

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9199 HOUSE JUDICIARY

1994 WYOMING SNOWMOBILE ASSESSMENT



We are interested in improving snowmobiling in Wyoming.
Will you please help us by answering the following questions.

Sponsored by:

The Wyoming Department of Commerce

and

The University of Wyoming

Line 4

The Dept may issue
a registration # free to
w/o the payment of a fee to
the United States if the
snowmob

CS FOR HOUSE BILL NO. 231()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MASEK

A BILL

FOR AN ACT ENTITLED

Registration

1 "An Act relating to regulation of snowmobiles."

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

3 * Section 1. AS 28 is amended by adding a new chapter to read:

4 Chapter 39. Snowmobiles.

5 Sec. 28.39.010. Snowmobile registration. (a) Except as provided in (b) of
6 this section, a person may not operate a snowmobile within the state unless the
7 snowmobile has been registered and numbered as required by this chapter.

8 (b) ^ARegistration ^{for} under this section is not required for a snowmobile

9 ~~(1) owned by an agency of the state, the United States, or another state;~~

10 ~~or~~

11 ~~(2) exempt from motor vehicle registration under AS 28.10.011.~~

12 Sec. 28.39.020. Authority of department; registration agents; registration
13 applications. (a) The department is authorized to assign identification numbers and
14 register snowmobiles.

15 (b) The department shall authorize agents, including snowmobile dealers, to

1 register snowmobiles. The department may authorize a snowmobile dealer authorized
2 as an agent for snowmobile registration to issue temporary and permanent registrations,
3 and to renew registrations.

4 (c) A snowmobile dealer shall require a purchaser of a new or used
5 snowmobile sold at retail to complete a registration application and pay the registration
6 fee before the snowmobile leaves the dealer's premises unless the snowmobile is
7 exempt from registration under this chapter.

8 (d) In a manner set out in this chapter and as may be prescribed by the
9 department, an authorized agent shall accept a registration application and registration
10 fee, issue a registration, and forward the application and registration fee to the
11 department.

12 (e) The original and each renewal registration fee for a snowmobile is as
13 provided under AS 28.10.421.

14 **Sec. 28.39.030. Proof of ownership for registration purposes.** The
15 department shall require proof of ownership of the snowmobile before registering a
16 snowmobile under this chapter.

17 **Sec. 28.39.040. Issuance of a certificate of registration and decals;**
18 **inspection of registration; expiration of registration.** (a) Upon receipt of a
19 completed application for registration of a snowmobile, the department shall record the
20 registration of the snowmobile under a number assigned to the snowmobile by the
21 department. A number assigned to a snowmobile at the time of the original
22 registration must remain with the snowmobile until the snowmobile is destroyed,
23 abandoned, or permanently removed from the state or until the registration number is
24 changed or terminated by the department.

25 (b) The department ^{shall} may issue a registration without the payment of a fee if
26 the snowmobile is owned by ^{the U. S. the state agency} a political subdivision of the state, ~~or a political subdivision~~

27 (c) The department shall, upon assignment of a registration number, issue and
28 deliver to the owner a certificate of registration in a form prescribed by the
29 department. A certificate of registration is not valid unless it is signed by the person
30 who signed the application for registration.

31 (d) At the issuance of the original certificate of registration and upon biennial

HOUSE COMMITTEE REPORT

(1)

Date Referred to Committee: April 4, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/2/98

The JUDICIARY Committee considered:

HB 231

HOUSE BILL NO. 231

REGULATION OF SNOWMOBILES

"An Act relating to regulation of snowmobiles."

recommends it be replaced with the following committee substitute

CS HJR 231 (Jud)

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) Admin.

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brian S. Porter</i>	<input checked="" type="checkbox"/>			
<i>Nancy K. Kelley</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE

[Handwritten Signature]

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: CSHB 231(JUD)

Revision Date: 2/2/98 Dept. Affected: Administration
 Title: "An Act relating to the regulation of BRU: Motor Vehicles
Snowmachines..." Component: Administration
 Sponsor: Representative Masek
 Requestor: H. JUD COMPONENT SERIAL NO. 2149

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	43.0	43.0	43.0	43.0	43.0	43.0
TRAVEL	5.0	2.5	2.5	2.5	2.5	2.5
CONTRACTUAL	18.0	3.0	7.7	7.7	10.9	10.9
SUPPLIES	5	5	5	5	5	5
EQUIPMENT	10.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	76.5	49.0	53.7	53.7	56.9	56.9

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

CHANGE IN REVENUES (1005)						
Revenue Code	100.0	100.0	200.0	200.0	300.0	300.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	76.5	49.0	53.7	53.7	56.9	56.9
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 98) impact: \$ _____

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-5648
 Division: Motor Vehicles Date: 2/3/98

Approved by Commissioner: Mark Boyer Date: 2/5/98
 Agency: Department of Administration

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STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: CSHB 231(JUD)

Revision Date: 02/3/98 Dept. Affected: Administration

ANALYSIS CONTINUED:

This bill moves the registration requirement for snowmachines from Title 5 to Title 28 and requires dealers to have purchases complete applications prior to leaving the dealership with the snowmachine. The bill also authorizes the dealers to act as agents for DMV and issue the registrations and decals for snowmachines.

Snowmachines are currently required to be registered if they are operated on public land. There are 14,642 snowmachines registered but the estimates from dealers and snowmachine organizations indicate there are 70,000 snowmachines in the state. Not all of these machines will be registered under this bill even if the law requires it and the primary reason is a lack of effective enforcement.

For the purpose of this fiscal note the following projection will be used:

FY99	FY00	FY01	FY02	FY03	FY04
10,000	10,000	20,000	20,000	30,000	30,000

The increase of 10,000 registrations every two years is based on the number of machines estimated to be registered a year and those that must renew the registration on a biennial basis. Mail-in renewal of registrations will increase 10,000 to 20,000 a year. A Motor Vehicle Customer Service Representative III will be required to manage the contracts negotiated with the snowmobile dealers; train the dealer personnel, audit the program and maintain the security of the forms and decals.

COST SUMMARY		FY 99
PERSONAL SERVICES		
1 PFT MVCSR III, Rage 14		\$43.0
TRAVEL to train and audit dealer work		\$ 5.0
CONTRACTUAL		
Forms and tabs		\$3.0
Computer Programming		\$15.0
EQUIPMENT		
1 computer workstation —one time cost (this includes PC, desk, chair, file cabinet)		\$10.0
TOTAL		\$76.5

REVENUE

It is estimated 10,000 registrations at \$10 for the biennial period. Assuming even distribution with 10,000 in each year after the startup, there will be an increase of revenue from registration fees.

FY99	FY00	FY01	FY02	FY03	FY04
\$100.0	\$100.0	\$200.0	\$200.0	\$300.0	\$300.0

CS FOR HOUSE BILL NO. 231(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MASEK

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of snowmobiles."

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

3 * Section 1. AS 28 is amended by adding a new chapter to read:

4 Chapter 39. Snowmobiles.

5 Sec. 28.39.010. Snowmobile registration. Except as provided in this section,
6 a person may not operate a snowmobile within the state unless the snowmobile has
7 been registered and numbered as required by this chapter. Registration under this
8 section is not required for a snowmobile owned by the United States.

9 Sec. 28.39.020. Authority of department; registration agents; registration
10 applications. (a) The department is authorized to assign identification numbers and
11 register snowmobiles.

12 (b) The department shall authorize agents, including snowmobile dealers, to
13 register snowmobiles. The department may authorize a snowmobile dealer authorized
14 as an agent for snowmobile registration to issue temporary and permanent registrations,
15 and to renew registrations.

1 (c) A snowmobile dealer shall require a purchaser of a new or used
2 snowmobile sold at retail to complete a registration application and pay the registration
3 fee before the snowmobile leaves the dealer's premises unless the snowmobile is
4 exempt from registration or a registration fee under this chapter.

5 (d) In a manner set out in this chapter and as may be prescribed by the
6 department, an authorized agent shall accept a registration application and registration
7 fee, issue a registration, and forward the application and registration fee to the
8 department.

9 (e) The original and each renewal registration fee for a snowmobile is as
10 provided under AS 28.10.421.

11 Sec. 28.39.030. **Proof of ownership for registration purposes.** The
12 department shall require proof of ownership of the snowmobile before registering a
13 snowmobile under this chapter.

14 Sec. 28.39.040. **Issuance of a certificate of registration and decals;
15 inspection of registration; expiration of registration.** (a) Upon receipt of a
16 completed application for registration of a snowmobile, the department shall record the
17 registration of the snowmobile under a number assigned to the snowmobile by the
18 department. A number assigned to a snowmobile at the time of the original
19 registration must remain with the snowmobile until the snowmobile is destroyed,
20 abandoned, or permanently removed from the state or until the registration number is
21 changed or terminated by the department.

22 (b) The department shall issue a registration without the payment of a fee if
23 the snowmobile is owned by a state agency, a political subdivision of the state, or
24 another state. The department may, upon request, issue a registration without the
25 payment of a fee if the snowmobile is owned by the United States.

26 (c) The department shall, upon assignment of a registration number, issue and
27 deliver to the owner a certificate of registration in a form prescribed by the
28 department. A certificate of registration is not valid unless it is signed by the person
29 who signed the application for registration.

30 (d) At the issuance of the original certificate of registration and upon biennial
31 renewal, the department shall issue to the registrant a validation decal indicating the

1 validity of the current registration and the expiration date. A validation decal must be
2 affixed to the snowmobile in the manner prescribed by the department. A snowmobile
3 is not validly registered under this chapter unless a validation decal and current
4 registration have been issued as required by this section.

5 (e) The department may refuse to register a snowmobile if the snowmobile
6 does not comply with the equipment requirements under AS 28.39.070.

7 (f) A snowmobile shall display the registration number assigned to it at all
8 times in the manner prescribed by the department.

9 (g) While operating a snowmobile that is required to be registered under this
10 chapter, a person shall have in possession or carry in the snowmobile a valid
11 registration. Upon demand by a peace officer authorized to enforce this chapter, a
12 person operating a snowmobile shall produce for inspection the certificate of
13 registration for the snowmobile and furnish to the peace officer any information
14 necessary for the identification of the snowmobile and its owner.

15 (h) A snowmobile owner holding a certificate of registration shall notify the
16 department in writing of a change of residence within 15 days after the change occurs.

17 (i) A snowmobile registration expires at the end of the second season for
18 which it is issued. An application for renewal of registration for the succeeding years
19 must be made at a time and in a form prescribed by the department.

20 (j) The department may issue a replacement certificate of registration if the
21 owner demonstrates to the department that the original certificate has been lost,
22 mutilated, or destroyed.

23 **Sec. 28.39.050. Termination of ownership; used snowmobiles held for**
24 **resale; termination of use.** (a) If there is a change of ownership of a snowmobile,
25 the seller and buyer shall fill out the transfer of ownership section of the registration,
26 and the seller shall sign over the registration to the new owner. The seller shall
27 promptly submit the transfer of ownership section to the department, and the
28 department shall issue a new certificate of registration to the new owner.

29 (b) This chapter does not require a snowmobile dealer to renew the registration
30 of a used snowmobile held solely for purposes of resale until the snowmobile is resold.

31 (c) An owner of a snowmobile registered under this chapter shall notify the



To: Representative Joe Green
Chair, House Judiciary Committee

From: Glenda Smith
Legislative Chair
Mat-Su Motor Musers

Re: HB231

Date: April 18, 1997

We have reviewed HB231 and have the following comments:

1) Division referring to Department of Natural Resources. We would respectfully request registration remain with DMV. One reason we have been trying to obtain point of sale registration is to attempt mail-in re-registrations. Mail-in is not addressed as a method of renewal that we can find. Please let us know if we missed this.

2) Section 05.30 060 The division (being DNR in this bill) shall adopt:

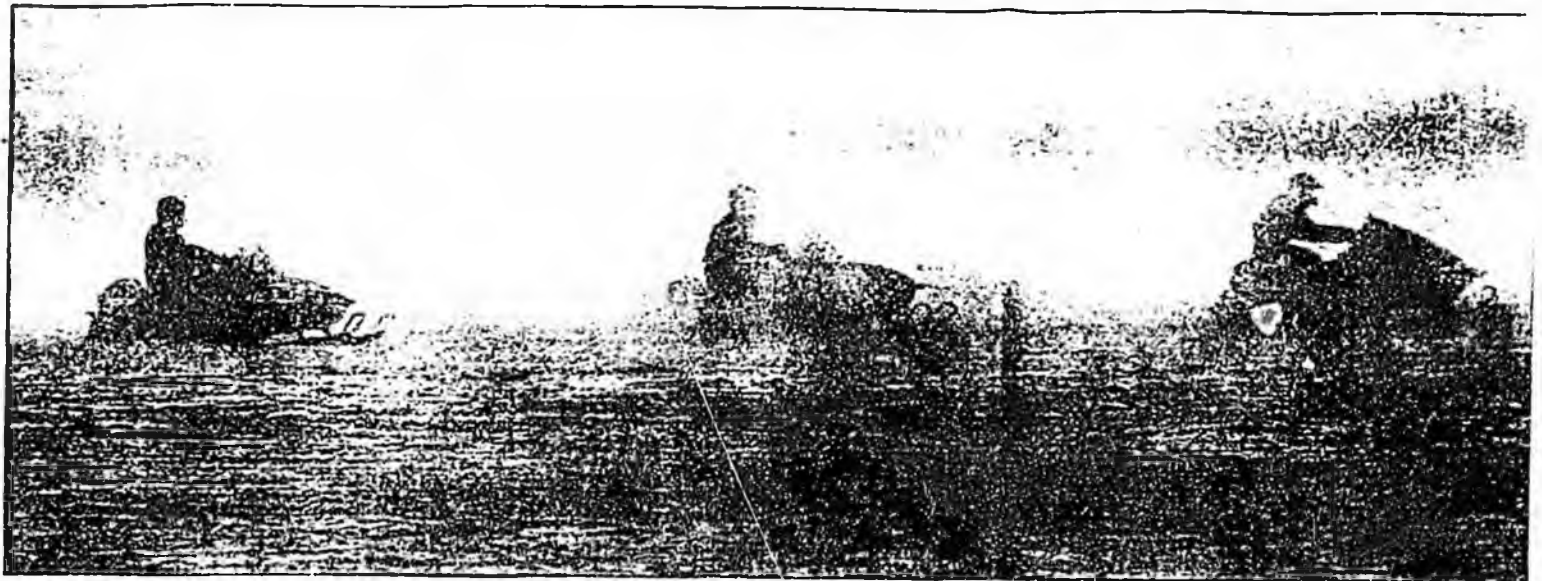
- 1) Regulations for registration of snowmobiles and display of registration numbers.
- 2) in cooperation with appropriate federal agencies, uniform maps and signs to control, direct, or regulate the operation of snowmobiles;
- 3) regulations for the use of snowmobiles, consistent with the provisions of this chapter.

