflict with regulations  
6 adopted under AS 44.64.060, regulations adopted by the commissioner of  
7 administration on a contract claim appealed to the commissioner of administration or  
8 the commissioner of transportation and public facilities or referred to either  
9 commissioner under AS 36.30.620(f).

10 \* Sec. 54. AS 36.30.635(a) is amended to read:

11 (a) After consultation with the using agency and the attorney general and after  
12 a hearing conducted according to AS 36.30.670 and, to the extent they do not  
13 conflict with regulations adopted under AS 44.64.060, regulations adopted by the  
14 commissioner of administration, the commissioner of administration or the  
15 commissioner of transportation and public facilities may debar a person for cause from  
16 consideration for award of contracts. Notice of a debarment hearing shall be provided  
17 in writing at least seven days before the hearing. The debarment may not be for a  
18 period of more than three years.

19 \* Sec. 55. AS 36.30.650 is amended to read:

20 Sec. 36.30.650. Hearing on a suspension. (a) A person suspended under  
21 AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and, to the  
22 extent that they do not conflict with regulations adopted under AS 44.64.060,  
23 regulations adopted by the commissioner of administration if the person files a written  
24 request for a hearing with the commissioner of administration or the commissioner of  
25 transportation and public facilities, as appropriate, within seven days after receipt of  
26 the notice of suspension under AS 36.30.645.

27 (b) If a suspended person requests a hearing, the commissioner of  
28 administration or the commissioner of transportation and public facilities, as  
29 appropriate, after consulting with the office of administrative hearings  
30 (AS 44.64.010), shall schedule a prompt hearing unless the attorney general  
31 determines that a hearing at the proposed time is likely to jeopardize an investigation.

1 A hearing may not be delayed longer than six months after notice of the suspension is  
2 provided under AS 36.30.645.

3 \* Sec. 56. AS 36.30.670(a) is amended to read:

4 (a) The chief administrative law judge (AS 44.64.010) [COMMISSIONER  
5 OF ADMINISTRATION OR THE COMMISSIONER OF TRANSPORTATION  
6 AND PUBLIC FACILITIES] shall assign an administrative law judge to act as a  
7 hearing officer [OR APPOINT A HEARING OFFICER] for a hearing conducted  
8 under this chapter. The hearing officer shall arrange for a prompt hearing and notify  
9 the parties in writing of the time and place of the hearing. The hearing shall be  
10 conducted in an informal manner. The provisions of AS 44.62 (Administrative  
11 Procedure Act) do not apply to a hearing conducted under this chapter.

12 \* Sec. 57. AS 36.30.675(a) is amended to read:

13 (a) The [IF THE COMMISSIONER OF ADMINISTRATION OR THE  
14 COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES IS NOT  
15 ACTING AS HEARING OFFICER, THE] hearing officer shall recommend a decision  
16 to the commissioner of administration or the commissioner of transportation and  
17 public facilities, as appropriate, based on the evidence presented. The  
18 recommendation must include findings of fact and conclusions of law.

19 \* Sec. 58. AS 39.25.120(c) is amended by adding a new paragraph to read:

20 (20) the chief administrative law judge and administrative law judges  
21 of the Office of Administrative Hearings.

22 \* Sec. 59. AS 39.52.120 is amended by adding a new subsection to read:

23 (e) Except for supplying information requested by the hearing officer or the  
24 entity with authority to make the final decision in the case, or when responding to  
25 contacts initiated by the hearing officer or the individual, board, or commission with  
26 authority to make the final decision in the case, a public officer may not attempt to  
27 influence the outcome of an administrative hearing by directly or indirectly contacting  
28 or attempting to contact the hearing officer or individual, board, or commission with  
29 authority to make the final decision in the case assigned to the hearing officer unless  
30 the

31 (1) contact is made in the presence of all parties to the hearing or the

1 parties' representatives and the contact is made a part of the record; or

2 (2) fact and substance of the contact is promptly disclosed by the  
3 public officer to all parties to the hearing and the contact is made a part of the record.

4 \* Sec. 60. AS 39.52.350(c) is amended to read:

5 (c) If the subject of the accusation denies that a violation of this chapter has  
6 occurred, the attorney general shall refer the matter to the personnel board, which  
7 shall notify the chief administrative law judge (AS 44.64.010), who shall appoint  
8 an administrative law judge to serve as a hearing officer to conduct a hearing.

9 \* Sec. 61. AS 40.25.100(a) is amended to read:

10 (a) Information in the possession of the Department of Revenue that discloses  
11 the particulars of the business or affairs of a taxpayer or other person is not a matter of  
12 public record, except as provided in AS 43.05.230(i) or for purposes of investigation  
13 and law enforcement. The information shall be kept confidential except when its  
14 production is required in an official investigation, administrative adjudication under  
15 AS 43.05.405 - 43.05.499 [AS 43.05.400 - 43.05.499], or court proceeding. These  
16 restrictions do not prohibit the publication of statistics presented in a manner that  
17 prevents the identification of particular reports and items, prohibit the publication of  
18 tax lists showing the names of taxpayers who are delinquent and relevant information  
19 that may assist in the collection of delinquent taxes, or prohibit the publication of  
20 records, proceedings, and decisions under AS 43.05.405 - 43.05.499 [AS 43.05.400 -  
21 43.05.499].

22 \* Sec. 62. AS 43.05.010(8) is amended to read:

23 (8) except as provided in AS 43.05.405 - 43.05.499 and in  
24 AS 44.64.030 [AS 43.05.400 - 43.05.499], hear and determine appeals of a matter  
25 within the jurisdiction of the Department of Revenue and enter orders on the appeals  
26 that are final unless reversed or modified by the courts;

27 \* Sec. 63. AS 43.05.230(a) is amended to read:

28 **Sec. 43.05.230. Disclosure of tax returns and reports.** (a) It is unlawful for  
29 a current or former officer, employee, or agent of the state to divulge the amount of  
30 income or the particulars set out or disclosed in a report or return made under this title,  
31 except

1 (1) in connection with official investigations or proceedings of the  
2 department, whether judicial or administrative, involving taxes due under this title;

3 (2) in connection with official investigations or proceedings of the  
4 child support enforcement agency, whether judicial or administrative, involving child  
5 support obligations imposed or imposable under AS 25 or AS 47;

6 (3) as provided in AS 38.05.036 pertaining to audit functions of the  
7 Department of Natural Resources;

8 (4) as provided in AS 43.05.405 - 43.05.499 [AS 43.05.400 -  
9 43.05.499]; and

10 (5) as otherwise provided in this section.

11 \* Sec. 64. AS 43.05.241 is amended to read:

12 Sec. 43.05.241. Administrative appeal. For a matter within the jurisdiction  
13 of the office of administrative hearings (AS 44.64) [TAX APPEALS] under  
14 AS 43.05.405, the taxpayer aggrieved by an informal conference decision entered  
15 under AS 43.05.240 may file with the office of administrative hearings [TAX  
16 APPEALS] a notice of appeal for formal hearing, as provided in AS 43.05.430, no  
17 later than 30 days after service of the decision resulting from an informal conference.

18 \* Sec. 65. AS 43.05.242(i) is amended to read:

19 (i) If it is determined that appeal was improperly filed under this section, the  
20 appeal shall be transferred to the office of administrative hearings (AS 44.64) [TAX  
21 APPEALS] for further proceedings under AS 43.05.405 - 43.05.499 [AS 43.05.400 -  
22 43.05.499].

23 \* Sec. 66. AS 43.05.405 is amended to read:

24 Sec. 43.05.405. Jurisdiction. The office [OF TAX APPEALS] has original  
25 jurisdiction to hear formal appeals from informal conference decisions of the  
26 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only  
27 from an informal conference decision under AS 43.05.240. AS 44.64.060 does not  
28 apply to an administrative hearing under the jurisdiction of the office under this  
29 section. Jurisdiction of the office under this section is limited to, and AS 43.05.405 -  
30 43.05.499 apply [AS 43.05.400 - 43.05.499 APPLIES] to and govern [GOVERNS],  
31 an administrative appeal regarding

- 1 (1) electric and telephone cooperative taxes under AS 10.25;  
2 (2) a seafood marketing assessment under AS 16.51;  
3 (3) all taxes levied under AS 43, except the property tax assessed  
4 under AS 43.56; and  
5 (4) any other taxes administered by the Department of Revenue.

6 \* Sec. 67. AS 43.05.420(b) is amended to read:

7 (b) An administrative law judge with experience in tax law or tax  
8 administration, including the chief administrative law judge, may preside over a  
9 proceeding and carry out any procedures authorized under AS 43.05.405 - 43.05.499  
10 [AS 43.05.400 - 43.05.499].