What is the intent of this added article 2 to section 05.30? This appears to be a clear attempt on the part of the division of DNR to have Alaska Statute regulatory power over where snowmobiles can be used. We feel this is not in the best interest of the recreational snowmobile public nor the tourists who visit our state in pursuit of recreational snowmobiling.

MSMM would not be opposed to regulations for the display of registration numbers. Most new machines have an area available on the front of the machine that is just the correct size for these stickers and is easily seen.

Thank you, in advance, for considering our comments regarding snowmobile registration.

cc: Honorable Beverly Masek



Frontiersman file photo

Registration of machines is being considered as one way to increase responsible riding.

Snowmachiners study registration

By CASEY RESSLER

Frontiersman reporter

A snowmachine trail running from Anchorage to Fairbanks could become a reality if the state adopts legislation forcing snowmachiners to pay to register their vehicles.

The trail, maintenance of existing trails and safety are primary reasons why many snowmachiners are hoping the legislation is adopted and the registration fees go into effect.

"We all would like to see the trail be put in to give us a place to ride, and the registration money would give the state some funding to go through with that project," said Steve Turney, Palmer resident and president of the Petersville Snowmobile Club. "The safety issue is also one that is very important for people to consider in this matter."

Turney said that the registration will force snowmachiners to ride safely and responsibly because they will be easily identified by registration numbers on the snowmachines. If someone is acting irresponsibly, the registration can be traced to the rider.

"When someone is drunk and tearing up property, it makes all snowmachiners look bad," Turney said. "With the registration, law enforcement agencies will be able to tell who the rider is and take action against them."

Turney is hoping by requiring operators to pay for registration, the state will in turn give a percentage of the income

back to the snowmobile clubs and agencies to provide more maintained riding areas.

"By giving money back, the state can provide a winter tourism outlet that will benefit people all over the Interior," Tur-

neity," Smith said. "It would give Anchorage residents a chance to utilize their own state without any hassles."

The registration would be collected by dealers across the state, who would in turn be compensated \$1 per registration collected.

Alaska State Parks or the Department of Motor Vehicles would be the actual agencies handling the registrations and assigning numbers, but that has not been determined yet.

Renewals would be handled via mail.

Registration numbers would be assigned to a snowmachine, and the number assigned would remain with the vehicle until the vehicle was destroyed or permanently out of the state.

Custom numbering is an option that is being discussed to allow snowmachiners to keep the designs of their sleds unique and artistic.

However, registration would not be required for snowmachines owned by the government or a government agency or those that are used strictly on private property for private and non-commercial purposes.

Jana Littlewood, president of ASSA, said that the proposal is only in draft form and that her organization expects a lot of feedback.

"We really want to hear about what people think about it before any action is taken," Littlewood said. "We are real excited about the registration legislation, but we want to make sure it works for everyone."



Frontiersman file photo

Users are encouraged to ride safely.

ney said. "The registration could provide major money to a lot of people and give people a chance to take part in one of the largest family sports in Alaska."

Glenda Smith, a former president of the Alaska State Snowmobile Association and avid Wasilla snowmachiner, said the entire state will prosper from the deal.

"We have been working on this for years now, and it could finally become a

ASSA works on point of sale registration legislation

The Alaska State Snowmobile Association will be putting a lot of time and energy into point of sale registration legislation during this legislative session. Registration of snowmobiles is important to Alaska as the number of registered snowmobiles equals to money that will become available through the National Trails Fund for trail construction, trail heads, trail signing, grooming equipment, etc.

The following is a draft copy of that legislation.

CHAPTER 30. Snow Vehicles

Article 1. Registration

Sec. 05.30.010 Snowmobile registration - fees - applications - requirements - penalties - exemptions.

(1) (a) Except as provided in subsection (5) of this section, no person shall operate any snowmobile within the state unless such snowmobile has been registered and numbered in accordance with the provisions of this article. The division, or its designee, is authorized to assign identification numbers and register snowmobiles.

(b) The division shall employ snowmobile agents, including dealers and licensing agents serving as such for the division of parks, for snowmobile registration pursuant to the provisions of this section. Such agents shall take the registration application and issue a temporary registration and shall forward the application to the division, which shall issue the registration. Snowmobile dealers employed as licensing agents for snowmobile registration may be authorized to issue renewal registrations and shall retain

a commission of up to one dollar, as authorized by the division, for each registration issued.

(c) For all or any part of a year beginning October 1 and ending September 30, the original and each renewal registration fee by an owner shall be as specified pursuant to AS 28.10.421.

(2) (a) Every dealer shall require a purchaser of a new or used snowmobile sold at retail from the dealer's inventory to complete a registration application and pay the registration fee before the snowmobile leaves the dealer's premises, except for those snowmobiles purchased for use exclusively outside of this state or those otherwise exempt from this registration requirement.

(3) (a) Dealer and manufacturer registrations shall be distinguished by appropriate means by the division from the registration required for owners other than dealers and manufacturers.

(4) A registration certificate shall be issued without the payment of a fee for snowmobiles owned by the state of Alaska or a political subdivision thereof upon application therefore.

(5) No registration under this section is required for the following snowmobiles:

(a) Snowmobiles owned by any agency of the United States, another state, or a political subdivision of either, when such ownership is clearly displayed on the machine;

(continued on page 14)

(continued from page 1)

private property for private, noncommercial purposes;

(c) Snowmobiles used only in sanctioned snowmobile races, including any racing snowmobile brought into the state which is exempt from registration in the state where the owner of said snowmobile resides.

(d) Snowmobiles used exclusively in communities exempt from motor vehicle registration pursuant to AS 28.10.011.

(6) All registrations shall expire at the end of the second season for which issued. Application for renewal of registration for the succeeding years shall be made at such time and in such manner as the division shall prescribe.

Sec. 05.30.020 Proof of ownership for registration purposes. (1) The division shall require proof of ownership for snowmobiles prior to the registration of a snowmobile under this article.

Sec. 05.30.030 Issuance of registration.

(1) (a) Upon receipt of a sufficient application for registration of a snowmobile, as required by this section,

the division shall enter upon its records the registration of such vehicle under the distinctive number assigned to it pursuant to this section.

(b) A number assigned to a snowmobile at the time of its original registration shall remain with the snowmobile until the machine is destroyed, abandoned, or permanently removed from the state or until such registration number is changed or terminated by the division.

(2) The division shall, upon assignment of such number, issue and deliver to the owner a registration in such form as the division shall prescribe. A registration shall not be valid unless it is signed by the person who signed the application for registration. In the event of the loss, mutilation, or destruction of any registration, the owner of the registered snowmobile may file such statement and proof of such facts as the division shall require for the issuance of a replacement registration.

(3) (a) At the time of the original registration and at the time of each biennial renewal thereof, the division shall issue to said registrant a validation decal indicating the validity of the current registration and the expiration

date thereof, which validation decal shall be affixed to the snowmobile in such manner as the division may prescribe.

(b) Notwithstanding the fact that a snowmobile has been assigned an identifying number, it shall not be considered as validly registered within the meaning of this section unless a validation decal and current registration have been issued.

(4) In the event that a snowmobile sought to be registered or reregistered does not comply with the provisions respecting equipment established by section 05.30.070, the division may deny the issuance of a validation decal and current registration.

(5) The registration number assigned to a snowmobile shall be displayed on the vehicle at all times in such manner as the division may prescribe. No number other than the

number assigned to a snowmobile or the identification number of the registration number shall be painted, attached, or otherwise displayed on either side of the cowling; except that racing numbers on a snowmobile being operated in a prearranged organized special event may be temporarily displayed for the duration of the race.

(6) Every person, while operating a snowmobile in this state which is required to be registered under this article, shall have in his possession or carry in the snowmobile the registration therefor and shall, upon demand of any peace officer authorized to enforce this article, produce for inspection the registration for such snowmobile and furnish to such officer any information necessary for the identification of such snowmobile and its owner.

(continued on next page)

(Continued from previous page)

(7) It is the duty of every owner holding a registration to notify the division, in writing, of any change of residence of such person within fifteen days after such change occurs and to inscribe on the registration, in the place provided, a record of such change of residence.

Sec. 05.30.040 Transfer or other termination of ownership.

(1) When the use of a snowmobile for which a registration has already been issued is permanently discontinued, the old registration shall be properly filled out, signed and returned to the division within fifteen days after discontinuance.

(2) (a) If there is a change of ownership of a snowmobile for which a registration has been issued, the seller shall properly fill out the registration "transfer of ownership" section and sign over the registration to the new owner who shall apply for a new registration from the division.

(b) In the event that such snowmobile was purchased through a bona fide dealer, such application must be accompanied by a dealer's form, as prescribed by the division, numbered, completed, and signed by the dealer or his agent and by the new owner.

(3) It is the duty of every owner of a snowmobile registered pursuant to the provisions of this article to notify the division, in writing, of the destruction, theft, or permanent removal of such snowmobile from the state within fif-

teen days thereafter, and, in the event of destruction or theft, he shall surrender the registration with such notice.

Sec. 05.30.050 Rules and regulations authorized.

(1) The division shall adopt rules and regulations for the following purposes:

(a) Registration of snowmobiles and display of registration numbers;

(b) Formulation, in cooperation with appropriate federal agencies, of regulations for uniform maps and signs for use by the state, counties, cities, city and counties, and towns to control, direct, or regulate the operation and use of snowmobiles;

(c) Formulation of other regulations concerning the use of snowmobiles, but not in any way inconsistent with the provisions of this article.

Article 2. Regulation and Equipment

Sec. 05.30.060 Regulation by political subdivision. A city of any class, or an organized borough in the area outside cities, may, by ordinance, regulate the use and operation of snow vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries if such regulation is not inconsistent with the provisions of this Chapter and the rules and regulations promulgated pursuant thereto.

Sec. 05.30.070 Required equipment - snowmobiles.

(1) A snow vehicle, while operating, must contain the following equipment:

(a) At least one lighted head lamp and one lighted tail lamp, each of a minimum candlepower to reveal persons and objects at a distance of at least 100 feet ahead during hours of darkness under normal atmospheric conditions;

(b) Brakes adequate to control the movement of an to stop and to hold the vehicle under normal conditions of operation.

(c) A muffler which emits a noise level no higher than the maximum decibel level standards prescribed by the manufacturer of the machine, which shall be applicable in all cases, except for snowmobiles being operated in organized races or similar competitive events held on private lands with the permission of the owner, lessee, or custodian of the land, on public lands and waters under the jurisdiction of the division with its permission, or on other public lands with the consent of the public agency owning the

land.

Article 3 - General Provisions

Sec. 05.30.080 Definitions. As used in this article, unless the context otherwise requires:

(1) "Division" is the Division of Parks and Outdoor Recreation.

(2) "Dealer" means a person engaged in the business of selling snowmobiles at wholesale or retail in this state.

(3) "Operate" means to ride in or on and control the operation of a snowmobile.

(4) "Operator" means every person who operates or is in actual physical control of a snowmobile.

(5) "Owner" means a person, other than a lienholder, having title to a snowmobile and entitled to the use or possession thereof.

(6) "Person" means any individual, association, partnership, or public or

(continued on page 18)

Snowmachine comeback fuels winter business

By BARBARA CARTON
The Wall Street Journal

It may be zero outside, but Bosacki's Boat House in remote Mimocqua, Wis., is jammed with snowmobilers ordering the \$11.95 prime rib and hoisting Polish Delights (hot chocolate and peppermint schnapps). Says owner Larry Bosacki, gleefully, "It's nothing to have 100 snowmobiles in the parking lot."

Snowmobiling, nearly killed by high prices of machines and noise complaints a decade ago, is roaring back and breathing new life into areas of the Northern United States that were formerly depressed — and depressing — in the wintertime.

U.S. snowmobile sales tripled to \$905.2 million last year from \$300 million in 1990, and analysts believe sales are likely to grow

by up to 10 percent a year for the next few years. Including sales of accessories like special insulated suits and boots, snowmobiling fuels a \$4 billion-a-year market, according to the American Council of Snowmobile Associations Inc., a trade group.

Partly responsible for the comeback: To-

Please see Page C-4, SNOWMOBILES

STEWART: Hope is in sight

Continued from Page C-1

field to keep the pressure up and the oil flowing.

A study of the field last month estimated production — recently at about 2,400 barrels a day — will decline 55 percent a year if the injection well isn't drilled. That could lead to the field shutting down within 18 months, according to the reorganization plan.

Even with the injection well, there's no guarantee, the plan warns. Production could increase, or it could continue to decline.

Nor is there any guarantee the plan will be accepted by all parties to the bankruptcy and by federal Bankruptcy Judge Donald McDonald in the form filed Friday.

Still, the people who put it together said they believe continuing to produce oil from West McArthur is the best hope for everybody involved. If Stewart Petroleum is sold in pieces, the plan warns, it's far less likely to bring in enough money to pay off creditors and give investors a return on their money.

"The company believes that this joint plan is a very big step in the right direction," Mills said.

SNOWMOBILES: Winter tourism booms

Continued from Page C-1

day's sleek machines are quieter, more stable and more comfortable, with amenities like heated handlebars and floorboards. They zip along at up to 65 mph and break down far less often, making it possible to take weeklong trips over a vastly expanded network of trails. It is now possible to travel from Maine to Washington state via snowmobile trails. In some states, the miles of groomed trail — 15,000 in Minnesota — exceed the number of miles of state highway.

Snowmobiles are cutting their widest swath in the upper Midwest, where Minnesota, Michigan and Wisconsin together have more than 630,000 snowmobiles registered, or about half the national total. There, restaurants and hotels that once served mainly summertime hikers and fishers are open year-round, and new ones are springing up. Summer fishing cabins are being winterized as snowmobile base camps. When Terry Roy, 57, moved to Big Sandy Lake in central Minnesota several years ago, few homes were winterized. Now, he says, almost all are. And every Friday night, traffic streams in from Minneapolis and Duluth.

Snowmobile tourists have brought undeniable economic benefits to these states, where there once wasn't much to do during winter but snowshoe and ice-fish. The average cross-country skier spends \$45 to \$55 a day, while snowmobilers spend three times that, one study by several Minnesota towns found

Snowmobilers travel in bigger groups than skiers and tend to stay one to three days longer, creating a midweek hotel business.

In Minnesota, home of two big snowmobile manufacturers — Arctic Cat Inc and Polaris Industries Inc. — the sport has an annual economic impact of \$304 million, state officials say. That includes \$16 million in tourist spending by non-Minnesotans, and \$280 million in sales of snowmobiles made in the state. The nearly 6,000 people who work at snowmobile makers bring home \$75 million in wages.

Snowmobilers are heavily blue-collar, with interests that run toward Popular Mechanics and Motor Trend magazines, demographic studies show. But they spend an average of \$5,400 per new snowmobile, plus \$1,000 on accessories like \$70 leather gloves, \$200 Darth Vaderlike helmets or even \$199.95 gold pinkie rings embossed with "Arctic Cat," a snowmobile brand. Some families also buy \$1,200 Kitty Cat snowmobiles for children ages four to nine, which go about eight miles per hour — and even enter kids in Kitty Cat races. Traders for hauling the machines can cost \$5,000.

But cross-country skiers slipping through the woods in search of fresh air and wildlife are often dismayed to find snowmobilers thundering by in neon outfits (lime green is big this year). Nature lovers also complain that snowmobiles tear up the earth, and snowmobilers who ride drunk have caused accidents, prompting new safety laws.

Willow Trails Committee

P.O. Box 1175 Willow, AK 99688-1175
Tele/Fax 1-907-495-6688
Email canoeak@alaska.net

Alaska State Legislature
House of Representatives
Attn: Representative Beverly Masek
State Capital
Room 432
Juneau, Ak 99801-1182

Dear Representative Masek:

Thank you for your recent letter of support for the new Willow Trail System. This committee has gone forward with our request to D.O.T. for the Parks Highway underpass, grant applications, and other steps to get the basic trail system in place.

Considering the need to obtain additional funding for recreation trails throughout this state, our committee fully supports your bill which would create point of sale registration for snowmobiles.

We would be interested in learning what mechanisms will be provided to ensure that funds generated by this registration program will be allocated back into recreation trail systems.

This committee will be tracking the movement of this important bill through the legislative process and applaud your efforts in supporting a very important recreation industry in Alaska.

Please let us know if there is further action we can take to help in promoting your timely bill. In the interim, we will post information on our trails bulletin board as a Legislative Alert.

Sincerely,


Ray Kelley, Chair

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Willow Trails Committee

P.O. Box 1175 Willow, AK 99688-1175

Tele/Fax 1-907-495-6688

Email canoeak@alaska.net

Alaska State Legislature
House of Representatives
Attn: Representative Beverly Masek
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Sincerely,



Ray Kelley, Chair

It appears most of the trail grooming is done with money given back to the state associations (sometimes through DNR and sometimes through Fish and Wildlife) and then back to clubs, or is raised by the state associations.

State	Miles	Money from
Iowa	5,000	\$270,000 from clubs, sponsors, and registration
Maine	11,000	\$790,000 from gas tax and registration
Michigan	5400	\$4,000,000 - doesn't say where from
Massachusetts	1,000	Dept of Environmental Affairs, doesn't say amount
Minnesota	15,000+	Snowmobile registration money 3/4 of 1% of gas tax \$3.5 million through DNR
Montana	3700	Dept of Fish and Wildlife \$664,000 decal fee per machine
New Hampshire	6000	Registration money State grant-in-aid \$1,061,690
New York	15,000	Registration fees, \$10.00 in state, \$20.00 out
North Dakota	1350	\$17.00 of registration fee per machine gas tax refund based on 30 gal per registered sled
Ohio	146 miles	DNR Registration fees
Oregon	6200	Gas tax refund Registration fees
Pennsylvania	3000	Registration fees
South Dakota	580	Gas tax refund License fee 3% sales tax on machine sales

Utah	850	Registration fee Gas tax refund
Vermont		85% of registration fees 3/4 of 1% of gas tax back to state association through DNR
Washington	3017	License fee from snowmachines Percentage of gas tax money \$943,842.5 to state association
Wisconsin	25,000	Registration fees Off road gas tax money refund \$5.5 million dollars
Wyoming	1500	Snowmachine registration money Volunteer trail sticker purchase \$236,668

4/30/97

(HB 231)

Eddie @ Naseks

3306

1/3 trails motor only	/	1/3 trails Non motor	/	1/3 both
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snowmachiners

↳ # of machines
& other factors

↳ TRACKS - AK organization
↳ will spend grant #

SIMS program
tax on Motor fuels

↳ SIMS GRANT
↳ # for trails

CS FOR HOUSE BILL NO. 231()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MASEK

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of snowmobiles."

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

3 * Section 1. AS 28 is amended by adding a new chapter to read:

4 Chapter 39. Snowmobiles.

5 Sec. 28.39.010. Snowmobile registration. (a) Except as provided in (b) of
6 this section, a person may not operate a snowmobile within the state unless the
7 snowmobile has been registered and numbered as required by this chapter.

8 (b) Registration under this section is not required for a snowmobile

9 (1) owned by an agency of the state, the United States, or another state;

10 or

11 (2) exempt from motor vehicle registration under AS 28.10.011.

12 Sec. 28.39.020. Authority of department; registration agents; registration
13 applications. (a) The department is authorized to assign identification numbers and
14 register snowmobiles.

15 (b) The department shall authorize agents, including snowmobile dealers, to

1 register snowmobiles. The department may authorize a snowmobile dealer authorized
2 as an agent for snowmobile registration to issue temporary and permanent registrations,
3 and to renew registrations.

4 (c) A snowmobile dealer shall require a purchaser of a new or used
5 snowmobile sold at retail to complete a registration application and pay the registration
6 fee before the snowmobile leaves the dealer's premises unless the snowmobile is
7 exempt from registration under this chapter.

8 (d) In a manner set out in this chapter and as may be prescribed by the
9 department, an authorized agent shall accept a registration application and registration
10 fee, issue a registration, and forward the application and registration fee to the
11 department.

12 (e) The original and each renewal registration fee for a snowmobile is as
13 provided under AS 28.10.421.

14 **Sec. 28.39.030. Proof of ownership for registration purposes.** The
15 department shall require proof of ownership of the snowmobile before registering a
16 snowmobile under this chapter.

17 **Sec. 28.39.040. Issuance of a certificate of registration and decals;
18 inspection of registration; expiration of registration.** (a) Upon receipt of a
19 completed application for registration of a snowmobile, the department shall record the
20 registration of the snowmobile under a number assigned to the snowmobile by the
21 department. A number assigned to a snowmobile at the time of the original
22 registration must remain with the snowmobile until the snowmobile is destroyed,
23 abandoned, or permanently removed from the state or until the registration number is
24 changed or terminated by the department.

25 (b) The department may issue a registration without the payment of a fee if
26 the snowmobile is owned by a political subdivision of the state.

27 (c) The department shall, upon assignment of a registration number, issue and
28 deliver to the owner a certificate of registration in a form prescribed by the
29 department. A certificate of registration is not valid unless it is signed by the person
30 who signed the application for registration.

31 (d) At the issuance of the original certificate of registration and upon biennial

1 renewal, the department shall issue to the registrant a validation decal indicating the
2 validity of the current registration and the expiration date. A validation decal must be
3 affixed to the snowmobile in the manner prescribed by the department. A snowmobile
4 is not validly registered under this chapter unless a validation decal and current
5 registration have been issued as required by this section.

6 (e) The department may refuse to register a snowmobile if the snowmobile
7 does not comply with the equipment requirements under AS 28.39.070.

8 (f) A snowmobile shall display the registration number assigned to it at all
9 times in the manner prescribed by the department.

10 (g) While operating a snowmobile that is required to be registered under this
11 chapter, a person shall have in possession or carry in the snowmobile a valid
12 registration. Upon demand by a peace officer authorized to enforce this chapter, a
13 person operating a snowmobile shall produce for inspection the certificate of
14 registration for the snowmobile and furnish to the peace officer any information
15 necessary for the identification of the snowmobile and its owner.

16 (h) A snowmobile owner holding a certificate of registration shall notify the
17 department in writing of a change of residence within 15 days after the change occurs.

18 (i) A snowmobile registration expires at the end of the second season for
19 which it is issued. An application for renewal of registration for the succeeding years
20 must be made at a time and in a form prescribed by the department.

21 (j) The department may issue a replacement certificate of registration if the
22 owner demonstrates to the department that the original certificate has been lost,
23 mutilated, or destroyed.

24 **Sec. 28.39.050. Termination of ownership; used snowmobiles held for**
25 **resale; termination of use.** (a) If there is a change of ownership of a snowmobile,
26 the seller and buyer shall fill out the transfer of ownership section of the registration,
27 and the seller shall sign over the registration to the new owner. The seller shall
28 promptly submit the transfer of ownership section to the department, and the
29 department shall issue a new certificate of registration to the new owner.

30 (b) This chapter does not require a snowmobile dealer to renew the registration
31 of a used snowmobile held solely for purposes of resale until the snowmobile is resold.

1 (c) An owner of a snowmobile registered under this chapter shall notify the
2 department in writing of the termination of use, destruction, or permanent removal of
3 the snowmobile from the state within 15 days after the termination of use, destruction,
4 or removal.

5 **Sec. 28.39.060. Regulations authorized.** The commissioner shall adopt
6 regulations governing the registration of snowmobiles and display of registration
7 numbers on snowmobiles as may be necessary to carry out this chapter.

8 **Sec. 28.39.070. Equipment required.** (a) A snowmobile must contain the
9 following equipment:

10 (1) brakes adequate to control the movement of and to stop and to hold
11 the vehicle under normal conditions of operation;

12 (2) at least one automatically illuminating head lamp that is aimed and
13 is of sufficient intensity to reveal persons and objects at a distance of at least 100 feet
14 ahead during hours of darkness under normal atmospheric conditions and one
15 automatically illuminated tail light;

16 (3) a throttle that, when released by the hand, will return the engine
17 speed to idle;

18 (4) an exhaust muffler that emits a noise level not higher than the
19 maximum decibel level prescribed by the manufacturer for the snowmobile.

20 (b) The provisions of (a)(4) of this section do not apply to a snowmobile while
21 the snowmobile is operated in a racing event permitted under AS 05.90.001.

22 **Sec. 28.39.080. Reporting of accidents.** The operator of a snowmobile
23 involved in an accident resulting in injury to or death of a person, or property damage
24 other than to the operator's snowmobile, the estimated amount of which is \$500 or
25 more, shall immediately, by the quickest means of communication, give notice of the
26 accident to the nearest state trooper or municipal police officer.

27 **Sec. 28.39.250. Definitions.** In this chapter,

28 (1) "commissioner" means the commissioner of administration;

29 (2) "dealer" means a person engaged in the business of selling
30 snowmobiles predominantly for purposes other than resale;

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

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(4) "operate" means to ride in or on and control the operation of a snowmobile;

(5) "operator" means a person who operates or is in actual physical control of a snowmobile;

(6) "owner" means a person, other than a lienholder, having title to a snowmobile and who is entitled to the use or possession of the snowmobile;

(7) "possession" means physical custody of a snowmobile by an owner of a snowmobile or by an owner of a motor vehicle or trailer on or in which a snowmobile is placed for the purpose of transport;

(8) "retail" means the sale of a snowmobile for any purpose other than resale;

(9) "season" means one calendar year beginning October 1 and ending September 30;

(10) "snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats; "snowmobile" does not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

* Sec. 2. AS 05.30 is repealed.



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
 Committee on H.B. 231 Committee Name
Bill / Subject Dated 4/30/97

I favor the bill as amended to have the division of motor vehicles administer registration of snowmobiles.

Thanks for your letter requesting your favorable ~~input~~ attitude for HB 231. Your testimony will be entered on the record.

Gus to Lisa

SIGNED:

Chuck Johnson Chuck Johnson
 Testifier

Concerned Snowmobiler, Skier and maintainer of trails
 Representing

2382 Skiland Road Fairbanks 99712-1749
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
 Committee on HB 231 Committee Name
 Dated 4-30-97
Bill / Subject

*I support the amendments to HB 231
 proposed by Rep. Masch*

459-7304

SIGNED:

DAVID LAMBERTI

Testifier

Alaska Dog Musher Ass

Representing

PO BOX 71243

Address / Phone Number FBKS AK 99707

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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Central Microfilm Services
Department of Education
State of Alaska



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
 Committee on HB 231 Committee Name
 Dated 4-30-97
 Bill / Subject

*I support the amendments to HB 231
 proposed by Rep. Masek*

459-7304

SIGNED: DAVID LAMBERTI
 Testifier
Alaska Dog Muckers Ass
 Representing
PO BOX 71243
 Address / Phone Number FBK5 AK 99707



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Judiciary Com.
Committee Name
 Committee on HR 231 Dated 4-30-97
Bill / Subject

I support the concept of point of sale registration for snowmobiles. I would encourage this legislation because of the positive impact it would have on the future of snowmobiling in Alaska.

Point of Sale Snowmobile registration will:

- aid in the recovery of stolen vehicles
- increase the amount of federal grant \$ dollars available to snowmobile clubs
- quantify the number of snowmobile users which helps identify the social and economic importance of snowmobiling.