11 \* Sec. 68. AS 43.05.420(c) is amended to read:

12 (c) The chief administrative law judge may adopt regulations implementing or  
13 interpreting AS 43.05.405 - 43.05.499 [AS 43.05.400 - 43.05.499], including rules of  
14 procedure and evidence for proceedings before the office.

15 \* Sec. 69. AS 43.05.435 is amended to read:

16 Sec. 43.05.435. **Scope and standards for decision.** The administrative law  
17 judge shall hear all questions de novo under AS 43.05.405 - 43.05.499 [AS 43.05.400  
18 - 43.05.499]. The administrative law judge shall

19 (1) resolve a question of fact by a preponderance of the evidence or, if  
20 a different standard of proof has been set by law for a particular question, by that  
21 standard of proof;

22 (2) resolve a question of law in the exercise of the independent  
23 judgment of the administrative law judge;

24 (3) defer to the Department of Revenue as to a matter for which  
25 discretion is legally vested in the Department of Revenue, unless not supported by a  
26 reasonable basis.

27 \* Sec. 70. AS 43.05.440 is amended to read:

28 Sec. 43.05.440. **Service of documents.** Service of documents required under  
29 AS 43.05.405 - 43.05.499 [AS 43.05.400 - 43.05.499] may be accomplished in any  
30 manner authorized under the Alaska Rules of Civil Procedure. If service is done only  
31 by mail, the date of service is determined by the date of mailing. If service is done by

1 both mail and hand delivery, the date of service is determined by the earlier of the date  
2 of mailing or actual receipt of the documents.

3 \* Sec. 71. AS 43.05.470(a) is amended to read:

4 (a) Records, proceedings, and decisions under AS 43.05.405 - 43.05.499  
5 [AS 43.05.400 - 43.05.499] are confidential, except that the records, proceedings, and  
6 decisions become public records and open to the public when the final administrative  
7 decision is issued and becomes final.

8 \* Sec. 72. AS 43.05.475 is amended to read:

9 Sec. 43.05.475. Consistency of decisions. (a) As to questions of law, a final  
10 administrative decision issued under AS 43.05.405 - 43.05.499 [AS 43.05.400 -  
11 43.05.499], unless reversed or overruled, has the force of legal precedent.

12 (b) To promote consistency among legal determinations issued under  
13 AS 43.05.405 - 43.05.499 [AS 43.05.400 - 43.05.499], the chief administrative law  
14 judge may review and circulate among the other administrative law judges the drafts  
15 of formal decisions, decisions upon reconsideration, and other legal opinions of the  
16 other administrative law judges in the office. The drafts are confidential documents  
17 and are not subject to disclosure under AS 40.25.100 - 40.25.220 or this chapter.

18 \* Sec. 73. AS 43.05.480(a) is amended to read:

19 (a) Judicial review by the superior court of a final administrative decision may  
20 be had by a party to the appeal under AS 43.05.405 - 43.05.499 [AS 43.05.400 -  
21 43.05.499] by filing a notice of appeal in accordance with the applicable rules of court  
22 governing appeals to that court in civil matters. The notice of appeal shall be filed  
23 within 30 days after an administrative decision becomes final under AS 43.05.465.  
24 The right to judicial review under this subsection is not affected by the failure to seek  
25 reconsideration before the administrative law judge.

26 \* Sec. 74. AS 43.05.499 is amended to read:

27 Sec. 43.05.499. Definitions. In AS 43.05.405 - 43.05.499 [AS 43.05.400 -  
28 43.05.499], unless the context otherwise requires,

29 (1) "administrative law judge" means an administrative law judge  
30 employed or retained by the office [APPOINTED UNDER AS 43.05.410];

31 (2) "commissioner" means the commissioner of administration;

1 (3) "department" means the Department of Administration;

2 (4) "discovery" means the use of subpoenas, subpoenas duces tecum,  
3 interrogatories, requests for production, requests for admission, depositions, and other  
4 methods of civil procedure by which one party to an action may discover information  
5 within the knowledge and control of another person;

6 (5) "legislative history" means the documents of the legislature  
7 recording the background and events, including draft bills, correspondence and  
8 memoranda, committee reports, tapes and transcripts of hearings, and tapes and  
9 transcripts of floor debate concerning consideration of a bill;

10 (6) "office" means office of administrative hearings (AS 44.64)  
11 [TAX APPEALS IN THE DEPARTMENT];

12 (7) "party" means the Department of Revenue or the taxpayer;

13 (8) "proceeding" means only a proceeding under the jurisdiction of the  
14 office;

15 (9) "subpoena" means a command to appear at a certain time and place  
16 to testify, or to appear at a certain time and place to produce books, papers, and other  
17 things, and testify;

18 (10) "tax" means a tax described in AS 43.05.405, including a seafood  
19 marketing assessment under AS 16.51;

20 (11) "taxpayer" means a person required to pay a tax, including a  
21 person required to pay a seafood marketing assessment under AS 16.51.

22 \* Sec. 75. AS 43.55.040 is amended to read:

23 Sec. 43.55.040. Powers of Department of Revenue. Except as provided in  
24 AS 43.05.405 - 43.05.499 [AS 43.05.400 - 43.05.499], the department may

25 (1) require a person engaged in production and the agent or employee  
26 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil  
27 or gas to furnish additional information that is considered by the department as  
28 necessary to compute the amount of the tax;

29 (2) examine the books, records, and files of such a person;

30 (3) conduct hearings and compel the attendance of witnesses and the  
31 production of books, records, and papers of any person; and

1 (4) make an investigation or hold an inquiry that is considered  
2 necessary to a disclosure of the facts as to

3 (A) the amount of production from any oil or gas location, or of  
4 a company or other producer of oil or gas; and

5 (B) the rendition of the oil and gas for taxing purposes.

6 \* Sec. 76. AS 43.70.075(m) is amended to read:

7 (m) The department may initiate suspension of a business license endorsement  
8 or the right to obtain a business license endorsement under this section by sending the  
9 person subject to the suspension a notice by certified mail, return receipt requested, or  
10 by delivering the notice to the person. The notice must contain information that  
11 informs the person of the grounds for suspension, the length of any suspension sought,  
12 and the person's right to administrative review [BEFORE THE DEPARTMENT]. A  
13 suspension begins 30 days after receipt of notice described in this subsection unless  
14 the person delivers a timely written request for a hearing to the department in the  
15 manner provided by regulations of the department. If a hearing is requested under this  
16 subsection, a hearing officer of the office of administrative hearings (AS 44.64.010)  
17 [DEPARTMENT] shall determine the issues by using the preponderance of the  
18 evidence test and shall, to the extent they do not conflict with regulations adopted  
19 under AS 44.64.060, conduct the hearing in the manner provided by regulations of the  
20 department. A hearing under this subsection is limited to the following questions:

21 (1) was the person holding the business license endorsement, or an  
22 agent or employee of the person while acting within the scope of the agency or  
23 employment of the person, convicted by plea or judicial finding of violating  
24 AS 11.76.100, 11.76.106, or 11.76.107;

25 (2) if the department does not allege a conviction of AS 11.76.100,  
26 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while  
27 acting within the scope of the agency or employment of the person, violate a provision  
28 of (a) or (g) of this section;

29 (3) within the 24 months before the date of the department's notice  
30 under this subsection, was the person, or an agent or employee of the person while  
31 acting within the scope of the agency or employment of the person, convicted of

1 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a  
2 provision of (a) or (g) of this section.

3 \* Sec. 77. AS 43.70.075(q) is amended to read:

4 (q) The department may adopt regulations that do not conflict with  
5 regulations adopted under AS 44.64.010 to establish an administrative hearing  
6 process for actions taken [BY THE DEPARTMENT] under this section. AS 44.62  
7 (Administrative Procedure Act) does not apply to a hearing under this section.

8 \* Sec. 78. AS 44.62.350(a) is amended to read:

9 (a) The governor shall assign a qualified, unbiased, and impartial hearing  
10 officer, with experience in the general practice of law, to conduct hearings under this  
11 chapter that are not conducted by the office of administrative hearings  
12 (AS 44.64.010). A [ THE] hearing officer may perform other duties in connection  
13 with the administration of this chapter and other laws.

14 \* Sec. 79. AS 44.62.450(a) is amended to read:

15 (a) A hearing in a contested case shall be presided over by a hearing officer.  
16 Unless the hearing is conducted by the office of administrative hearings  
17 (AS 44.64.010), the [THE] agency itself shall determine whether the hearing officer  
18 hears the case alone or whether the agency hears the case with the hearing officer.

19 \* Sec. 80. AS 44.62.500(b) is amended to read:

20 (b) If a contested case is heard by a hearing officer alone, the hearing officer  
21 shall prepare a proposed decision in a form that may be adopted as the decision in the  
22 case. A copy of the proposed decision shall be filed by the agency as a public record  
23 with the lieutenant governor, and a copy of the proposed decision shall be served by  
24 the agency on each party in the case and the party's attorney. Except as otherwise  
25 provided in AS 44.64.060(c), for a hearing conducted by the office of  
26 administrative hearings, the [THE] agency itself may adopt the proposed decision in  
27 its entirety, or may reduce the proposed penalty and adopt the balance of the proposed  
28 decision.

29 \* Sec. 81. AS 44.62.500(c) is amended to read:

30 (c) If the proposed decision is not adopted as provided in (b) of this section the  
31 agency may decide the case upon the record, including the transcript, with or without

1 taking additional evidence, or may refer the case to the same or another hearing officer  
2 to take additional evidence. If the case is so assigned the hearing officer shall prepare  
3 a proposed decision as provided in (b) of this section upon the additional evidence and  
4 the transcript and other papers that are part of the record of the earlier hearing. A copy  
5 of the proposed decision shall be furnished to each party and the party's attorney as  
6 prescribed by (b) of this section. The agency may not decide a case provided for in  
7 this subsection without giving the parties the opportunity to present either oral or  
8 written argument before the agency. If additional oral evidence is introduced before  
9 the agency, an agency member may not vote unless that member has heard the  
10 additional oral evidence. This subsection does not apply to a hearing conducted by  
11 the office of administrative hearings.

12 \* Sec. 82. AS 44.64.030(a), added by sec. 3 of this Act, is amended to read:

13 (a) The office shall conduct all adjudicative administrative hearings required  
14 under the following statutes or under regulations adopted to implement the statutes:

- 15 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
- 16 (2) AS 05.15 (charitable gaming);
- 17 (3) AS 05.20 (recreational devices);
- 18 (4) AS 05.90.001 (special racing events);
- 19 (5) AS 06 (banks and financial institutions);
- 20 (6) AS 08 (occupational licensing), other than AS 08.08 and  
21 AS 08.62.046;
- 22 (7) AS 10.06 (Alaska Corporations Code);
- 23 (8) AS 10.13 (Alaska BIDCO Act);
- 24 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);
- 25 (10) AS 10.50.408 (limited liability companies);
- 26 (11) AS 14.11.016 (education-related facility grants);
- 27 (12) AS 14.18 (discrimination in public education);
- 28 (13) AS 14.48 (postsecondary educational institutions);
- 29 (14) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than  
30 AS 17.20.060 and 17.20.360;
- 31 (15) AS 18.18.030 (hospice licenses);

- 1 (16) AS 18.20 (hospitals and nursing facilities), other than  
2 AS 18.20.180;
- 3 (17) AS 18.35.040 (tourist accommodations);
- 4 (18) AS 21.09, AS 21.22.190, AS 21.27, AS 21.34, AS 21.36,  
5 AS 21.69, AS 21.86.200, AS 21.87, and AS 21.89 (insurance);
- 6 (19) AS 25.27 (child support enforcement);
- 7 (20) AS 32.06 (Uniform Partnership Act);
- 8 (21) AS 34.45 (unclaimed property);
- 9 (22) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
- 10 (23) AS 36.30 (State Procurement Code), other than  
11 AS 36.30.627(a)(2);
- 12 (24) AS 38.05.065 (contracts for sale of state land);
- 13 (25) AS 39.52 (Alaska Executive Branch Ethics Act);
- 14 (26) AS 43.23 (permanent fund dividends);
- 15 (27) AS 43.70 (Alaska Business License Act);
- 16 (28) AS 44.50 (notaries public);
- 17 (29) AS 44.77 (claims against the state);
- 18 (30) AS 45.30.040 (mobile homes);
- 19 (31) AS 45.55 (Alaska Securities Act);
- 20 (32) AS 45.57 (Takeover Bid Disclosure Act);
- 21 (33) AS 46 (water, air, energy, and environmental conservation),  
22 other than AS 46.03.820, 46.03.850, AS 46.39, and AS 46.40;
- 23 (34) AS 47.33 (assisted living homes);
- 24 (35) [(34)] AS 47.35 (child care);
- 25 (36) [(35)] AS 47.45 (longevity bonuses).

26 \* Sec. 83. AS 44.77.040(a) is amended to read:

27 (a) The Department of Administration, after consulting with the office of  
28 administrative hearings (AS 44.64.010), shall fix a time for hearing the appeal and  
29 shall notify the claimant and the officer who approved the voucher and give them a  
30 reasonable opportunity to be heard. The hearing shall be conducted by the office of  
31 administrative hearings.

1 \* Sec. 84. AS 45.30.040(c) is amended to read:

2 (c) Whenever it determines that there may be a violation of the provisions of  
3 this chapter by a manufacturer or dealer of mobile homes, the department may give  
4 notice of hearing, and, within 30 days after giving notice, [HOLD] a hearing shall be  
5 held by the office of administrative hearings (AS 44.64.010) to determine whether  
6 there has been a violation. After notice and hearing,

7 (1) if the department finds that there has been a violation of the  
8 provisions of this chapter, the department may issue an order directing that the person  
9 who is violating the provision cure the violation in a reasonable time and in a  
10 reasonable manner;

11 (2) if the department determines that violations of the provisions of  
12 this chapter are regular and recurring, it may require forfeiture of the bond to the  
13 benefit of the state and arrange for distribution of the proceeds of the bond to the  
14 mobile home owners injured by the activities of the dealer or manufacturer, or to  
15 mobile home dealers injured by the activities of the manufacturer.

16 \* Sec. 85. AS 45.55.935 is amended to read:

17 Sec. 45.55.935. Hearings. (a) The administrator shall adopt regulations,  
18 consistent with the provisions of this chapter and with regulations adopted under  
19 AS 44.64.060, governing administrative hearings conducted by the office of  
20 administrative hearings (AS 44.64.010) [ADMINISTRATOR OR A DESIGNEE OF  
21 THE ADMINISTRATOR] for the following:

22 (1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in  
23 these instances, the administrator shall promptly send a notice of opportunity for  
24 hearing to the issuer of the securities and to all persons who have filed with the  
25 department a notice of intention to sell the securities; and

26 (2) orders issued under AS 45.55.060; before the administrator enters  
27 an order under AS 45.55.060, the administrator shall send to the person involved a  
28 notice of opportunity for hearing; if the person involved is an agent or investment  
29 adviser representative, then the administrator shall, in addition, notify the employing  
30 broker-dealer, state investment adviser, federal covered adviser, or issuer.

31 (b) In conducting a hearing in accordance with (a) of this section, the

1           administrative law judge [ADMINISTRATOR] may issue a subpoena to compel the  
2           attendance of any witness or party and to compel production of evidence.

3           \* Sec. 86. AS 45.55.950(e) is amended to read:

4                   (e) Every hearing in an administrative proceeding shall be public unless the  
5                   administrative law judge, [ADMINISTRATOR] in the exercise of discretion, grants  
6                   a request joined in by all the respondents that the hearing be conducted privately.

7           \* Sec. 87. AS 45.57.020(a) is amended to read:

8                   (a) An offeror may not make a takeover bid unless at least 20 days before the  
9                   bid the offeror files with the department and with the registered agent of the offeree  
10                   company a statement containing all the information required by (c) of this section and  
11                   either

12                           (1) within 10 days following the filing no hearing has been ordered by  
13                           the department or requested by the offeree company; or

14                           (2) a hearing has been ordered within that time and, after [UPON] the  
15                           hearing conducted by the office of administrative hearings (AS 44.64.010), the  
16                           department has decided [ADJUDICATED] that the offeror proposed to make fair,  
17                           full, and effective disclosure to offerees of all information material to a decision to  
18                           accept or reject the offer.

19           \* Sec. 88. AS 45.57.020(b) is amended to read:

20                   (b) A hearing shall begin within 20 days of the date of filing of the statement,  
21                   and adjudication shall be made within 30 days of the filing unless extended by the  
22                   administrative law judge [DEPARTMENT] for the convenience of the parties or  
23                   protection of the offerees.

24           \* Sec. 89. AS 46.15.065(c) is amended to read:

25                   (c) The commissioner shall make investigations as necessary of rights asserted  
26                   by declarations filed under this section and shall determine each existing appropriation  
27                   and mail a summary of the determination to each person who has filed a declaration  
28                   with respect to the specified area or source. Any person adversely affected by a  
29                   determination may file with the commissioner a request for a hearing within 20 days  
30                   of the date the notice is mailed. If a hearing is requested, the commissioner shall,  
31                   after consulting with the office of administrative hearings (AS 44.64.010), send a

1 notice of the time and place of the hearing to each person who has filed a declaration.