These are only a few benefits of this legislation.

I would recommend that the process used ~~to~~ for point of sale registration of snowmobiles be the same process currently used for registration of cars and trucks.

Thank you for your time and consideration.

SIGNED: Scott Heidorn Scott Heidorn
Testifier

Representing

PO Box 84591 Fbk's AK 99708 474-8711
Address / Phone Number



Alaska State Legislature

Please enter into the record my testimony to the H Jud
committee name

committee on HB 231, dated 4/30/97
bill/subject

Reg. of snowmobiles. Majority of the people wanted or liked the idea of registering their machines they would do so. They do not. Testimony by biased sources, who stand to gain from this bill is not representative of the "Good of the people as a whole" who wants to show up and testify against a \$5.00 bill for the time it takes. The public does not need to continually register their machines just to get trail funding. It should be mandatory and perpetuate the already unnecessary burden of the existing DMV.

Signed:

David Bartels

Testifier

Alaskans Committed to Equity

Representing (Optional)

581 Muskratna #3 Was. AK.

Address

376-4693

Phone No.



P.O. Box 741
Tok, Alaska 99780
Phone (907) 883-5877
(800) 478-5878 in Alaska
Fax (907) 883-5878

April 30, 1997

Chairman, Representative Joe Green
Judiciary Committee
State of Alaska

Ref: House Bill # 231
Snowmobile Registration

Sir,

With one recommended change in the proposed House Bill, you will have my full support for passage.

The problem I have with the bill as proposed is that it be administered by the "Department of Natural Resources" (Parks and Recreation).

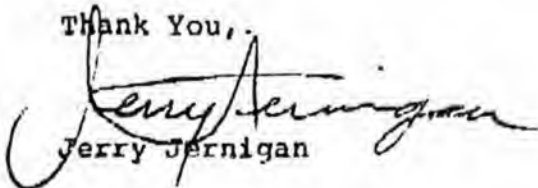
The responsibility for such a registration requirement justly belongs with the Department of Motor Vehicles, which already has the machinery in place and the experience necessary for the most efficient administration.

To place the Department of Natural Resources in charge of enforcement can be likened to placing the Fox in charge of the Chicken house. Parks and Recreation under the direction of Mr. Jim Stratton has shown a very strong indication of being overly protective of the natural habitat by closing Byers lake to motorized traffic - in other words made Byers Lake a quiet lake without (as I understand) holding hearings etc.,

Again, if HB# 231 places responsibility with the Dept of Motor Vehicles, then I encourage you to seek passage.

Snowmobile registration will help bring to the state large amounts of funding for trails of all kinds from the Federal Government fuel taxes which will help to increase WINTER TOURISM.

Thank You,


Jerry Jernigan



To: House Judiciary Committee

From: Glenda Smith
Legislative Chair

Re: HB231

Date: April 30, 1997

After much deliberation of this bill we would make the following recommendations:

1. Page 4, Lines 18 through 21, Section 5. We would request this amended new section be deleted. We do not feel it is in the best interest of snowmachiners in our state or potential winter tourism for DNR to have regulatory authority over riding areas for snowmachines inasmuch as their previously expressed opinion would be to regulate this riding to corridors only in designated areas and no riding at all in many areas which have historic use for this purpose.
2. Page 4, Lines 22 through 27, Section 6. We would request deletion of this with either return to present statute or to state authority in order to work toward a goal of statewide trail systems for those recreationists who wish to use a trail system and for tourists.
3. Page 5, Section 9, Definitions. Request change of #2, "division" from Department of Natural Resources to Department of Motor Vehicles in the Department of Administration. The purpose of our work toward a better registration bill was to promote easier registration of snowmachines. DMV has done a good job in the past; however, we would like to see an expansion of the methods by which machines can be registered, i.e. mail-in renewals and point-of-sale as Symms money for our state is in direct proportion to the number of registered machines. By making it easier to comply and providing mail-in reminders more snowmachines will be in compliance with the registration law which has been on the books since 1975.

Thank you for these considerations.

Committees:

Military & Veteran Affairs,
Chair

House Resources,
Vice-Chair

House Transportation,
Vice-Chair

Legislative Council

Alaska State Legislature



Representative Beverly Masek

During Session: Jan - May
State Capitol
Juneau, Ak. 99801-1182
(907) 465-2679
Fax: (907) 465-4822
(800) 505-2678

During Interim: June - Dec.
600 E. Railroad Ave.
Wasilla, Ak. 99654
(907) 376-2679
Fax: (907) 376-6180

Date: April 16, 1997

To: Representative ^{Joe} Joe Green, Chair
House Judiciary Committee

From: Rep. ^{Beverly} Beverly Masek

Re: HB 231 "An Act relating to snowmachine registration."

I would appreciate it if House Judiciary would hear HB 231. This is an important piece of legislation developed in conjunction with the various snowmachine groups from around Alaska. It provides the initial step necessary to provide for a practicable way for Alaskans to register their snowmachines, and it will provide important information allowing Alaska to obtain existing funds for trail development and maintenance.

The initial step taken by HB 231 will lay the groundwork for the development of a more comprehensive program at a later date that will give Alaska the opportunity to raise the necessary funding to have a good trail system. The development and maintenance of trail infrastructures throughout Alaska will assist in the promotion of this facet of winter tourism. This type of tourism is doing very well in other northern and western states and Alaska's winter conditions lend it to be being a first class destination.

I expect this legislation will need a good airing with the public and we will need to work on making sure we develop a good program for Alaska. I am asking that we start on that effort at this time.

Thank you for your time and consideration on my request.

HB

232

cc:Mail for: Lisa Kirsch

Subject: HB 232 Admin Hearings

From: David Koivuniemi at DOA-DAS 5/2/97 5:31 PM
To: lisa kirsch at LAA_TRANS
cc: chrystal_smith@law.state.ak.us at CC2MHS1
cc: teresa_williams@law.state.ak.us at CC2MHS1
cc: Sharon Barton@cchub.Alaska at CC2MHS1
cc: Mark Boyer@cchub.Alaska at CC2MHS1
cc: Alison Elgee@cchub.Alaska at CC2MHS1
cc: Daniella Loper@cchub.Alaska at CC2MHS1
cc: Shelley Higgins@cchub.Alaska at CC2MHS1
cc: pat pourchot@Gov.Alaska at CC2MHS1
cc: shari kochman@Gov.Alaska at CC2MHS1

Lisa - the Department of Administration (DOA) is working on this bill but because of the press of business at the end of the session, we have not had sufficient time to collect all of the information necessary to figure out exactly what the bill does; which departments will be effected; which hearing officers will have to be moved to the DOA and what the fiscal impacts will be. We are not opposed to the bill at this point but think it is VERY important that such a significant overhaul of the administrative hearing process be done in a careful and orderly fashion so that everyone, especially the members of the public who use the appeal system, understand what the changes will do and why they are necessary.

We strongly encourage the Judiciary Committee to hold this bill to be worked on during the interim.

HB 232--Admin hearings

I only have HSS and Admin(Off of commis)--Law has problems with the bill, but I have no note from them. What about various agencies who use admin hearing process? This bill covers all who fall under the APA--are none showing this bill will fiscally impact them? It looks like some agency positions may be eliminated or moved to the indep admin hearing section. This bill may end up passing out if we don't hear from the agencies--if there are problems perhaps it should remain in judiciary as an interim project.



REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

MEMORANDUM

TO: CO-CHAIRS HANLEY AND *Lea* RIAULT
FROM: REPRESENTATIVE OGAN *Lea*
DATE: JANUARY 26, 1998
RE: HB-232 / SEPERATION OF POWERS BILL

.....
I have asked the members of House Judiciary to move HB-232 on to Finance to take up the fiscal information on the measure.

In so doing I would request that you attempt to discover the full associated costs of administrative hearings in every agency of the state. This would include but not be limited to the salaries, contracts, and direct costs of hearing officers. I believe we should also look at such collateral costs as maintaining files, publishing decisions, numbers of hearings, time in decision writing and any training hearing officers receive.

It is my contention the Administration has not revealed these costs and until we have them no fiscal note on HB-232 can be accurate because it would not show the savings commonly associated with independent hearing offices (central panels).

I would respectfully request that sub-committee chairs be directed to obtain this information as a pre-requisite to finalizing their departmental budgets. I believe you will be astounded when these costs are uncovered and compared to states who hear thousands more administrative appeals than we do in Alaska.

Preliminary information shows our costs to be very high for the number of hearings we hold. HB-232 seeks to directly cut costs of hearings, establish fast fair procedures, and achieve the remarkable public satisfaction the other 21 states have who have separated the adjudication functions from the police and prosecution sections of government agencies.

Thank you for your assistance in this request.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

April 25, 1997

The Honorable Joe Green, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska

RE: HB232 (Consolidated Hearing Officer Panel)

Dear Representative Green:

I am writing at the request of your aide, Lisa Kirsch, to advise you of my preliminary observations on HB 232. These observations are not complete because I am still collecting materials and reviewing the bill to determine its impacts.

The idea of a centralized hearing panel is intriguing, but this bill involves some complexities that need to be addressed during a lengthier review period than is available during the remainder of this session. Preliminarily, this office has noted that the bill contains changes from the models so far reviewed.

One of the concerns my office has noted is that the bill would take away the adjudicatory function of the citizen boards and commissions that comprise the vast majority of decision-makers under the existing Administrative Procedure Act. Generally those boards consist of persons with particular expertise in the field as well as public members. Those boards and commissions include, for example, the Alcoholic Beverage Control Board, all occupational licensing boards, the Alaska Police Standards Council, the Alaska Labor Relations Agency, and the Alaska Public Offices Commission.

Other issues include the placement of the hearing officers into the classified service, the ability of a hearing officer to single-handedly set public policy in addition to determining facts and applying legal principles, the authority of a hearing officer over regulatory hearings as opposed to adjudicatory hearings, the loss of expertise in unique subject areas, whether a decision of one hearing officer would bind another hearing officer, whether the chief administrative hearing officer would have the power to make changes in decisions of individual hearing officers, and the unrestricted ability of the chief administrative hearing officer to accept money from private sources.

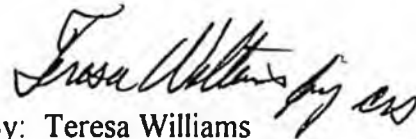
The Honorable Joe Green
April 25, 1997

page 2

I appreciate this opportunity to communicate with your office and look forward to ongoing opportunities to discuss the issues raised in this bill.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By: Teresa Williams
Assistant Attorney General

cc: Pat Pourchot
Chrystal Smith
Deborah Behr

Ed Fetter
Colorado Division
of Adm. Hrqs.

303 - 894 - 2500

2:00 pm
Mon

Alaska State Legislature



HB 232
Jud/Finance


Co-Chair, House Resources
Community & Regional Affairs
Legislative Council
Special Committee on Fisheries
Special Committee on Oil and Gas

State Capitol
Room 128
Juneau, Alaska 99801
(907) 465-3878
1-800-862-3878
Fax (907) 465-3265

Representative Scott Ogan
House District 27

MEMORANDUM

TO: ALL LEGISLATORS

FROM: REP. SCOTT OGAN 

DATE: APRIL 4, 1997

**RE: ESTABLISHING A FAIR, EFFICIENT,
ADMINISTRATIVE HEARING PROCESS**

As legislators we are constantly responding to people affected by state regulations. In a larger sense we also deal with budgets, and laws developed within the administrative realm of regulators. These enforcers have become an institutionalized 4th branch of government.

Whether it is a person or group interested in undertaking a community project, establishing a dog sled race, panning for gold, or buying the Alaska Railroad many of us feel obliged to warn persons about our state's propensity for regulating.

And what happens when those entrepreneurs who take the risks and commit to jumping through the hoops disagree with those who regulate them? How many businesses go under because of regulations? How often does the administration rule in favor of those who protest it's regulations?

In my opinion it is unreasonable to assume employees of a Department, who serve the Commissioner of that Department, associate with employees and regulators in the Department, and serve in other professional capacities within Department will render truly unbiased decisions with regard to the actions of the Department.

Legislatures, and indeed administrations, in other states are tackling this problem by separating adjudicators from agencies, streamlining hearing processes, and bringing an atmosphere of fairness back to their governments.

After considerable thought and research I have chosen the latest and most widely accepted model as a starting point here in Alaska. Legislators, administrators, and legal experts, in answering the due process rights of the private sector in other states give their highest support for this approach. We would be the first state to have the opportunity to adopt this rigorously tested model which has recently been adopted unanimously by the American Bar Association House of Delegates. Expert administrative law judges in both Colorado and Maryland hail this model act as the best in the nation and send their support for assisting in it's implementation should we adopt it in Alaska. Praised by administrations, legislators, courts, but most importantly the public, this highly evolved adjudication structure is credited with restoring public confidence when it is properly applied.

The turn around in business climate, investment interest, worker's comp. rates, insurance, bonding costs, and overall public attitude toward government can be seen in the surveys and results contained in the overview provided to us by Colorado.

It is impossible to calculate with numbers the benefits to all sectors of society when conflicts between government and citizens are reduced, but based on the decrease in adjudication costs alone they should be substantial. The big winners will be our citizens when their endeavors are served by an adjudication office which is anchored in the foundation of due process rights.

I invite your support in establishing a fair adjudication process in Alaska by co-sponsorship of HB-232

Co-Chair, House Resources
Community & Regional Affairs
Legislative Council
Special Committee on Fisheries
Special Committee on Oil and Gas



State Capitol
Room 128
Juneau, Alaska 99801
(907) 465-3878
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Representative Scott Ogan
House District 27

***** *FOR IMMEDIATE RELEASE* *****

VALLEY LAWMAKER PUSHES FOR SEPARATION OF POWERS

A major reform of the state's regulatory hearing process is underway via a bill sponsored by Rep. Scott Ogan (R) Palmer. Ogan calls his measure the separation of powers act. The measure would remove all in-house hearings from agencies and move them to an independent office within the Department of Administration. "People need to get fair and impartial hearings when they challenge government. To deliver that we need to have highly skilled, due process oriented hearing officers who are not connected to agencies," said Ogan.