2 \* Sec. 90. AS 47.45.050 is amended to read:

3 **Sec. 47.45.050. Department hearing.** The Department of Health and Social  
4 Services may arrange with the office of administrative hearings (AS 44.64.010) to  
5 hold a [DEPARTMENTAL] hearing upon the request of an applicant or recipient who  
6 has been disqualified. Before this hearing the department shall by certified mail notify  
7 an applicant or recipient in plain and comprehensive language the exact reason for the  
8 disqualification. Form letters using only referral to state statutes or department  
9 regulations, or otherwise vague in detail, are not considered compliance by the  
10 department with this section.

11 \* Sec. 91. AS 39.25.110(31); AS 43.05.400, 43.05.410, 43.05.415, 43.05.420(a), and  
12 43.05.425 are repealed.

13 \* Sec. 92. The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 **APPLICABILITY.** (a) Sections 1 - 81, 83 - 88, 90, and 91 of this Act apply to  
16 administrative proceedings that begin on or after July 1, 2005.

17 (b) Sections 82 and 89 of this Act apply to administrative proceedings that begin on  
18 or after July 1, 2007.

19 \* Sec. 93. The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 **REGULATIONS.** The chief administrative law judge and any agency affected by this  
22 Act may proceed to adopt regulations to implement this Act. A regulation adopted under this  
23 section takes effect under AS 44.62 (Administrative Procedure Act) but not before the  
24 effective date of the law implemented by the regulation.

25 \* Sec. 94. The uncodified law of the State of Alaska is amended by adding a new section to  
26 read:

27 **TRANSITION.** (a) Litigation, hearings, investigations, and other proceedings  
28 pending under a law amended or repealed by this Act, or in connection with functions  
29 transferred by this Act, continue in effect and may be continued and completed,  
30 notwithstanding a transfer, amendment, or repeal provided for in this Act.

31 (b) Certificates, orders, and regulations issued or adopted under authority of a law

1 amended or repealed by this Act remain in effect for the term issued, or until revoked,  
2 vacated, or otherwise modified under the provisions of this Act.

3 (c) Contracts, rights, liabilities, and obligations created by or under a law amended or  
4 repealed on July 1, 2005, by this Act and in effect on July 1, 2005, remain in effect.  
5 Contracts, rights, liabilities, and obligations created by or under a law amended or repealed on  
6 July 1, 2007, by this Act and in effect on July 1, 2007, remain in effect.

7 (d) If, before July 1, 2005, there is vacancy in the office of chief administrative law  
8 judge of the office of tax appeals, the commissioner of administration may refer a case to a  
9 hearing officer for a hearing under AS 43.05.400 - 43.05.499.

10 (e) Upon the initial appointment of the chief administrative law judge under  
11 AS 44.64.010(c), added by sec. 2 of this Act, the chief administrative law judge and the  
12 commissioner of administration, the commissioner of community and economic development,  
13 the commissioner of revenue, and the governor's office shall identify administrative law  
14 judges and support staff to be transferred to the office of administrative hearings on or after  
15 January 1, 2005. A state employee who is transferred under this section from another agency  
16 to the office of administrative hearings shall continue to be compensated at the same range  
17 and step of the salary schedule in AS 39.27.011(a) that the employee was receiving before the  
18 transfer, and qualifies for salary increases authorized under AS 39.27.011 and 39.27.022.

19 (f) Procedural regulations of an agency that refers an administrative hearing to the  
20 office of administrative hearings shall apply to the hearing until regulations adopted under  
21 AS 44.64.060(a), added by sec. 3 of this Act, become effective.

22 \* Sec. 95. Sections 1, 2, 93, and 94 of this Act take effect immediately under  
23 AS 01.10.070(c).

24 \* Sec. 96. Sections 82 and 89 of this Act take effect July 1, 2007.

25 \* Sec. 97. Except as provided in secs. 95 and 96 of this Act, this Act takes effect July 1,  
26 2005.

SB 203

SB 203 Fiscal Note Synopsi

#	Agency	Division	Publish	FY04 Total	FY05 Total	FY06	Fund Sources:
			Date				
new	Labor	Labor Stand & Safety	3/23/2004	n/a	0.0	0.0	N/A
new	LAW	Civil Division	3/23/2004	n/a	*	*	N/A
new	Labor	Labor Stand & Safety	3/23/2004	n/a	0.0	0.0	N/A
6	Administration	Office of Admin Appeals	3/3/2004	n/a	500.6	899.5	Perm Fund Div. Fund; CSED Admin; GF; I/A
7	Administration	Tax Appeals	3/3/2004	n/a	-113.6	-227.2	GF; I/A
9	Public Safety	ABC Board	3/3/2004	n/a	0.0	0.0	N/A
10	DHSS	Commissioner's Office	3/3/2004	n/a	0.0	0.0	N/A
11	Gov	Human Rights Comm.	3/3/2004	n/a	-22.5	-22.5	GF
12	DCED	Banking, Securities&Corp	3/3/2004	n/a	*	*	N/A
13	DEED	ACPE	3/3/2004	n/a	0.0	0.0	N/A
14	DEC	All	3/3/2004	n/a	0.0	0.0	N/A
15	DCED	Insurance	3/3/2004	n/a	38.3	84.1	Rcpt Sup Svcs
18	DEED	various	3/3/2004	n/a	*	*	N/A
19	Revenue	Commissioner's Office	3/3/2004	n/a	-203.6	-407.0	GF; CSED Admin, I/A
20	Revenue	PFD	3/3/2004	n/a	-52.4	-104.8	Perm Fund Div. Fund
21	DCED	Occ Licensing	3/22/2004	n/a	0.0	0.0	N/A

# ALASKA STATE LEGISLATURE

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



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## Administrative Regulation Review Committee

### Expertise used in constructing SB 203

1. **Mr. Ed Felter / Senior ALJ, former Chief of Colorado's Central Panel office.**

Mr. Felter is internationally recognized for his judicial skills in administrative law. He is highly published author and speaker on the construction and administration of central panels.

2. **Mr. John Hardwicke / Senior ALJ / Chief of Maryland's Central Panel Office.**

Maryland's central panels are considered by many to be the most efficient and effective in the nation. Both Mr. Hardwicke and Mr. Felter have followed the Alaska model act and have counseled us throughout the process with their suggestions and admonitions.

3. **Mr. Ed Hein, senior ALJ with NOA (federal agency here in Juneau).**

A former legislative drafter and the head of Alaska's Association of Administrative Law Judges, Mr. Hein's perspective and input have been invaluable. Mr. Hein also assembled a five state panel of ALJ's who have existing central panels in their respective states. They gave SB 203 high marks in all categories.

4. **Mr. Andy Hemenway, senior hearing officer for the state of Alaska.**

Mr. Hemenway is also a member of the state association of ALJ's. Mr. Hemenway has provided invaluable expertise blending the new jurisdictional model with existing adjudication processes.

#### Model Acts used in drafting SB 203:

National ALJ Association's Model for Central Panels  
Colorado's Central Panel  
Maryland's Central Panel

#### Reference materials used in drafting SB 203:

National Law Review  
UCLA (law studies)  
Maryland's Governor's Task Force on Administrative Hearing Officers (1988)  
NCSL (data on central panels)  
Legislative Research on State hearing office functions

# SB 203 An Act establishing an Independent Office of Administrative Hearings

## Section By Section Quick Reference (version \M 4-07-04)

- Section 1.** Purpose and intent
- Section 2.** 44.64.010 Establishes location of independent office of administrative hearings and qualifications and compensation of Chief Administrative Law Judge.
- 44.64.20 Powers and duties of Chief ALJ.
- Section 3.** 44.64.030 Administrative hearing functions to be included in the new independent office. Provisions of service and delegation of decision authority.
- 44.64. 040 ALJ qualifications and duties. Authority for Chief ALJ officer to enter into contracts with qualified individuals to serve as ALJ.
- 44.64.050 Code of conduct for hearing officers.
44. 64.055 Reimbursement agreements
- 44.64.060 Establishes procedures for administrative hearings, including time limits, decision authority, and rules for altering an ALJ decision.
- 44.64.070 Disqualification of an ALJ.
- 44.64.080 Agency cooperation with ALJ's. Selection of ALJ's. No agency interference.
- 44.64.090 Administrative hearing records. Record keeping requirements.
- 44.64.095 Federal requirement resolutions of conflict with federal law.
- 44.64.200 Definitions

Sections 4 – 48	Conforming technical amendments to affected statutes.
Section 49	Prohibits legislative influence in hearings
Sections 50 -- 58	Conforming technical amendments
Section 59	Prohibits undue agency influence
Sections 60	Conforming technical amendment
Sections 61 -- 75	Transition with Office of Tax Appeals
Sections 76 - 81	Conforming technical amendments
Section 82	Brings certain sections of DEC into Central Panel after 2 years
Sections 83 -- 91	Conforming technical amendments to affected statutes.
Sections 92 – 94	Applicability, regulatory authority, transition authority and timing to accommodate changes in administrative process.
Sections 95 - 97	Effective date clauses

## Basic Goals In Establishing Independent Hearing Office

1. Better public service through a higher level of due process.
2. Cutting hearing costs to both government and the public.
3. Improving hearing efficiencies for both government and the public.
4. Establishing high standards of performance and training and central oversight for hearing officers.
5. Eliminating unhealthy agency influence or impact on hearing officers.
6. Better balancing administrative goals (rule of necessity) with the tight and expectations for public due process.
7. Improving hearing functions including judicial settings and better-prepared dockets and decisions.
8. Improving the regulation process by requiring a high standard of performance as ultimately reviewed through independent, highly professional adjudicators.
9. Establishing better accountability through public surveys, annual reporting, and separate accounting and budgeting practices.
10. Relieving administrators of the oversight and mechanics of the in-house hearing office functions.

### Background

- Central Panels of varying forms have been instituted in 25 states and several large metropolitan governments such as New York, Chicago and Washington, D.C.
- With few exceptions, savings have occurred and efficiencies in administrative adjudication have improved. Results depend on any number of factors including the degree of implementation, the willingness to execute reform, and the quality of the Central Office established.
- The fundamental changes that occur receive high public approval. Available statistics show high public approval with performance through surveys issued by the Central Panels.

- Most hearing officers that transfer over to the Central Panel are able to increase their skills as adjudicators through cross training and on-going professional education and associations such as the National Association of Administrative Law Judges.
- Most administrations, even those luke-warm to the initial reform, report high approval after working with new Central Panels. When the public becomes less adversarial towards government function and regulation writers and enforcers have to measure up to the standards of independent adjudicators agency heads have fewer controversies to quell.
- Legislatures have through a Central Panel a means to improve the entire regulations and APA function without meddling in the workings of the Executive or conducting constant and resented oversight of the internal administrative process. By being able to keep track of public performance and expenditures for the services rendered the legislative branch can more efficiently address public concerns with regulatory processes.
- Commissioners and courts report better quality decisions and more defensible dockets from Central Panels. Risk management also sees fewer potential problems when high quality adjudication takes place.
- Finally, the private and public business climate is enhanced when the adjudication process is fast, fair, and most of all professionally consistent. People who contest regulations receive finality in the most constructive way when they feel the process has been thorough, efficient and fair. Whether they rise from the proceedings in victory or defeat, the sense of justice being properly administered and a fair opportunity to be heard and receive redress is essential for constructive finality.

**The primary reforms represented in the Central Panel movements are as follows:**

1. Establishment of independent and protected adjudicators who are highly skilled and fair.
2. Establishment of a separate location for the resources and the adjudicators to study, train, and perform.
3. A resource for other hearing officers to be trained and members of the executive and the legislature to become educated about the workings and the needs within the administrative process.
4. Establishment of central arm of government designed and charged to deliver one of the most fundamental rights of the public not against, but in harmony with the intent and the administration of the law.

# Independent Administrative Hearings Why Central Panels Are Needed In Alaska

## Alaska's Administrative Hearing System Fragmented

- ❖ In Alaska, there exists no central autonomous independent administrative hearing office.
- ❖ In the various office locations and political subdivisions of the Executive Branch employees serve as hearing officers to adjudicate administrative appeals.
- ❖ These employees are subject to control and supervision of the very agency that renders decisions or has taken some action that is the subject of the appeal being considered by the Hearing Officer.
- ❖ It is hard for those requesting a hearing to feel they will receive fair and impartial judgment from such an employee.
- ❖ 25 other states have now placed hearing officers in Central Panels to better protect adjudicators (Hearing Officers) from agency influence.
- ❖ Alaska's fragmented hearing officer arrangement suffers from a lack of cross training, direct supervision, as well as standard oversight in the conducting of hearings and writing the opinions. (Poorly written opinions often do not withstand the scrutiny of the Judicial Branch thus causing more work and expense for the state as well as private parties).
- ❖ In general, citizens are impacted more by administrative decisions than by Judicial ones. The decisions of an agency can be pervasive and the impacts can be extreme and costly to the economy and to the state. It is therefore, both in the interest of the state and the citizen to achieve the highest standards of due process possible in the Administrative Hearing process.

*The following recommendations are based on actions and models used by other states that have sought to bring about, timely, fair, efficient, and high-quality Administrative Hearing Functions in their sovereigns.*

## Putting The House In Order

- ✓ Alaska's Administrative Hearing functions should be centralized to the fullest extent possible.
- ✓ The Central Panel should be budgeted via the existing process; however, quality review and fiscal efficiency reports should be required.
- ✓ Efficiencies gained through training, logistics, and professional oversight will more than offset any upfront expenses of consolidation.

### Highly Qualified Adjudicators.

One of the improvements for high quality hearings involves changing the designation and the qualifications of Hearing Officers to those of Administrative Law Judges. This can be accomplished through a reasonable transition time and through the course of attrition. Trying to correct the present scattered system of unequally trained hearing officers through a bar J-aid approach would ultimately be more expensive and less certain of reaching high goals.

### Change of Focus

The primary focus of independent Administrative Law Judges (ALJ) would not be agency expertise, political goals, or internal policies, but guaranteeing timely due process for the citizen. Agency representatives at independent hearings will provide expertise just as they do now in a court proceeding.

### Well-Trained Professionals

Central Panel Administrative Law Judges should be well trained and well schooled in law and have the experience pertaining to the duties they will be carrying out. Ongoing training should be instituted as well as cross training for efficiency and expertise in adjudication matters. Non-legally trained Hearing Officers could be

retained contingent upon a commitment for training upgrades by those holding the present positions.

### **Autonomy**

Administrative Law Judges should be employed as unclassified, however their positions should be protected through a dismissal for cause requirement. They should be fairly paid as professionals in a highly respected field, and expected to present and perform their duties in an atmosphere and manner of strict standards.

### **Oversight**

A Chief Administrative Law Judge should have sole oversight responsibility of the Central Panel with well laid out duties including day-to-day functions as well as the hiring and the dismissal of those he or she is responsible to oversee.

### **Accountability**

The Chief ALJ should be responsible for the overall goals of the Central Panel and report both fiscal and administrative performance each year to the Legislature. Reports should also include public approval ratings.

## **Good Government Reasons For Central Panels In Alaska**

*Central Panels are good for government and good for those government serves. High quality, fair, impartial hearings have the effect of improving all aspects of the regulatory process by requiring administrators to do their work well enough to pass judicial scrutiny. Citizens are benefited through a more timely and fair hearing process conducted by independent adjudicators.*

### **A Different Master.**

Central panels change the focus of Administrative hearings away from agency priorities to that of due process. Issues of salary, employment, promotions, benefits, even on down to office space, and parking privileges, would not be of any possible consideration or consequence to a non-agency hearing officer.

### **An Improved Standard.**

High standards of due process will be more easily attained and sustained in a truly professional, judicially protected, well trained and well supervised Central Hearing Office that is separately budgeted and closely monitored by the legislature.

### **Reasonable Transition.**

Current hearing officers could be retained, however cross training for better efficiency and reduction of burnout would be completed. This will lead to higher job satisfaction and ultimately higher expertise.

### **Human Resources.**

Central Panels facilitate peer consultation and create an atmosphere of pride and lofty public purpose goals within the fundamental authority and obligations of the Executive Branch.

### **Back-up Coverage.**

In the case of an ALJ being ill or unavoidably detained would serve the public well both in timeliness and efficiency. Additionally, the Chief ALJ can assign caseload in the most efficient and fair manner possible.

### **Outstanding Environment.**

A well-directed Central Panel should attract those who see the vision and goals of due process as a highly desirable form of public service. It should be an interesting and challenging place of legal expertise to which better law school graduates would apply.

### **A Training Center.**

The Central Office can provide the training for other Hearing Officers in the State who are not yet located there. It may also serve as a clearinghouse for troublesome decisions or those remanded by a Commissioner or even the Governor.

### **Applying High Standards.**

A code of ethics would be required and the development of the most respectful demeanor and temperament should evolve. Performance evaluation standards would be put in place and an emphasis on well-written decisions established.

### **Wealth of Information.**

A Central Panel offers the cost savings and efficiency of a pool of both written and institutional resources. A uniform standardized writing format can be put into place. Decisions can be published and available on a regular basis to the public, other ALJ's and State administrators and regulation writers and enforcers. A body of administrative law can be developed to facilitate participants with resolving future problems.