The concept of independent hearing officers is not totally new in Alaska. The last legislature working with governor Knowles established a more autonomous administrative tax law judge. Ogan wants to expand the framework and cites separation of powers acts being adopted in at least 18 other states. A highly respected Chief Administrative Law Judge, Mr. Ed Felter from Colorado supplied Ogan with the language for his bill. "I have obtained the best model available. It was patterned after Maryland's central hearing adjudication system. They handle over 50,000 appeals annually with a budget of 2 million dollars. Here in Alaska we are spending over three times that amount on far fewer hearings," said Ogan.

The figures aren't all in for the total number of hearings in Alaska but Ogan expects the numbers to be at least 50% less than Maryland's 50,000. "Once we get a total number we can calculate average hearing costs. When queried about the costs involved with the new Division Ogan said he expects "... a more efficient system which will not only bring government costs down but level the playing field for the private sector to produce more revenue."

The Colorado Chief Administrative Law Judge sent Ogan a report touting the high levels of success by separating adjudicatory from prosecutorial powers. Ogan has adopted that state's hearing office mission statement into the purpose and intent section of his bill. "To deliver high quality adjudication in a timely, cost efficient manner with respect for the dignity of the individual and their due process rights"... "this says it all," said Ogan.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 26, 1998

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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The Honorable Rep. Joe Green
Chair, House Judiciary Committee
House of Representatives
State Capitol Rm 118
Juneau 99801-1182

Re: IID 232 - Independent Hearing Officers

Dear Chairman Green:

HB 232 would revise the Administrative Procedure Act (APA) to create a centralized group of hearing officers. These persons would be classified employees within a new agency within the Department of Administration.

The APA applies to agency functions listed in AS 44.62.330, and to those agencies where the Administrative Procedures Act is made applicable in the particular statute that grants adjudicatory powers.

I have attached my letter of April 25, 1997 and have additional comments. Currently, the bill contains fundamental drafting flaws that require extensive revision of the bill. Additionally, the bill raises significant legal issues that must be considered.

DRAFTING PROBLEMS

- In a number of proposed amendments to the APA, the language assumes that statutes within the APA are applicable in non-APA proceedings. However, the span of statutes within the APA are by definition only applicable to the listed agencies. *more specific*

- Many statutes within the APA, that are not proposed to be amended, contain language that would be inconsistent with amendments in the bill. In order to correct these inconsistencies, the APA as a whole must be revised.

APPLICATION TO BOARDS AND COMMISSION THAT PROVIDE PURELY ADJUDICATIVE FUNCTIONS

- The bill would remove adjudicatory functions from certain boards and commissions that exist solely for that function, such as the Alaska Labor Relations Agency.

The Honorable Rep. Joe Green
Chair, House Judiciary Committee
House of Representatives

January 26, 1998
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APPLICATION TO LICENSING BOARDS AND COMMISSIONS

- The bill would remove adjudicatory functions from boards and commissions that currently determine licensing and discipline for many occupations and businesses, such as all occupational licensing boards, the Alaska Police Standards Council, and the Alcoholic Beverage Control Board. The AHO would determine suitability for licensure, whether misconduct has occurred, and the level of sanction for misconduct. Those matters are currently determined by citizen boards and commission consisting of persons with particular expertise in the field as well as public members.

FINAL DECISION-MAKING AUTHORITY

- The bill grants final decision-making authority on legal, factual, and public policy issues to the AHO. This is a broad grant of executive power to a non-constitutional judicial officer. Because the agency itself no longer makes the final decision, it would have the power to appeal the AHO's decision to the superior court.

- Currently, the court system grants deference to the expertise of the agency in a number of areas. For example, questions of law involving "special agency expertise, or "the determination of fundamental policies within the scope of the agency's statutory function," are reviewed under the rational basis test. Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 903 (Alaska 1987). In reviewing agency decisions involving fundamental policy determinations, court's role is to ensure that the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making. Id. The "reasonable and not arbitrary " test applies when the court is reviewing an agency interpretation of its own regulations. Handley v. State, Dep't of Revenue, 838 P.2d 1231, 1233 (Alaska 1992). The standard of review is deferential because the "agency is best able to discern its intent in promulgating the regulation at issue." Rose v. Commercial Fisheries Entry Comm'n, 647 P.2d 154, 161 (Alaska 1982). This expertise is lost if final decision-making power is placed with an AHO.

HEARING OFFICER POWERS

- language requiring the chief administrative hearing officer (AHO) to "protect and ensure the decisional independence of each hearing officer" may preclude the chief AHO's ability to promote consistency in decision-making and inhibit the ability to provide supervision.

- allows the Chief AHO to accept "money, grants, bequests, and services" from any public or private source. Presumably, that power is limited to accepting the items for the benefit of the division. The question arises whether this power impermissibly conflicts with the Executive Budget Act or the prohibition on dedicated funds. An additional question is whether funds or services could come from an interested party to an adjudication.

- Does not preclude AHOs from engaging in the practice of law outside of employment as a hearing officer in "pro bono" cases in which an adversary party or decision-maker is the state.

The Honorable Rep. Joe Green
Chair, House Judiciary Committee
House of Representatives

January 26, 1998
Page 3

CLASSIFIED SERVICE

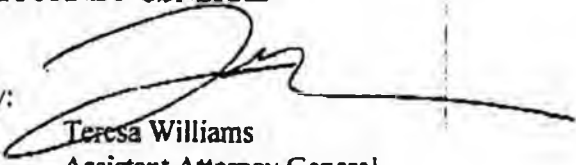
- The placement of AHOs in the classified service poses problems because the Alaska Labor Relations Agency would come under the bill. Inclusion in a bargaining unit could affect the impartiality or interest of AHOs who would be hearing labor relation disputes. (Additionally, the ALRA was moved from the Department of Administration earlier because the department represents the state as an employer.)
- The bill does not state whether the Chief AHO will be in the classified service or the partially-exempt service.
- The minimal performance standard for employees within the classified service to continue in state service is "minimally acceptable."

I would welcome the opportunity to work with your committee and to ongoing opportunities to discuss the issues raised in this bill.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Tercsa Williams
Assistant Attorney General

TW:jem

Attachment

cc: Pat Pourchot, Governor's Legislative Director
Crystal Smith, Dep't of Law Legislative Liaison
David Koivumiemi, Dep't of Administration Legislative Liaison

MEMORANDUM

Date: 5/5/98

To: Joe Green

From: Kevin Jardell

Re: **HB 232 Independent Division of Administrative Hearings and the Administrative Procedure Act.**

BACKGROUND

Representative Ogan introduced HB 232, Independent Division of Administrative Hearings, in the first session of the 20th legislature. The focus of this legislation was to remove the administrative hearing functions of government from the agencies who write, promulgate and enforce regulatory law. At that time the Department of Law, with promises of cooperation in hand, convinced Rep. Ogan that they would assist in drafting the legislation over the interim. Over the interim the Dept. of Law failed to do any work on the issue, and instead waited for the session to attempt to derail the legislation. Based on comments from Assistant Attorney General Teresa Willaims she is attempting to have the administration revise the APA. An attempt was made to draft the necessary changes to the Administrative Procedure Act, but unfortunately, due primarily to subsistence, HB 232 was once again placed on hold until the interim.

A large part of the Dept. of Law's concerns were centered around the need to address the entire Administrative Procedure Act. The administrative procedure act has not undergone a major revision since its inception in 1959. Instead of updating the APA and correcting its problems legislation has focussed on exempting agencies from its regulation.

PROPOSAL

Rewrite the Administrative Procedure Act, including the establishment of an independent division of administrative hearings, over the interim to be introduced in the next legislature.



Co-Chair, House Resources
Community & Regional Affairs
Legislative Council
Special Committee on Fisheries
Special Committee on Oil and Gas

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Representative Scott Ogan
House District 27
SPONSOR STATEMENT

HB-232 / SEPARATION OF POWERS

What HB-232 is designed to do:

Remove administrative hearing functions of government from the agencies who write, promulgate and enforce regulatory law. In other words to separate the adjudicatory function of the executive from the prosecutorial function.

Why HB-232 is needed:

"As a matter of theory, the existence of a judiciary (sometimes quasi-judiciary) within the executive branch of the government seems explicitly self contradictory or, at best, a violation of the doctrine of separation of powers." (Volume XIV Journal of Administrative Law Judges 1994)

1. From The New York Study (ibid.)

"Often the influence of executive agency officials upon those within the agency who have adjudicatory responsibilities is so pervasive as to prevent agency hearings from being truly fair and impartial. Any system in which executive personnel can manipulate what transpires in the hearing room is a system which falls short of its goal and needs to be reformed."

How HB-232 accomplishes the structural goal:

HB-232 is based on a model act unanimously adopted by the American Bar Association House of Delegates in Feb. '97. It is based on Maryland's independent hearing system which is recognized as being the best in existence.

HB-232 establishes the framework for an independent hearing division, including qualifications for officers, judicial conduct, power and duties of hearing officers, authority in decisions, cooperation of other agencies, and appointing authority.

Achieving the full due process goal:

" If the hearing officer is structurally independent of the agency. If his /her position, salary, work conditions, job evaluations, and circumstances of employment are fully protected, his / her only motivation is to hold a fair and impartial hearing". (Vol. XIV Journal of Admin. Law Judges. '94)

The legislature does not have the ability or the authority to manage the administrative hearing process. Only the executive can accomplish this task. The success in providing due process for the public can only be fully realized through the determined efforts of the governor, commissioner, and chief hearing officer. They must work with the legislature to attain the common goal of .. "*delivering high quality adjudication in a timely, cost efficient manner with respect for the dignity of the individual and their due process rights.*" That must be our common mission.

Realizing .. "government seldom operates in the abstract nor are improvements often effectuated in furtherance of political theory..", we as leaders need not fall into those ruts. I urge the House and Senate along with the administration to move forward on HB-232, not only in response to abuses or problems, but even more importantly, as a matter of good government.

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal & Research Services



130 Seward Street, Suite 218
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Phone: (907) 465-3991
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April 25, 1997

MEMORANDUM

TO: Representative Scott Ogan

FROM: Paul Brandt and Patricia Young
Legislative Analysts

BY Young

RE: **State of Alaska Administrative Adjudications--Expenditures for Fiscal Years 1994 Through 1996**
Research Request 97.049 (Revised)

You asked about the cost of administrative adjudications in Alaska state government. Specifically, you wanted to know the total expenditures for administrative adjudications, or appeals, made by each department, the court system, and the University of Alaska during fiscal years 1994 through 1996.¹

In order to obtain the requested information, we surveyed the directors of administrative services, or their equivalent, in each department. Specifically, we asked for the amounts spent on personal services for hearing officers and support personnel, contractual arrangements, and all associated costs including such things as travel, equipment and supplies.² We asked departments to exclude expenditures associated with judicial review of administrative decisions.

¹Pursuant to the Alaska Administrative Procedure Act (Alaska Statutes 44.62.330 - 630), administrative adjudications involve appeals of agency decisions regarding rights, authorities, licenses, or privileges. Among others, appealable decisions would include procurement disputes, labor relations conflicts, permit decisions, cash and medical benefit awards and denials (unemployment insurance, workers' compensation, Medicaid, and public assistance), permanent fund dividend distributions, and denial and revocation of occupational licenses.

²Expenditures for such things as subpoenas; witness fees, travel, food, and lodging; depositions; and reporter services are included in associated costs.

Summary

The results of the survey are compiled on Tables 1 and 2. Table 1 summarizes expenditures made for administrative appeals during fiscal years 1994 through 1996. Table 2 shows expenditures by funding source (general funds, federal funds, and other receipts). Because there is no single source of data in each department and no specific accounting codes are used in the statewide accounting system to identify such expenditures, it is important that these data be viewed as estimates only.

With these caveats in mind, one can see that during the three target years, state expenditures for direct and associated costs of administrative adjudications averaged nearly \$5.5 million per year. Of that amount, an average of approximately \$1.2 million per year were from federal funds. These federal dollars represent funding for administration of programs such as unemployment insurance, child support enforcement, and highways. During each of the target years, over one-third of the state's annual expenditures were made by the Department of Labor, and nearly half of those expenditures were federal funds. The vast majority of administrative adjudications within the Department of Labor involved disputes over unemployment and workers' compensation.

How Expenditure Data Were Compiled

For a variety of reasons, we advise caution when interpreting data presented in Tables 1 and 2. Numerous sources were used to collect expenditure data. No single state department, division, or information source collects specific data on expenditures for administrative adjudications. Some data were simply unavailable.³ Additionally, department personnel used subjective judgments in determining expenditures. For example, because work on appeals comprises only a portion of numerous employees' duties, department officials often had to estimate personal services costs based on perceived percentages of employee time devoted to such appeals. Furthermore, administrators often delegated to division staff the task of determining how much each division spent on administrative appeals. The final expenditure figures, then, are in many cases compilations of data based on the subjective judgment of several individuals. **These data should be viewed strictly as estimates.**

³For example, the Alaska Public Utilities Commission within the Department of Commerce and Economic Development changed its accounting system in March 1996; consequently, commission officials were unable to provide data on adjudication expenditures prior to that time.

Administrative Adjudication Expenditures by Department

Tables 1 and 2 provide data on expenditures for administrative adjudications for each department, the court system, and the University of Alaska for fiscal years 1994 through 1996.⁴ Items of note include the following:

- The Department of Labor (DOL)--which administers cash benefit programs such as unemployment insurance and workers' compensation--reported the largest expenditures for administrative appeals. During fiscal years 1994 through 1996, the Department of Labor's expenditures averaged one-third of the state's total expenditures for administrative appeals as estimated by this survey. Over 40 percent of those expenditures were federal dollars.
- The Departments of Commerce and Economic Development (DCED) and Fish and Game (ADF&G) also reported relatively high expenditures for appeals. These expenditures are largely attributable to DCED's occupational licensing functions and ADF&G's permitting activities. At least 60 percent of DCED's expenditures each year were attributable to investigations related to occupational licensing and disciplinary actions.
- While most departments only deal with administrative appeals generated by internal departmental decisions, the Department of Administration (DOA) is responsible for labor relations complaints involving mediation and arbitration for all state agencies. The expense of labor relations mediators and arbitrators accounted for over 80 percent of DOA administrative appeal expenditures during all three fiscal years.
- The majority of appeals in the Department of Revenue concerned permanent fund dividend eligibility and child support disputes. A significant portion of Revenue's expenditures came neither from the state's general fund nor from federal dollars but from the Permanent Fund Corporation's administrative budget. Additionally, federal dollars for administration of child support enforcement accounted for over 30 percent of the department's expenditures during fiscal years 1995 and 1996.