### **Real Expertise.**

A Central Panel would have a single legal advisor to assist ALJs and is well schooled in administrative law, but does not appear in contested cases.

### **Built in Review.**

A Central Panel would be a valuable resource when undertaking changes to administrative procedures acts. Conversely, scattered or fragmented system of hearing officers has little chance of pulling together the improvements needed in administrative law.

### **More Respect.**

Attorneys on both sides of contested issues would respect and conduct their proceedings better in the presence of well-trained independent ALJs. Presentations would be more thorough and insightful. As an independent tribunal, the Central Panel would better serve the high goal of justice thereby providing resolution and in many cases the finality needed to reestablish productivity.

### **Bad Regulations Not Protected.**

If ALJs are not attached to agencies, better drafted, more carefully promulgated and more judiciously enforced regulations are the end result.

### **Savings Through Time and Consistent Quality.**

Evidence from other states reflects that by centralizing administrative adjudication procedures, tremendous economies of scale have resulted, and tax payers money expended in the administration of this quasi-judicial hearing function has been greatly diminished.

## High Public Approval.

*Whenever obvious and long term inefficiencies and biases are corrected in government the public approval is very high. In the case of administrative hearings, theory, common sense understanding and practical application are all easily understood and appreciated by the general public.*

*The economic benefit of a fair, high quality and efficient due process hearing is immense. Nothing is more crippling to an economy than unpredictable time constraints and inconsistent decisions by those who regulate and adjudicate administrative law.*

*The loss of productivity, the sense of discouragement and dismay that a poor hearing function can bring destroys not only current productivity, but crushes many future hopes as well. Dealing with government has come to occupy a larger and larger portion of every entrepreneur's plan and budget.*

## Summary

- Alaska's Administrative Hearing Officer functions are scattered, inconsistently trained, inconsistently paid, and too closely associated with agency influence. Oversight comes from a myriad of places and from matters that change with the political winds.
- There is no way for the legislature or the administration to accurately understand or assess either the efficiencies or the costs of Administrative Hearings. The quality of hearing decisions, both oral and written, varies.
- The quality of the atmosphere for both the Hearing Officer and the adjudication process varies widely. The respect of the public for the process is low. The confidence in the process is low. Those Hearing Officers who excel in their expertise are treated no differently than those who do not.
- The ability of an Agency to tie up a plaintiff in the hearing process is nearly unlimited. The percentage of decisions of the agency overturned by Hearing Officers is below national norms. The percentage of Hearing Officer decisions overturned by Agencies is below national norms.
- The cost to business in dealing with administrative hearings has never been calculated, but is likely to be enormous. Many small businesses simply cannot afford the delays agencies can cause in the process. Attorneys are reluctant to

put out a full court press at the administrative level because of the low chance of success.

- In the scale of delivering due process, Alaska's current administrative hearing process, barely passes even the most liberal litmus tests. Poor quality regulations, poorly administered, upheld through in-house hearing officers put the state at risk and a fragile economy in a tailspin.
- There simply is no positive reason to continue scattered, in-house administrative hearings in Alaska. On the other hand, there certainly is a host of good business, citizen and good government reasons to establish independent, central panels in the 49<sup>th</sup> state.

### **Positive Results Across the Board**

- Independent Administrative Hearings are usually established through the cooperation of an Administration that is willing to stay focused on goals that benefit the public through the improvements of the governing process.
- Not one of the 25 states using this reform has repealed or moved away from Central Panels once they put them in place.
- Not one state has reported anything but cost savings and public efficiencies.
- To the contrary, states that have enacted this vital reform report high public approval, a better business climate, a more efficient and effective government, fewer court cases, and large cost savings through efficiency of service delivery.

**Most good government reforms occur when there exists a high degree of cooperation between the Executive and the Legislature.**

**There may never be a more opportune time for Alaska to restructure and improve its administrative hearing functions.**

MODEL CODE OF JUDICIAL CONDUCT  
FOR STATE ADMINISTRATIVE LAW JUDGES©

Board of Governors

NATIONAL ASSOCIATION OF  
ADMINISTRATIVE LAW JUDGES

PREAMBLE

Our state administrative legal system is based on the principle that an independent, fair and competent administrative judiciary will interpret and apply the laws that govern consistent with American concepts of justice. Intrinsic to all sections of this Code are the precepts that state administrative law judges, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in our legal system. The state administrative law judge decides questions of fact and law for the resolution of disputes and is a highly visible symbol of government under the rule of law.

This Code of Judicial Conduct for State Administrative Law Judges is intended to establish standards for ethical conduct. The Canons and Sections contained in this code are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as to not impinge on the essential independence of the state administrative law judge in making judicial decisions.

The Code of Judicial Conduct for State Administrative Law Judges is not intended as an exhaustive guide for the conduct of state administrative law judges. They should also be governed in their official judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist such judges in establishing and maintaining high standards of judicial and personal conduct.

Except where modified, this Code follows the language of the American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges. This Code is also based upon the American Bar Association Model Code of Judicial Conduct (1990). The American Bar Association's codes are copyrighted by the American Bar Association and are used with permission.

The Model Code of Judicial Conduct for State Administrative Law Judges is copyrighted by the National Association of Administrative Law Judges.

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### CANONS

- 1 A State Administrative Law Judge Shall Uphold the Integrity and Independence of the Administrative Judiciary
- 2 A State Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities
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- 4 A State Administrative Law Judge May Engage in Activities to Improve the Law, the Legal System and the Administration of Justice
- 5 A State Administrative Law Judge Shall Regulate the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties
- 6 A State Administrative Law Judge Shall Limit Compensation Received for Quasi-Judicial and Extra-Judicial Activities
- 7 A State Administrative Law Judge Shall Refrain from Political Activity Inappropriate to the Judicial Office
- 8 Compliance with the Code of Judicial Conduct

### CANON 1

A State Administrative Law Judge Shall Uphold the Integrity and Independence of the Administrative Judiciary

An independent and honorable administrative judiciary is indispensable to justice in our society. A state administrative law judge shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards of conduct so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this Code should be construed and applied to further that objective.

## CANON 2

### A State Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A state administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

B. A state administrative law judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others, nor convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify voluntarily as a character witness.

### COMMENTARY

*Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by state administrative law judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely or willingly.*

*State administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for judges to allude to their office to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial or official letterhead must not be used for conducting a judge's personal business.*

*The testimony of a state administrative law judge as a character witness injects the prestige of the judge's office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford the judge a privilege against testifying in response to an official summons.*

C. A state administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

#### COMMENTARY

*It is inappropriate for a state administrative law judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women and others that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership.*

*When a person who is a state administrative law judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.*

#### CANON 3

A State Administrative Law Judge Shall Perform the Duties of the  
Office Impartially and Diligently

The judicial duties of a state administrative law judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

#### A. ADJUDICATIVE RESPONSIBILITIES

1. A state administrative law judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
2. A state administrative law judge shall maintain order and decorum in proceedings.
3. A state administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers or other representatives, staff members and others subject to the judge's direction and control.

#### COMMENTARY

*The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to promptly dispose of the business of the state administrative law judge. Judges can be efficient and businesslike while being patient and deliberate.*

*A state administrative law judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.*

4. A state administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law. A state administrative law judge shall not initiate, permit or consider *ex parte* communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- a. Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

- i. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

- ii. the judge makes provisions promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.
  
- b. A judge may obtain the advice of a disinterested expert on the law applicable to the proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
  
- c. A judge may consult other judges and support personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.
  
- d. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  
- e. A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.
  
- f. Decisions of a state administrative law judge shall be based exclusively on evidence in the record of the proceeding and material that has been officially noticed.

#### COMMENTARY

*This provision is in conformity with the American Bar Association Model Code of Judicial Conduct of 1990. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers and other persons who are not participants in the proceeding, except to the limited extent permitted.*

*To the extent reasonably possible, all parties and their lawyers shall be included in communications with a judge.*

*Whenever presence of a party or notice to that party is required by Canon 3 A. 4, it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.*

*An appropriate and often desirable procedure for a judge to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.*

*Certain *ex parte* communication is approved by Canon 3 A. 4 to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communications and allow it only if all criteria stated in Canon 3 A. 4 are*

*clearly met. A judge must disclose to all parties all ex parte communications described in Canon 3 A. 4 a and 3 A. 4 b regarding a proceeding pending or impending before the judge.*

*A judge must not independently investigate facts in a case, unless authorized by law, and must consider only the evidence presented.*

*A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.*

*A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3 A. 4 is not violated through law clerks or other personnel on the judge's staff.*

*If communication between the judge and the appellate tribunal with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.*

5. A state administrative law judge shall dispose of all judicial matters promptly, officially and fairly.

#### COMMENTARY

*Prompt disposition of the state administrative law judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants and their lawyers or representatives cooperate with the judge to that end.*

6. A state administrative law judge should prohibit broadcasting, televising, recording or photographing in hearing rooms and areas immediately adjacent to the hearing rooms during hearings or recesses between hearings, except that under rules prescribed by an appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of proceedings in hearing rooms and areas immediately adjacent thereto consistent with the right of the parties to a fair hearing and subject to express conditions, limitations and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the hearing participants and will not otherwise interfere with the administration of justice.