⁴As of this date, the Departments of Corrections and Education have not yet responded.

Representative Scott Ogan

April 25, 1997

Page 4

- Federal dollars represent an average of 47 percent of appeal expenditures in the Department of Health and Social Services. Most appeals concerned eligibility for Medicaid and cash benefits for public assistance programs.
- Federal dollars represented an average of 71 percent of expenditures for administrative construction and lease appeals in the Department of Transportation and Public Facilities during fiscal years 1994-1996.
- Federal dollars represented an average of 73 percent of appeal expenditures in the Department of Education. Most appeals concerned eligibility for special education and vocational rehabilitation.

We hope this information is useful for your purposes. If you have questions about this data, or need more information, please contact us.

Table 1
Expenditures for Administrative Adjudications
Fiscal Years 1994 - 1996
(dollars in thousands)

Department	Fiscal Year 1994	Fiscal Year 1995	Fiscal Year 1996
Administration (a)	727.8	886.6	812.8
Commerce and Economic Development (b)	837.4	928.1	1,056.6
Community and Regional Affairs (c)	0.0	0.0	0.0
Corrections (d)	64.5	0.0	0.0
Education (e)	63.7	172.0	190.3
Environmental Conservation (f)	5.0	7.4	75.0
Fish and Game (g)	629.2	614.5	612.6
Health and Social Services (h)	341.7	296.0	353.4
Labor (i)	1,684.7	1,781.6	2,041.0
Law (j)	0.0	0.0	0.0
Military and Veterans' Affairs (k)	0.0	0.0	0.0
Natural Resources (l)	7.0	7.8	0.8
Public Safety (m)	15.0	18.0	32.1
Revenue (n)	370.7	374.1	352.6
Transportation and Public Facilities (o)	114.7	46.0	137.3
University of Alaska (p)	276.2	192.2	205.6
Alaska Court System (q)	2.9	5.3	12.3
Office of the Governor, Lt. Governor, and Division of Elections (r)	16.8	9.6	46.3
Total	5,157.3	5,339.2	5,928.7

NOTES:

Departments responded to a survey asking for administrative appeals expenditures for fiscal years 1994 through 1996. Data include amounts spent for personal services (hearing officers, persons serving in that capacity, and support personnel); contractual arrangements; and associated costs including travel, equipment, and supplies. Costs associated with judicial review of administrative procedures were not included.

- (a) Administration--Most expenditures were for labor-related appeals. The department is responsible for mediation and arbitration in labor relations disputes for all departments.
- (b) Commerce and Economic Development--Most expenditures were for occupational licensing appeals, and at least 60 percent of these expenditures were for investigations regarding licensing and disciplinary actions. The department total does not include complete data for the Alaska Public Utilities Commission because of changes in their accounting system.
- (c) Community and Regional Affairs--No expenditures for administrative appeals during fiscal years 1994-1996.
- (d) Corrections--Most 1994 expenditures were for an RSA with the Department of Law for prisoner rights litigation.
- (e) Education--Most expenditures were for special education and vocational rehabilitation related appeals. The department continues to compile data for 1994; consequently, the 1994 data is incomplete.
- (f) Environmental Conservation--Most expenditures were for air quality, water quality, or solid waste permit appeals.
- (g) Fish and Game--Most expenditures were for permit appeals before the Commercial Fisheries Entry Commission.
- (h) Health and Social Services--Most expenditures were for appeals concerning Medicaid and cash benefits for public assistance programs.
- (i) Labor--Most expenditures were for workers' compensation and unemployment benefit appeals.
- (j) Law--No expenditures for administrative appeals during fiscal years 1994-1996.
- (k) Military and Veterans' Affairs--No expenditures for administrative appeals during fiscal years 1994-1996.
- (l) Natural Resources--Most expenditures were for appeals concerning procurement disputes or land use permits.
- (m) Public Safety--Most expenditures were for hearings before the Violent Crimes Compensation Board.
- (n) Revenue--Most expenditures concerned permanent fund dividend eligibility and child support enforcement.
- (o) Transportation and Public Facilities--Most expenditures were for construction and lease appeals.
- (p) University of Alaska--Most expenditures were for labor relations, procurement-related appeals, and student grievances.
- (q) Alaska Court System--Expenditures were for procurement-related appeals.
- (r) Office of the Governor--Expenditures were for hearings before the Human Rights Commission.

SOURCES: Directors of Administrative Services for each department.

TABLE 2
Expenditures for Administrative Adjudications (a)
Fiscal Years 1994-1996
(dollars in thousands)

Department	Fiscal Year 1994				Fiscal Year 1995				Fiscal Year 1996			
	Federal Receipts	General Fund	Other Receipts (b)	Total	Federal Receipts	General Fund	Other Receipts (b)	Total	Federal Receipts	General Fund	Other Receipts (b)	Total
Administration	0.0	727.8	0.0	727.8	0.0	886.6	0.0	886.6	0.0	812.8	0.0	812.8
Commerce and Economic Development	0.0	820.4	17.0	837.4	0.0	911.1	17.0	928.1	0.0	1,056.6	17.0	1,056.6
Community and Regional Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Corrections	0.0	64.5	0.0	64.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Education	46.5	0.0	17.2	63.7	138.9	10.0	23.1	172.0	123.1	20.0	47.2	190.3
Environmental Conservation	0.0	5.0	0.0	5.0	0.0	7.4	0.0	7.4	0.0	75.0	0.0	75.0
Fish and Game	0.0	629.2	0.0	629.2	0.0	614.5	0.0	614.5	0.0	612.6	0.0	612.6
Health and Social Services	170.3	171.4	0.0	341.7	147.3	148.7	0.0	296.0	142.0	162.2	49.2	353.4
Labor	682.7	1,002.0	0.0	1,684.7	735.1	1,046.5	0.0	1,781.6	852.1	1,188.9	0.0	2,041.0
Law	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Military and Veterans' Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Natural Resources	0.0	7.0	0.0	7.0	0.0	7.8	0.0	7.8	0.0	0.8	0.0	0.8
Public Safety	0.0	0.0	15.0	15.0	0.0	0.0	18.0	18.0	2.0	1.6	28.5	32.1
Revenue	0.0	90.3	280.4	370.7	101.4	39.2	233.5	374.1	123.5	39.5	189.8	352.6
Transportation and Public Facilities	114.7	0.0	0.0	114.7	14.4	9.6	22.0	46.0	112.2	0.7	24.4	137.3
University of Alaska	0.0	276.2	0.0	276.2	0.0	192.2	0.0	192.2	0.0	205.6	0.0	205.6
Alaska Court System	0.0	2.9	0.0	2.9	0.0	5.3	0.0	5.3	0.0	12.3	0.0	12.3
Office of the Governor, Lt. Governor, and Division of Elections	0.0	16.8	0.0	16.8	0.0	9.6	0.0	9.6	0.0	46.3	0.0	46.3
Total	1,014.2	3,813.5	329.6	5,157.3	1,137.1	3,888.5	313.6	5,339.2	1,354.9	4,234.9	356.1	5,928.7

NOTES:

(a) Departments responded to a survey asking for data on expenditures for administrative appeals for fiscal years 1994 through 1996, including amounts spent for all personal services, contractual arrangements, and all associated costs such as travel, equipment, and supplies. Departments excluded costs associated with judicial review of administrative procedures. See Table 1 for additional notes.

(b) "Other" receipts include Reimbursable Service Agreements (RSA) from other agencies (for DCED and DHSS), administrative funds from the Permanent Fund (for Revenue), and an RSA of lease receipts from Anchorage International Airport (for DOT/PF).

SOURCES: Directors of Administrative Services in each department.

STATE OF COLORADO

GENERAL SUPPORT SERVICES
DIVISION OF ADMINISTRATIVE HEARINGS

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Denver, Colorado 80203
Phone: (303) 894-2500
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Roy Romer
Governor

Department of Personnel
André N. Pettigrew
Executive Director

Edwin L. Felter, Jr., Director
and Chief Administrative Law Judge

April 18, 1997

Teresa Williams, Esq.
Assistant Attorney General
Office of the Attorney General
1031 West 4th Ave., Suite 200
Anchorage, Alaska 99501

Re: Model Act Creating the State Central Hearing Agency

Dear Ms. Williams:

Per your telephone request of today, I am enclosing the Model Act as unanimously adopted by the House of Delegates of the American Bar Association in San Antonio on February 3, 1997.

If you need anything further or have additional questions, please feel free to call me at any time.

Very truly yours,

Edwin L. Felter, Jr.

enclosure

**CREATING A
STATE CENTRAL HEARING AGENCY
(OFFICE OF ADMINISTRATIVE HEARINGS)**

AN ACT concerning

Office of Administrative Hearings

FOR the purpose of establishing an Office of Administrative Hearings as an independent agency in the Executive Branch in order to provide a source of independent administrative law judges to preside in contested cases; providing for the appointment of a chief administrative law judge; establishing the chief administrative law judge's qualifications, compensation, powers, and duties . . . [other purposes]

Section 1. BE IT ENACTED BY THE [NAME OF LEGISLATIVE BODY], That the Laws of [STATE] read as follows:

Article - State Government

Subtitle []. Office of Administrative Hearings

Part I. Office of Administrative Hearings

Section 1-1 Scope of Subtitle.

(a) Exceptions - - This subtitle does not apply to:

- (1) an agency of the Legislative Branch of the State government;**
- (2) an agency of the Judicial Branch of the State government; or**
- (3) the following agencies of the Executive Branch of the State government:**

- (i) the Governor;
- (ii) [exception]; and
- (iii) [exception]

(b) except as provided in paragraphs (1), (2), and (3) of subsection (a) of this section, this subtitle shall apply to each agency that employs or engages one or more hearing officers or administrative law judges, either full or part-time, to adjudicate contested cases unless the agency has been exempted by the Governor under subsection (c) of this section.

(c) until one year from the effective date of this statute the Governor temporarily may exempt an agency from this subtitle.

Section 1-2 Establishment and Appointment of Administrative Law Judges

(a) The Office of Administrative Hearings is created as an independent agency in the Executive Branch of State Government for the purpose of separating the adjudicatory function from the investigatory, prosecutory and policy-making functions of agencies in the Executive Branch. Administrative law judges shall be selected and appointed [by the Governor upon screening and recommendation of a judicial nominating commission] [through competitive examination in the classified service of state employment] [by the chief administrative law judge].

(b) The hearing officers and administrative law judges of the agencies to which this subtitle applies shall become employees of the Office of Administrative Hearings. [The grandfathered hearing officers and administrative law judges are exempt from the qualifications contained in Section 1-6(a)(2).]

Section 1-3 Responsibility.

(a) Except as provided herein, the Office shall administer the resolution of all contested cases [unless the agency head or governing body of any agency hears the case without delegation or assignment to a hearing officer or administrative law judge].

(b) Upon referral by an agency, one or more administrative law judges shall administer the resolution of the matters referred.

Section 1-4 Chief Administrative Law Judge - In general.

(a) The Office is headed by a chief administrative law judge [appointed by the Governor with advice and consent of the Senate for a term of () years], [through competitive examination in the classified service of state employment] who may be removed only for good cause following notice, and an opportunity for an adjudicative hearing and shall continue in office until a successor is appointed.

(b) The chief administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;
- (2) devote full time to the duties of the Office and shall not engage in the practice of law;
- (3) be eligible for reappointment;
- (4) receive the salary provided in the state budget [receive a salary in the same amount as that provided by law for a { } court judge];
- (5) be licensed to practice law in the State and admitted to practice for a minimum of five years;

- (6) have the powers and duties specified in this subtitle; and
- (7) be subject to the code of conduct for administrative law judges.

(c) The chief administrative law judge may employ a staff in accordance with the State budget.

Section 1-5 Chief Administrative Law Judge - Powers and Duties.

(a) The chief administrative law judge shall:

- (1) supervise the Office of Administrative Hearings;
- (2) [appoint and remove administrative law judges in accordance with this subtitle (the other option is for the Governor to appoint through a judicial nominating commission as provided by Section 1-2)];
- (3) assign administrative law judges in any case referred to the Office;
- (4) protect and ensure the decisional independence of each administrative law judge;
- (5) establish and implement standards and specialized training programs and provide materials for administrative law judges;
- (6) provide and coordinate continuing education programs and services for administrative law judges, including research, technical assistance, technical and professional publications, compile and disseminate information, and advise of changes in the law relative to their duties;
- (7) adopt rules to implement this subtitle through rulemaking proceedings in accordance with the Administrative Procedure Act or other law.
- (8) adopt a code of conduct for administrative law judges;

- (9) monitor the quality of state administrative hearings through the provision of training, observation, feedback and, when necessary, discipline of A.L.J.s who do not meet appropriate standards of conduct and competence, subject to the provisions of Section 1-6(a)(4) below;
- (10) submit an annual report on the activities of the Office to the Governor and to the [Legislature].
- (11) [cooperate and assist the State Advisory Council in the discharge of its duties pursuant to Sections 1-12 through 1-14 of this Act.]

(b) The chief administrative law judge may:

- (1) serve as an administrative law judge in a contested case;
- (2) [establish qualifications for the selection of administrative law judges];
- (3) furnish administrative law judges on a contractual basis to governmental entities other than those required to use their services;
- (4) accept and expend funds, grants, bequests and services, which are related to the purpose of the Office, from any public or private source;
- (5) enter into agreements and contracts with any public or private agencies or educational institutions;
- (6) [create specialized subject matter divisions within the Office.]

Section 1-6 Administrative Law Judges.

(a) An administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;

- (2) be admitted to practice law [in the State] [for a minimum of five years];
- (3) be subject to the requirements and protections of [e.g., classified service of State employment and the State ethics code];
- (4) be removed, suspended, demoted, or subject to disciplinary or adverse actions including, any action that might later influence a reduction in force, only for good cause, after notice and an opportunity to be heard in an Administrative Procedure Act or other statutory-type hearing and a finding of good cause by an impartial hearing officer;
- (5) be subject to a reduction in force only in accordance with established, objective civil service or merit system procedures;
- (6) receive compensation provided in the State budget [receive a salary in the same amount as that provided by law for a (_____) court judge];
- (7) not perform duties inconsistent with the duties and responsibilities of an administrative law judge;
- (8) devote full time to the duties of the position and [shall not engage in the practice of law unless serving as a part-time administrative law judge];
- (9) be subject to administrative supervision by the chief administrative law judge; and
- (10) be subject to the code of conduct for administrative law judges.

(b) An administrative law judge shall not be responsible to or subject to the supervision, direction or direct or indirect influence of an officer, employee, or agent engaged in the performance of investigatory, prosecutory, or advisory functions for an agency.

Section 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.

(a) All agencies of State government shall cooperate with the chief administrative law judge in the discharge of the duties of the Office.

(b) The Office shall be subject to audit by [the legislative audit office under the same rules and rotation by which other State agencies are audited].

(c) Except in arbitration or similar proceedings as provided by law or in this subtitle or in regulations adopted under this subtitle, an agency may not select or reject a particular administrative law judge for a particular proceeding.

Section 1-8 Designation of Administrative Law Judges.

If the Office is unable to assign an administrative law judge in response to an agency referral, the chief administrative law judge shall designate in writing an individual to serve as an administrative law judge in a particular proceeding before the agency [if the individual meets the qualifications for an administrative law judge established by the Office and is subject to the Code of Judicial Conduct].

Section 1-9 Powers of Administrative Law Judges.

An administrative law judge shall have the power to: (1) issue subpoenas; (2) administer oaths; (3) control the course of the proceedings; (4) engage in or encourage the use of alternative dispute resolution methodologies as appropriate; and (5) order a party, a party's attorney, or other authorized representative, to pay reasonable expenses,

including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, (6) perform other necessary and appropriate acts in the performance of duties.

Section 1-10 Decision-making Authority.

(a) The assigned administrative law judge shall render the final decision of the agency not subject to agency review, in all hearings for the following agencies:

- (1) [Name of Agency];
- (2) [Name of Agency]; and
- (3) [Name of Agency].

(b) Except as provided by law, the administrative law judge shall issue a proposed [initial, recommended] decision unless the agency authorizes the issuance of a final decision, as provided in the Administrative Procedure Act..

(c) Where a matter is referred to the Office by an agency, the referring agency shall take no further adjudicatory action with respect to the proceeding, except as a party litigant, as long as the Office has jurisdiction over the proceeding. [Nothing in this subsection shall be construed to prevent an appropriate interlocutory review by the agency nor an appropriate termination or modification of the proceeding by the agency.]

Section 1-11 Proposed Decisions and Orders.

In reviewing a proposed (initial, recommended) decision or order received from the administrative law judge, the agency head or governing body of the agency shall not modify, reverse or remand the proposed decision of the administrative law judge except for specified reasons in accordance with law. Judicial review of agency decisions shall occur in accordance with the Administrative Procedure Act [or other specific statutory provision].

OPTIONAL

**Section 1-12 State Advisory Council on Administrative Hearings -
Establishment; Composition; Appointment.**

- (a) There is a State advisory council on administrative hearings.
- (b) The council consists of nine members.
- (c) Of the nine council members:
 - (1) One shall be a member of the Senate of [];
 - (2) One shall be a member of the House of [];
 - (3) One shall be the Attorney General or the Attorney General's designee;
 - (4) Two shall be directors, secretaries, chief executives, or their designees from agencies involved in the adjudication of contested cases before the Office.
 - (5) Two shall be from the general public; and

(6) Two shall represent the state bar association.

(d) The Governor shall appoint the members specified in subsection (c)(4) through (6) of this section.

Section 1-13 Terms; Compensation; Chair.

- (a) (1) The term of a member of the council is four years.
(2) The terms of the members are staggered as required by the terms provided for members of the council on [DATE].
(3) A member is eligible to serve more than one term.
(4) A member shall not be disqualified by virtue of being engaged in the practice of law or appearing regularly as an attorney before the Office.

(b) A member of the council may not receive compensation, but is entitled to reimbursement for expenses under the standard state travel regulations.

(c) The council shall designate a chair from among its members.

Section 1-14 Powers and Duties; Meetings.

- (a) The council shall:
- (1) advise the chief administrative law judge in carrying out the duties of the Office;

- (2) identify issues of importance to administrative law judges that should be addressed by the chief administrative law judge;
- (3) review issues and procedures relating to administrative hearings and the administrative process:
- (4) review and comment upon rules of procedure and other regulations and policies proposed by the chief administrative law judge;
- (5) review and comment on the annual report submitted by the chief administrative law judge; and
- (6) conduct a study of agencies which employ hearing officers to adjudicate contested case hearings which have been exempted by the Governor pursuant to Section 1-1(3) and recommend to the Governor those agencies for which such exemption should be continued by [DATE].

(c) The council shall meet at a regular time and place to be determined by the council.

Section 1-15 Effective Date.

That Sections 1-1 through 1-14 shall take effect on [DATE].

MODE! ACT: February 3, 1997, as unanimously adopted by the House of Delegates of the American Bar Association.

propmode.cor/sb/cl

HEIN
ED ~~HEIN~~
586 7261
PRO - ALJ

MEMO TO: Dave Stancliffe
FROM: Ed Hein *EA*
RE: HB 232 -- Independent Division of Administrative Hearings
DATE: January 19, 1998

Sectional analysis of HB 232

Sec. 1. Purpose and Intent is to provide for:

- increased separation of the administrative adjudication function from agencies' investigative, prosecutory, and policy-making functions;
- the rendering of high-quality, timely administrative adjudications;
- respect & dignity of parties and a guarantee of due process protections in administrative hearings.

Sec. 2. Adds responsibility for the Independent Division of Administrative Hearings [IDAH] and Chief Administrative Hearing Officer [CAHO] to the Department of Administration's duties.

Sec. 3. Creates the Independent Division of Administrative Hearings. Adds new Article 9 to AS 44.21. [New sections]:

AS 44.21.510. Division and Chief Administrative Hearing Officer

(a) Places IDAH in Department of Administration, to be headed by a Chief Administrative Hearing Officer [CAHO].

(b) Specifies that CAHO will be appointed by Commissioner of Administration; must be an Alaska licensed attorney, admitted to practice for 5 years; must devote full time to the position and may not practice law privately for compensation while in office.

AS 44.21.520. Powers & duties of CAHO

(a) Mandatory duties: supervise division; hire hearing officers and staff; assign cases for hearings; contract with temporary hearing officers if no qualified hearing officer is available within IDAH to hear particular cases; ensure decisional independence of hearing officers; establish and implement standards and training programs for hearing officers; monitor quality of state's administrative hearings; submit annual report to governor; adopt a code of conduct for hearing officers; adopt regulations to implement this legislation.

(b) Discretionary powers: CAHO may serve as a hearing officer in individual cases; set requirements for establishing a register of qualified hearing officers (licensed Alaska attorneys with 5 years' law practice); assign hearing officers to non-Article 8 cases at agencies' request; receive appropriate money, grants, gifts, and services from public and private sources.

AS 44.21.530. Powers of, and restrictions on, hearing officers.

(a) In addition to other specified duties, hearing officers: may engage in alternative dispute resolution (ADR) methods; may order a party to pay reasonable expenses of other side for frivolous or bad-faith actions; is subject to a code of conduct established by CAHO.

(b) Hearing officers: may not perform duties inconsistent with responsibilities; must devote full-time to duties (unless appointed to part-time position); may not engage in private practice of law for compensation.

(c) Hearing officers cannot be subject to supervision or influence by agency employees engaged in investigations, prosecutions, or advisory functions.

AS 44.21.540. Cooperation of other state agencies

(a) Agencies must cooperate with division and chief

(b) Agencies may not select or reject particular hearing officers assigned by CAHO, except as otherwise provided by law for arbitration or similar proceedings or special circumstances recognized in regulations.

(c) Agencies cannot take further action in the proceeding after matter is referred to the division.

AS 44.21.590. Defines "division" as IDAH for purposes of Article 9 of AS 44.21.

Sec. 4. Amends AS 44.62.350(a) to shift authority to appoint hearing officers from governor to CAHO in contested cases governed by APA Article 8 or when an agency has requested CAHO to assign a hearing officer.

Sec. 5. Amends AS 44.62.350(b) to prohibit agency hearing officers from hearing cases governed by IDAH.

Sec. 6. Amends AS 44.62.450(a) by deleting agencies' authority to determine whether agency will hear contested cases along with the hearing officer.

Sec. 7. Amends AS 44.62.450(b) by eliminating agencies' presiding over hearings in contested cases.

Sec. 8. Amends AS 44.62.450(c) by deleting agency members from recusal provision for contested cases.

Sec. 9. Clean-up amendment of AS 44.62.500(b), concerning proposed decisions, reflecting

changes in Secs. 6-8, and 11.

Sec. 10. Amends AS 44.62.500(c) [APA] to provide that if the proposed decision in a contested case is not adopted by the agency, the agency may decide the case or refer it to the CAHO for assignment to the same or a different hearing officer.

Sec. 11. Adds new subsections (d) and (e) to AS 44.62.500 [APA] to provide that:

(d) an agency must specify on the record the reasons for modifying, reversing, remanding, or order reconsideration of a proposed decision; and prohibits the agency from taking action to change a hearing officer's final decision.

(e) hearing officers' decisions in adjudications under APA Article 8 are final decisions, not subject to agency review; agencies that voluntarily use IDAH hearing officers may authorize the hearing officer to make the final administrative decision in the case; copies of the decision must be served on the parties and filed with the Lieutenant Governor; provides for judicial review and reconsideration of hearing officers' final decisions.

Sec. 12. Amends AS 44.62.520(a) to allow hearing officers to order an effective date of decision sooner than 30 days.

Sec. 13. Amends AS 44.62.540 to provide for reconsideration of cases by hearing officers.

Sec. 14. Amends AS 44.62.590(a) to add hearing officers to provisions for certifying facts regarding contempt to the superior court.

Sec. 15. Amends AS 44.62.640(b) to add definition of "chief administrative hearing officer."

Sec. 16. Repeals AS 44.62.500(a), which had provided for agencies to hear contested cases, but had required the hearing officer who presided at the hearing to be present during consideration of the case and, if requested, to advise the agency.

Sec. 17. Transitional provision allowing existing state hearing officers to be eligible for hiring as hearing officers with the IDAH.

Sec. 18. Effective date.

Comparison of HB 232 with ABA Model Act Creating a State Central Hearing Agency (1997)

Model Act was originally proposed and drafted by the National Association of Administrative Law Judges [NAALJ] in 1995. It was circulated and discussed among all state central panel chief judges before being approved unanimously by the American Bar Association's House of

Delegates on February 3, 1997.

The Model Act, like HB 232, provides for establishment of a corps of independent administrative law judges [ALJs] who will, in appearance and in fact, be separated from potential bias, conflicts of interest, and undue influence of the state administrative agencies whose actions the ALJs review in contested cases brought by private parties.

The Model Act provides for the establishment of an Office of Administrative Hearings [OAH], to be headed by a Chief Administrative Law Judge. The Act is set out in 15 sections.

Sec. 1-1 Scope.

The Model Act exempts from coverage all Legislative and Judicial branch agencies, the Governor, and individual executive departments and agencies specified by the Legislature. It allows the Governor to temporarily exempt individual agencies during the first year after the Act takes effect. Within the Executive branch, all non-exempted agencies having hearing officers or ALJs would be covered by the Act.

HB 232 covers only agencies listed in AS 44.62.330, who administrative adjudications in contested cases are governed by Article 8 of the Administrative Procedure Act. Other Executive branch agencies may request that IDAH hearing officers be assigned to decide their cases on an individual basis.

Sec. 1-2 Establishment and Appointment of Administrative Law Judges

The Model Act creates the Office of Administrative Hearings as an independent agency in the Executive branch. The Act proposes that ALJs would be selected and appointed either by: 1) the Governor, after screening and recommendation by a judicial nominating commission; 2) competitive examination in the classified service; or 3) the CAHO. The Model Act would automatically make all existing state hearing officers employees of the IDAH, and would exempt such grandfathered hearing officers from the qualification requirements of the Act.

HB 232 makes the IDAH an independent Executive branch agency within the Department of Administration. The bill specifies that IDAH hearing officers are to be hired by the CAHO. Existing state hearing officers do not automatically become employees of the IDAH, but all who apply are eligible for such employment under the bill's transitional provision. The bill does not clearly state whether such hearing officers must meet the qualifications specified elsewhere in the bill [Alaska licensed attorneys with 5 years law practice], nor does it require the CAHO to hire any of them.

Sec. 1-3 Responsibility.

The Model Act provides that the Office of Administrative Hearings shall handle all contested administrative cases, except as otherwise provided in the Act. An optional provision would also exempt cases heard by the heads or governing bodies of individual agencies without a hearing officer.

HB 232 removes the authority of covered agencies to conduct their own hearings in

contested cases. Exempted agencies would continue to be able to conduct their own hearings.

Sec. 1-4 Chief Administrative Law Judge - In General.

The Model Act provides that the Chief Administrative Law Judge would be either: 1) appointed by the Governor, with advice and consent of the Senate for a term of years; or 2) under the classified service and hired through competitive examination. In either event, the Chief ALJ could be removed only for good cause following notice and an opportunity for an administrative hearing. A removed Chief ALJ would continue in office until a successor is appointed.

HB 232 provides that the CAHO is appointed by the Commissioner of Administration. No term of office is specified and no grounds for removal are stated. Presumably the CAHO's term and removal would be governed by the same provisions that govern other division directors appointed by the commissioner.