7. A state administrative law judge shall require participants in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

#### COMMENTARY

*A state administrative law judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the administrative judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give the parties, lawyers or representatives in the proceeding, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.*

8. A state administrative law judge shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The judge shall require similar abstention on the part of agency personnel subject to the judge's direction and control. This Section does not prohibit state administrative law judges from making public statements in the course of their official duties or from explaining for public information the procedures of the agency. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

#### COMMENTARY

*This subsection is not intended to preclude participation in an association of state administrative law judges merely because such an association makes public comments about a pending or impending proceeding in an agency where the judge serves. The subsection is directed primarily at public comments by a state administrative law judge concerning a proceeding before another judge in an agency where the commenting judge serves.*

9. A state administrative law judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law is not available to the general public.

10. A state administrative law judge should not be subject to the authority, direction or discretion of one who has served as investigator, prosecutor or advocate in a proceeding before the judge or in its pre-adjudicative stage.

## B. ADMINISTRATIVE RESPONSIBILITIES

1. A state administrative law judge shall diligently discharge assigned administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other state administrative law judges.
2. A state administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.
3. A state administrative law judge shall take appropriate action or initiate appropriate disciplinary measures against a state administrative law judge, lawyer, representative or others for unprofessional conduct of which the judge may become aware.

### COMMENTARY

*Appropriate action may include communication with the state administrative law judge, lawyer or representative, who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority, or other agency or body.*

## C. DISQUALIFICATION

1. A state administrative law judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
  - a. the state administrative law judge has a personal bias or prejudice concerning a party or a party's lawyer or other representative involved in the proceeding;
  - b. the state administrative law judge served as lawyer or representative in the matter in controversy, or a lawyer with whom the judge practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it.

### COMMENTARY

*A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection.*

c. the state administrative law judge has served in other governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

d. the state administrative law judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has a more than de minimis financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

e. the state administrative law judge or the judge's spouse or a person within the third degree of relationship to either of them or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer or representative in the proceeding.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

#### COMMENTARY

*The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the state administrative law judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3 C. 1. or that the lawyer-relative known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3 C. 1.(e)(iii) may require the judge's disqualification. A de minimis interest is an insignificant interest that would neither affect the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties.*

2. State administrative law judges should be aware of their personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of their spouse and minor children residing in the judges' households.

3. For the purposes of this section, the following words or phrases shall have the meaning indicated:

a. the degree of relationship is calculated according to the civil law system;

#### COMMENTARY

*According to the civil law system, the third degree of relationship test would, for example, disqualify the state administrative law judge if the judge's or judge's spouse's father, grandfather, uncle, brother or niece's husband were a party or representative in the proceeding but would not disqualify the judge if a cousin were a party or representative lawyer in the proceeding.*

b. "fiduciary" includes such relationships as executor, administrator, trustee and guardian;

c. "financial interest" means ownership of more than a de minimis legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the state administrative law judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

d. "proceeding" includes pre-hearing or other stages of litigation.

#### D. REMITTAL OF DISQUALIFICATION

A state administrative law judge disqualified by the means of Canon 3 C. may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers or representatives, independently of the judge's participation, all agree that the judge should not be disqualified and the judge is willing, the state

administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

#### COMMENTARY

*A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the state administrative law judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the parties jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties sign the remittal agreement.*

#### CANON 4

##### A State Administrative Law Judge May Engage in Activities to Improve the Law, the Legal System and the Administration of Justice

A state administrative law judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so doubt is not cast on the capacity to decide impartially any issue that may come before the judge:

A. Speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.

B. May appear at a hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official, unless otherwise prohibited by law.

#### COMMENTARY

*Canon 4 C. of the Model ABA Code was modified to permit state administrative law judges to appear at public hearings and consult with executive and legislative bodies and officials, if not prohibited by law, e.g., the federal Hatch Act or other similar laws, and no doubt is cast on the judge's ability to decide impartially any issue that may come before the judge.*

C. May serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. A state administrative law judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

#### COMMENTARY

*As a judicial officer and person specifically learned in the law, a state administrative law judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial association or other organization dedicated to the improvement of the law.*

*Extra-judicial activities are governed by Canon 5.*

#### CANON 5

A State Administrative Law Judge Shall Regulate the Judge's Extra-Judicial Activities to  
Minimize the Risk of Conflict with Judicial Duties

##### A. EXTRA-JUDICIAL ACTIVITIES IN GENERAL

A state administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

1. cast reasonable doubt on the judge's capacity to act impartially as a judge;
2. demean the judge's office; or
3. interfere with the proper performance of the judge's duties.

#### COMMENTARY

*The complete separation of a state administrative law judge from extra judicial activities is neither possible nor wise. A state administrative law judge should not become isolated from the community in which the judge lives.*

*Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.*

#### B. AVOCATIONAL ACTIVITIES

A state administrative law judge may write, lecture, teach and speak on non-legal subjects and engage in the arts, sports and other social and recreational activities.

#### C. CIVIC AND CHARITABLE ACTIVITIES

A state administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A state administrative law judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings before any agency in which the judge serves.

#### COMMENTARY

*The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he or she is affiliated to determine if it is proper to continue the judge's relationship with it.*

2. A state administrative law judge should not use or permit the use of the prestige of the judge's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal or civic organization, but the judge may be listed as an officer, director or trustee of such an organization. The judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

#### COMMENTARY

*This subsection is not intended to discourage participation in the identified organizations or preclude the use of a judge's name on stationary or other material used to solicit contributions, provided the judge's name and office are in no way selectively emphasized. The language of the Model ABA Code was modified to permit judges to solicit funds for charitable and other named organizations if they do not use the prestige of office in doing so.*

*A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.*

#### D. FINANCIAL ACTIVITIES

1. A state administrative law judge shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the judge's official position or involve the judge in frequent transactions with lawyers or persons likely to come before the agency in which the judge serves.

2. Subject to the requirements of subsection (1), a state administrative law judge may hold and manage personal investments, including real estate, and engage in other remunerative activity.

#### COMMENTARY

*The specific prohibition contained in the Model ABA Code against a judge's service as an officer, director, manager, advisor or employee of any business (which has sometimes been interpreted to bar such participation in a family business) has been deleted, because the general prohibitions in Canon 3 C. 1. and statutes or rules prohibiting such activities by judges involving agencies wherein they serve render the specific prohibition somewhat superfluous and because generic prohibition of involvement in a family business was regarded as unnecessary and undesirable. Involvement in a business that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.*

3. A state administrative law judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as judges can do so without serious financial detriment, judges shall divest themselves of investments and other financial interests that might require frequent disqualification.

4. Neither a state administrative law judge nor a member of the family residing in the judge's household should accept a gift, bequest, favor or loan from anyone except as follows:

a. A state administrative law judge may accept a gift incident to a public testimonial to the judge, books supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse to attend a function or activity devoted to the improvement of the law, the legal system or the administration of justice.

b. A state administrative law judge or a member of the family residing in the household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative or close personal friend; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.

c. A state administrative law judge or a member of the family residing in the household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, or the gift is otherwise consistent with relevant agency rules and is reported to the extent required by such rules and other applicable laws.

#### COMMENTARY

*The ABA Model Code of Judicial Conduct was modified to permit the acceptance of gifts permitted by agency rules.*

5. For purposes of this section "member of the family residing in the household" means any relative of the state administrative law judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the household.

6. A state administrative law judge is not required by this Code to disclose income, debts or investments, except as provided by law.

#### COMMENTARY

*Canon 3 requires a judge to disqualify himself or herself in any proceeding in which the judge has a significant financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's official duties. A judge has the rights of an ordinary citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties.*

7. Information acquired by state administrative law judges in their judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

#### E. FIDUCIARY ACTIVITIES.

A state administrative law judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in an agency in which the judge serves or one under its appellate jurisdiction. While acting as a fiduciary, a state administrative law judge is subject to the same restrictions on financial activities that apply to the judge in the judge's personal capacity.

#### COMMENTARY

*A judge's obligation under this Canon and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust or divest it of holdings whose retention would place the judge in violation of Canon 5 D. 3. The specific prohibitions contained in the ABA Code of Judicial Conduct against a judge's service as executor, administrator, trustee, guardian or other fiduciary were deleted, because the general prohibition in Canon 5 C. and 5 D., and statutes or rules regulating conflicting activities in agencies where a judge serves, render such provisions somewhat superfluous and because a generic prohibition of service in such fiduciary capacities was regarded as unnecessary and undesirable.*

#### F. ARBITRATION.

A state administrative law judge may act as an arbitrator or mediator if such activity does not affect the independent professional judgment of the administrative law judge or the conduct of his official duties. A state administrative law judge shall not be an arbitrator or mediator over a matter which the administrative law judge may later preside.

#### G. PRACTICE OF LAW.

A state administrative law judge may practice law if such activity would neither affect the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties. An attorney who is a state administrative law judge shall not accept the

representation of a client who is a litigant before the tribunal for whom the state administrative law judge serves or if there is a likelihood that such person will appear before the judge. A state administrative law judge shall not practice law before the administrative tribunal for which the judge serves.

#### COMMENTARY

*The American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges states that a federal administrative law judge should not practice law or act as an arbitrator or mediator. However, it is common for state administrative law judges to be hired on a part-time or as needed basis while maintaining a legal practice. Also, state administrative law judges are compensated at a much lower level than federal administrative law judges. As long as the professional judgment of the administrative law judge is not impaired by such unrelated activities, then conflicts should not normally occur. The provisions of this Code have been modified accordingly.*

#### H. EXTRA-JUDICIAL APPOINTMENTS.

A state administrative law judge may accept appointment to a governmental committee, commission or other position that is concerned with issues of policy on matters which may come before the judge if such appointment neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties.

#### COMMENTARY

*Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on state administrative law judges must be assessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect judges from involvement in matters that may prove to be controversial and which may affect the judge's impartiality. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the administrative judiciary. State administrative law judges may be disqualified from particular cases due to Canons 3 A.4. and 3 C. 1.c. The ABA Code of Judicial Conduct was modified to permit judges to accept appointments to appropriate organizations which do not appear before the agency they serve.*

## CANON 6

### A State Administrative Law Judge Shall Limit Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A state administrative law judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the judge's official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

#### A. COMPENSATION.

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a state administrative law judge would receive for the same activity.

#### B. EXPENSE REIMBURSEMENT.

Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the state administrative law judge and where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

## CANON 7

### A State Administrative Law Judge Shall Refrain from Political Activity Inappropriate to the Judicial Office

#### POLITICAL CONDUCT IN GENERAL.

1. A state administrative law judge shall not act as a leader or hold an office in a political organization or party, the principal purpose of which is to further the election or appointment of candidates to political office.

2. A state administrative law judge shall not solicit funds for or be compelled to pay an assessment to a political organization or candidate or purchase tickets for political dinners or other similar functions.

#### COMMENTARY

*Prohibitions in the ABA Code were deleted which were considered to be inappropriately and unnecessarily more restrictive than the federal Hatch Act provisions applicable to some state administrative law judges. Participation in political activities is a right of every person. Unless specified in this canon or otherwise prohibited by law, political activity that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.*

3. A state administrative law judge shall resign from judicial office when the judge becomes a candidate either in a party primary or in a partisan general election except that the judge may continue to hold office, while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.

4. A state administrative law judge should not engage in any other partisan political activity except with the intent to improve the law, the legal system or the administration of justice.

#### CANON 8

##### Compliance with the Code of Judicial Conduct for State Administrative Law Judges

Anyone employed by a state governmental agency or an instrumentality of a state or municipal corporation, who is empowered to preside over statutory or regulatory fact-finding hearings or appellate proceedings arising within, among or before public agencies, is a state administrative law judge for the purposes of this Code.

#### COMMENTARY

*The ABA Code of Judicial Conduct was changed so that the Model Code would apply fully to part-time, pro tempore and retired judges.*

## EFFECTIVE DATE OF COMPLIANCE

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

9/99

**Independent Administrative Hearings  
Through A Central Panel**

**Informal Legislative Brief**

Prepared for  
**Senator Gene Therriault**  
**Senate President**

By David Stancliff  
Staff / Administrative Regulation Review Committee

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*Poorly written, poorly administered, poorly enforced regulations are costly to an economy, a government, and society in general and will likely continue until a fair and impartial system of adjudication of those regulations is in place.*

## I. Overview

### Origin of Central Panels

The governance of administrative law has become a huge challenge in the United States. With this challenge have come reforms and the foremost is the establishment of quasi-judicial powers and proceedings to keep in balance the need to administer regulations with the public's right of due process and justice when those rules are challenged.

In many cases, it has become nearly impossible for all but the wealthy to take on regulators, and economically survive the process. Medium and small-scale businesses are desperate for speedy resolutions that are fair and impartial as are everyday citizens.

This chronic and suffocating problem of untouchable regulation has created a high social and political demand for a solution. Courts have long been uncomfortable with the erosion of due process evident in the aggressive growth of administrative law. The need for independent, highly skilled and trained adjudicators is a direct result of efforts to resolve this growing conflict.

The governing premise for this need is as old as our federal constitution and based on the premise that executive government can only be held in balance if it is constrained and held accountable through a separate and equal power that being the Judiciary.

When examining the damage caused by oppressive or poor regulations, it became evident that the balance needed to achieve fairness and due process within the administrative body of law was severely lacking or in some cases completely compromised through in-house bias or outright prejudice.

The answer has been the installment of separate and independent hearing officer functions within executive branches of government. These have come to be known as Central Panels.

## II. Introduction of the Central Panel Concept to the Alaska Legislature.

The Term. Central Panels is commonly used to describe any number of varieties of independent hearing office functions either established or being established in various states.

Presently. Alaska's Administrative Hearing Officers are not centralized and for the most part are located within various State Agencies. They often serve as employees under the authority of a particular Commissioner. Qualifications of hearing officers vary, and in many instances these adjudicators are not cross-trained.

Public Perception. Over the years the public has constantly wondered and complained about hearing officers who work for agencies and whether or not these officers are in fact unbiased and delivering fair, impartial, and timely decisions.

Not a New Concept. In doing research on how to achieve better regulations and more timely hearings, it was discovered that the issue of achieving high standards of due process in the administrative hearing function has been addressed in over half the 50 states through Central Panels.

Adjustments. To do so, other states have in many instances removed hearing officers from the burden of serving separate agencies and establishing a centralized, hearing office, with high standards, a strict code of ethics, and with a high degree of autonomy.

A New Mission. Central panels and the hearing officers in them are charged with serving the public with fair, efficient hearings based on the goal of complete due process under the law. While most fall under the administrative branch of government, theirs is very much a quasi-judicial responsibility as opposed to an extension of any particular agency.

### **III. Genesis of Initial Legislative Action**

1996-97 The first legislation introduced to establish independent hearing office functions in Alaska occurred on April 4 during the 20<sup>th</sup> Alaska legislature. HB 232 was sponsored by Representative Scott Ogan and was based on a model provided by Mr. Edwin Felter, the Senior Administrative Law Judge and founder of Colorado's Central Panel.

Mr. Felter is a recognized national expert on Central Panels, a member and elected leader in the national organization of independent hearing officers, and has been instrumental in establishing what is considered to be one of the most efficient and well-organized Central Panels in the United States.

Also contacted was Mr. John Hardwicke of Maryland who is also an expert in the establishment and functions of Central Panels and served as Maryland's Chief Administrative Law Judge.

Mr. Felter and Mr. Hardwick provided much guidance and a model act for Representative Ogan's office to examine. Mr. Felter also offered, through teleconference, his testimony to the House Judiciary Committee then Chaired by Representative Joe Green.

Mr. Ed Hein, from Juneau, a former Legislative Legal Services bill drafter, Judge, and now an independent hearing officer for the National Marine Fisheries Service, also provided a great deal of expertise on the Central Panel concept. Mr. Hein is a leader in the State Association of Administrative law Judges and is active at the National level as well.

### **IV. Legislative Action**

Much debate centered on how best to proceed based on cost and the highest chance of success in the application of the Central Panel during the Knowles Administration.

As predicted by Mr. Felter, many of the Knowles Department heads were concerned about losing the ability to have their own in-house hearing officers. While it was difficult for the Administration to object to fair, efficient administrative hearings, it was possible for them to provide inflated and very convoluted fiscal notes. If there was one fact that was surely established in the legislative process for HB 232, it was the true cost of Alaska's administrative hearing functions; their efficiency, and degree of fairness has never been established and reported to the legislature or the administration.