The Model Act mandates that the Chief Administrative Law Judge must: take an oath of office; devote full time to the duties of the office; be eligible for reappointment; receive the salary provided in the state budget [or the same salary as a state judge]; be currently licensed to practice law in the state and have been licensed for at least 5 years; and be subject to a code of conduct for ALJs. The Chief Administrative Law Judge may employ staff within the state budget.

HB 232 provides that the CAHO must be an Alaska licensed attorney, admitted to practice for 5 years; must devote full time to the position and may not practice law privately for compensation while in office.

Sec. 1-5 Chief Administrative Law Judge — Powers and Duties.

The Model Act requires the Chief Administrative Law Judge to supervise the Office of Administrative Hearings [OAH]; assign ALJs to cases referred to the OAH; protect and ensure the decisional independence of each ALJ; establish and implement standards and specialized training programs for ALJs; adopt rules to implement the Act; adopt a code of conduct for ALJs; monitor the quality of state administrative hearings; submit an annual report on the OAH to the Governor [and the Legislature]; [cooperate and assist with a State Advisory Council, if any].

The Model Act authorizes the Chief Administrative Law Judge to serve as an ALJ in individual contested cases; [establish qualifications for the selection of ALJs]; furnish ALJs to other agencies by contract; accept funds, grants, gifts, and services related to the purposes of the OAH; enter into contracts with public and private agencies or educational institutions; and [create specialized subject matter divisions within the OAH].

HB 232 provides virtually all the same powers and duties as the Model Act.

Sec. 1-6 Administrative Law Judges

The Model Act provides that ALJs shall: take an oath of office; be admitted to law practice [in the state][for at least 5 years]; be subject to the requirements and protections of state employment [classified service employees' protections]; be removed or disciplined only for good cause, after notice and an opportunity to be heard in an APA or statutory-type hearing and a

finding of good cause by an impartial hearing officer; be subject to reduction in force only in accordance with established civil service or merit system procedures; be compensated as provided in the state budget [or salary pegged to state judges' salaries]; not perform duties inconsistent with ALJ duties and responsibilities; devote full time to the position of ALJ [unless appointed part-time]; be subject to supervision by the Chief Administrative Law Judge; and be subject to the code of conduct for ALJs.

The Model Act also provides that ALJs are not to be supervised, directed, or influenced by agency officials or employees engaged in investigations, prosecutions, or advisory functions.

HB 232 has a much shorter section on administrative hearing officers. Qualifications for hearing officers are provided elsewhere, but are the same as the Model Act. HB 232 gives hearing officers the same powers and duties already prescribed in Article 8 of the APA. The bill also specifically provides, like the Model Act, that hearing officers: are subject to a code of conduct; may not perform duties inconsistent with their responsibilities as hearing officers; may not engage in private law practice; and cannot be subject to supervision or influence by agency employees engaged in investigations, prosecutions, or advisory functions.

Sec. 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.

The Model Act requires all state government agencies to cooperate with the Chief Administrative Law Judge; subjects the OAH to audit by the Legislative audit office; prohibits agencies from selecting or rejecting particular hearing officers of the OAH.

HB 232 likewise requires other state agencies to cooperate with the CAHO and prohibits them from selecting or rejecting hearing officers assigned by the CAHO, except in cases of arbitration or other special circumstances recognized in regulations. HB 232 does not provide for Legislative audit.

Sec. 1-8 Designation of Administrative Law Judges.

The Model Act provides that the Chief Administrative Law Judge shall designate in writing an individual to serve as an ALJ in a proceeding before an agency if the OAH does not have an ALJ that can be assigned in response to an agency referral.

HB 232 authorizes the CAHO to contract with suitable individuals to serve as temporary hearing officers within the IDAH if no qualified IDAH hearing officer is available.

Sec. 1-9 Powers of Administrative Law Judges.

The Model Act gives ALJs power to: issue subpoenas; administer oaths; control the course of proceedings; use alternative dispute resolution methods; order a party or their attorney to pay reasonable expenses for bad-faith actions or tactics that are frivolous or intended solely to cause unnecessary delay.

HB 232 either provides all these powers or gives hearing officers the powers already listed in Article 8 of the APA. These existing powers include subpoena power, among others. [See new Sec. 44.21.530(a)] It may be advisable to make clean-up amendments to specific sections of Article 8 to clarify whether hearing officer, the agency, or both are intended to exercise particular powers.

Sec. 1-10 Decision-making Authority.

The Model Act makes ALJs' decisions the final decision, not subject to further agency review, for those agencies specifically named under this section of the Act. All other ALJ decisions would be proposed decisions, unless the agency authorizes issuance of a final decision. The Act prohibits agencies who have referred matters to the OAH from taking any further adjudicatory action in a case while it is under OAH's jurisdiction. [An optional provision would allow interlocutory review, termination, or modification of the proceeding by the agency.]

HB 232 makes hearing officers' decisions final decision for all agencies required to submit cases to IDAH. Decisions in voluntary agency referrals can be final decisions if authorized by the referring agency, but otherwise are proposed decisions. Like the Model Act, agencies may not take further action in a proceeding after the matter has been referred to the IDAH.

Sec. 1-11 Proposed Decisions and Orders.

The Model Act provides that agencies reviewing proposed IDAH decisions cannot modify, reverse, or remand the decisions except for specified reasons in accordance with law.

HB 232 requires agencies to specify on the record their reasons for modifying, reversing, remanding, or ordering reconsideration of proposed decisions.

Secs. 1-12 — 1-14 [Optional] State Advisory Council on Administrative Hearings.

The Model Act proposes creation of a nine-member State Advisory Council on Administrative Hearings, consisting of two legislators, the Attorney General, two agency heads, two members of the public, and two representatives of the state bar association. Terms would be for four years, staggered. The Council would advise the CAHO on carrying out the duties of the office; identify important issues to be addressed by the CAHO; review issues and procedures relating to hearings and the administrative process; review and comment on rules of procedure and the IDAH annual report; and study agencies exempted from the Act that employ hearing officers.

HB 232 does not include this provision.

Sec. 1-15 Effective Date.

Potential benefits of enactment of HB 232

- Improved impartiality of hearing officers and their decisions
- Improved quality of the hearing process
- Improved management and training programs
- Reduction in staff
- Reduced costs
- Would attract experienced and politically insulated career professionals

Issues that may need to be addressed in HB 232

ISSUE: Accountability & independence

Who will review CAHO's performance?

ISSUE: Salary & grade of CAHO

Not specified. Will this be same as a division director? A superior or district judge?

Technical amendments needed:

- AS 44.21.520(b)(2) -- delete "and the practice of law in this state" (duplication).
- Change date in Sec. 17 Transitional Provision.
- Change the bill's effective date.

NOTE: I am the Chief Appeals Officer of the National Marine Fisheries Service for the Alaska Region, and a member of the Alaska Bar Association and the National Association of Administrative Law Judges. This memorandum does not necessarily represent or reflect the views of the Alaska Bar Association, National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, the U.S. Department of Commerce, or the United States Government. The bill is supported by the National Association of Administrative Law Judges, of which I am also a member. Ed Hein

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

April 25, 1997

SUBJECT: Sectional Summary of HB 232. (Administrative Hearings)

TO: Representative Scott Ogan
Attn: Dave Stancliff

FROM: Terri Lauterbach 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, let me know.

Section 1. Purpose and intent section.

Section 2. Amends a general statute that sets out duties of the Department of Administration by adding the duties of the independent division of administrative hearings, which is established in sec. 3.

Section 3. Adds a new division to the Department of Administration - the independent division of administrative hearings.

Sec. 44.21.510 creates the division and describes the qualifications of the chief administrative hearing officer who will direct the division.

Sec. 44.21.520 describes the powers and duties of the chief administrative hearing officer.

Sec. 44.21.530 specifies the powers, duties, and qualifications of hearing officers employed by the new division.

Representative Scott Ogan

April 25, 1997

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Sec. 44.21.540 governs some of the aspects of the relationship between the division and other state agencies.

Sec. 44.21.590 defines "division."

Section 4. Provides that hearing officers for cases governed by the contested case procedures of the Administrative Procedure Act (APA) will be assigned by the chief administrative hearing officer, not the governor. Also applies to cases where the agency is not under the APA but voluntarily requests that the chief hearing officer assign a hearing officer.

Section 5. Prohibits an agency from assigning an "in-house" hearing officer to a case that is governed by the APA.

Sections 6 - 8. Provide that APA hearings will be presided over only by a hearing officer, not the agency.

Section 9. Technical amendment corresponding to the new subsection (e), added by sec. 11. Subsection (e) specifies circumstances under which a hearing officer issues a final decision, rather than the proposed decision described in sec. 9.

Section 10. Provides that in those cases where a hearing officer issues only a proposed decision, the agency may ask the chief administrative hearing officer to assign the same or another hearing officer to take additional evidence before the agency decides the case.

Section 11. Adds a new subsection (d) that limits agency discretion with regard to both proposed and final decisions of administrative hearing officers.

Also adds a new subsection (e) that provides that the decision of a hearing officer in a case that is governed by the APA is the final administrative decision, not subject to agency review, but subject to judicial review under AS 44.62.560 - 44.62.570.

Section 12. Amends the statute related to the effective date of decisions to accommodate situations where the hearing officer issues a final decision rather than the agency.

Section 13. Amends the statute on reconsideration to accommodate situations where the hearing officer issues a final decision rather than the agency.

Section 14. Allows a hearing officer to certify facts to the court.

Section 15. Defines "chief administrative hearing officer."

Section 16. Repeals a provision made obsolete by the other changes in the bill. APA hearings will no longer be "before an agency." They will be before a hearing officer.

Representative Scott Ogan

April 25, 1997

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Section 17. Permits current "in-house" hearing officers to be hired for positions in the new independent division if the person is qualified.

Section 18. Effective date of July 1, 1997.

TML:pl

97-120.plm

HB-232 / SEPARATION OF POWERS

QUALIFICATIONS HEARING OFFICERS MUST HAVE IF THE GOALS OF DUE PROCESS AND INDIVIDUAL INTEGRITY FOR CITIZENS IS ACHIEVED UNDER HB-232. (From Journal of the National Assoc. of Administrative Law Judges, Vol. XIX, '94)

APPENDIX 2 QUALIFICATION STANDARDS ADMINISTRATIVE LAW JUDGE OFFICE OF ADMINISTRATIVE HEARINGS

The purpose of the Office of Administrative Hearings is to promote administrative justice and to serve the public interest. An Administrative Law Judge shall be distinguished for his or her integrity, wisdom and sound legal knowledge, and shall inspire confidence in his or her personal honesty, fairness and moral courage.

A candidate or incumbent shall possess, at a minimum, the following qualifications in order to obtain an appointment to, or retain the position of, Administrative Law Judge.

Integrity

An Administrative Law Judge shall possess a high degree of personal integrity, and shall deal with his or her appointments as a public trust. An Administrative Law Judge shall be honest, sincere, upright and principled, and shall exhibit compassion, humility and moral courage. An Administrative Law Judge shall be indifferent to private political or partisan influence. An Administrative Law Judge shall not administer the office for the purpose of advancing his or her personal ambitions, and shall not allow other affairs or private interests to interfere with the proper performance of official duties.

Impartiality

An Administrative Law Judge shall adhere to a high standard of justice and lawfulness, and shall treat all parties impartially and fairly without reference to his or her own feelings or interests. An Administrative Law Judge shall have the ability to preside justly and without bias. An Administrative Law Judge shall exhibit a willingness to hear and consider what is put forth on all sides of a debatable proposition, and shall have the ability to give genuine consideration to views with which he or she does not personally agree.

The Central Hearing Agency: Theory And Implementation In Maryland

Dedication

An Administrative Law Judge shall conduct his or her duties with industry and application and shall be conscientious, studious, thorough and punctual. An Administrative Law Judge shall not allow other affairs or private interests to interfere with the prompt performance of official duties.

Ability

An Administrative Law Judge shall possess superior self-discipline and shall exercise sound judgment in presiding, ruling on evidence, making decisions, and writing opinions. An Administrative Law Judge shall have the bearing and personality to allow him or her to deal with parties or counsel with sensitivity and without giving offense. An Administrative Law Judge shall be patient, courteous, attentive, yet shall also be firm and decisive. An Administrative Law Judge shall be mentally fit and alert and capable of performing the duties of office.

Ability to Preside:

An Administrative Law Judge shall conduct hearings with dignity and decorum and without interference which might detract from the proper atmosphere. An Administrative Law Judge shall so conduct himself or herself during hearings that his or her attitude, manner or tone toward attorneys or witnesses will not prevent the proper presentation of the cause or the ascertainment of truth. He or she shall not make an unnecessary display of learning, express a premature judgment, or add to the embarrassment or timidity of witnesses or attorneys. An Administrative Law Judge shall listen readily to others and be detached, even-handed and decisive.

Ability to Rule on Evidence:

An Administrative Law Judge shall be able to rule on evidence in accordance with applicable laws, rules, procedural regulations and legal precedent.

Ability to Make a Decision

An Administrative Law Judge shall possess the ability to decide causes before him or her in a fair, unbiased and impartial manner.

Ability to Write a Decision

An Administrative Law Judge shall be able to organize facts and legal opinion in a clear and concise manner.

Knowledge of Law

An Administrative Law Judge shall administer justice in accordance with the law and regulations governing the cause before him or her.

Timeliness

An Administrative Law Judge shall perform his or her duties in a timely manner as may be required in the particular cause.

Minimum Experience and Education

An Administrative Law Judge shall, at minimum, possess a Juris Doctor or equivalent degree from an accredited college or university, and be a member in good standing of the bar of any jurisdiction.

In conjunction with the initial formation of the Office of Administrative Hearings, and in order to grandfather into the Office those Hearing Examiners who performed their prior duties in an exemplary manner, individuals may be appointed to the position of Administrative Law Judge prior to February 1, 1990, without regard to this minimum experience and education requirement.¹⁶¹

¹⁶¹The Office of Administrative Hearings Administrative Law Judge Qualification Standards went into effect January 1, 1990. A copy of the signed document is on file with the author.