

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10898 HOUSE JUDICIARY

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 203  
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Office of Administrative Hearings BRU: Administration and Support  
Component: Commissioner's Office  
Sponsor: Rules Committee  
Requester: Senate State Affairs Committee Component No.: 123

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)
1005 GF/Program Receipts						
1113 Indirect Cost Reimbursement	(189.2)	(189.2)	(189.2)	(189.2)	(189.2)	(189.2)
1007 Inter-agency Receipts	(144.6)	(144.6)	(144.6)	(144.6)	(144.6)	(144.6)
<b>TOTAL</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>	<b>(379.4)</b>

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	-5	-5	-5	-5	-5	-5
Part-time						
Temporary						

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

This legislation would transfer the Department of Revenue's three hearing examiners and two support staff positions to the newly created Office of Administrative Hearings at the Department of Administration. Department of Revenue hearing examiners currently hear appeals of child support orders and modifications, Permanent Fund dividend eligibility cases and charitable gaming license cases.

The fiscal note shows the transfer of five positions and the accompanying funding for those positions. The Indirect Cost Reimbursement funding source is federal money allocated to the Department of Revenue as reimbursement for the cost of hearing child support cases. The Inter-agency Receipt funding is Permanent Fund Dividend funding allocated to the department for the cost of hearing dividend eligibility cases.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469  
Division: Department of Revenue Date/Time 5/6/03 10:19 AM  
Approved by: Larry Persily, Deputy Commissioner Date 5/6/2003  
Agency: Department of Revenue

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSSB 203  
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: "An Act relating to certain BRU: Centralized Administrative Services  
administrative hearings..." Component: Office of Tax Appeals  
Sponsor: Rules  
Requester: State Affairs Component No. 2131

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
1007 Interagency Receipts	(40.9)	(40.9)	(40.9)	(40.9)	(40.9)	(40.9)
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>	<b>(90.9)</b>

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

### POSITIONS

Full-time	-1	-1	-1	-1	-1	-1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

SB 203 creates the Office of Administrative Hearings in the Department of Administration and transfers to it the Office of Tax Appeals Hearing Officer position.

Prepared by: Kevin Jardell, Assistant Commissioner Phone \_\_\_\_\_  
Division: Commissioner's Office Date/Time: 5/6/03 2:42 PM  
Approved by: Mike Miller, Commissioner Date: 5/6/2003  
Agency: Department of Administration

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: SB 203  
(S) Publish Date: 5/7/03

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

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1007 - Inter-Agency Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 140.7  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	-2					
Part-time						
Temporary						

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

SB 203 establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) included in the FY04 budget request.

The fund source for these positions and related costs are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new Office, it is anticipated that receipts from licensing fees (RSS) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144  
Division Occupational Licensing Date/Time 5/6/03 11:57 AM  
Approved by: Edgar Blatchford, Commissioner Date 5/6/2003  
Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: SB 203  
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "An Act relating to certain administrative BRU Civil Division  
hearings; . . . the office of administrative hearings . . ." Component All  
Sponsor Senate Rules Committee by Request  
Requester Senate State Affairs Committee Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>*****</b>	<b>*****</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>*****</b>	<b>*****</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill establishes the Office of Administrative Hearings in the Department of Administration. The office will conduct all adjudicative administrative hearings for an extensive list of state programs, including alcoholic beverage licensing, charitable gaming, banking, occupational licensing, and oil and gas exploration, production, and pipeline transportation property taxes, among others.

The fiscal impact on the Department of Law from this bill will be during the first year or two of transition from the current structure of agency hearing officers to the centralized Office of Administrative Hearings. Hundreds of pages of regulations directing how the current adjudicative process is handled will need to be rewritten to implement the new process. Boards, commissions, and agency staff will need to be trained. Whether or not the new workload can be absorbed with existing staff will depend on how quickly the revised regulations need to be implemented. This will likely

Prepared by: Joan M. Kasson  
Division: Attorney General's Office  
Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General  
Agency: Department of Law

Phone (907) 465-5370  
Date/Time 5/6/03 10:50 AM  
Date 5/6/2003

FISCAL NOTE #5

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. SB 203

ANALYSIS CONTINUATION

vary from agency to agency. If any of the regulations projects assume an urgency that existing staff cannot meet, outside contract counsel may be necessary to handle them. Given the uncertainty, we cannot estimate what the potential cost might be.

# FISCAL NOTE

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

Fiscal Note Number: 6  
 Bill Version: CSSB 203 (FIN)  
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Office of Administrative Appeals RDU Centralized Administrative Services  
 Component Office of Administrative Appeals  
 Sponsor Senate Rules  
 Requester Senate Finance Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	446.8	791.9	791.9	791.9	791.9	791.9
Travel	4.3	8.6	8.6	8.6	8.6	8.6
Contractual	44.9	89.8	89.8	89.8	89.8	89.8
Supplies	4.6	9.2	9.2	9.2	9.2	9.2
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>500.6</b>	<b>899.5</b>	<b>899.5</b>	<b>899.5</b>	<b>899.5</b>	<b>899.5</b>

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

1050 Permanent Fund Div. Fund	52.4	104.8	104.8	104.8	104.8	104.8
1133 CSED Admin	128.3	256.6	256.6	256.6	256.6	256.6
1004 GF	181.1	260.4	260.4	260.4	260.4	260.4
1005 GF/Program Receipts						
1007 Interagency Receipts	138.9	277.7	277.7	277.7	277.7	277.7
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>500.6</b>	<b>899.5</b>	<b>899.5</b>	<b>899.5</b>	<b>899.5</b>	<b>899.5</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	9	9	9	9	9	9
Part-time	1	1	1	1	1	1
Temporary						

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

SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. The OAH will conduct administrative hearings under the direction of the Chief Administrative Law Judge. FY2005 funding assumes a July 1, 2004 start date for the Chief Administrative Law Judge, and a January 1, 2005 start date for the remainder of the OAH.

This fiscal note includes personal services and associated costs for the new Chief Administrative Law Judge position as well as five additional hearing officer positions and four support staff positions which will be transferred from the Departments of Revenue, Community & Economic Development, and Administration.

Although precise numbers are as yet unknown, budget savings are expected to result from the creation of the OAH. The new office will be able to conduct hearings that otherwise would have been contracted out. Economies of scale may produce additional savings.

Prepared by: Kevin Jardell, Assistant Commissioner  
 Division: Commissioner's Office  
 Approved by: Mike Miller, Commissioner  
 Agency: Department of Administration

Phone 465-5655  
 Date/Time 3/2/04 5:01 PM  
 Date 3/2/2004

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 7  
Bill Version: CSSB 203 (FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Office of Administrative Appeals RDU Centralized Administrative Services  
Component Office of Tax Appeals  
Sponsor Senate Rules  
Requester Senate Finance Component No. 2131

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	(100.0)	(200.0)	(200.0)	(200.0)	(200.0)	(200.0)
Travel	(3.8)	(7.5)	(7.5)	(7.5)	(7.5)	(7.5)
Contractual	(8.4)	(16.7)	(16.7)	(16.7)	(16.7)	(16.7)
Supplies	(1.5)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(113.6)</b>	<b>(227.2)</b>	<b>(227.2)</b>	<b>(227.2)</b>	<b>(227.2)</b>	<b>(227.2)</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	(92.6)	(185.1)	(185.1)	(185.1)	(185.1)	(185.1)
1005 GF/Program Receipts						
1007 Interagency Receipts	(21.1)	(42.1)	(42.1)	(42.1)	(42.1)	(42.1)
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>(113.6)</b>	<b>(227.2)</b>	<b>(227.2)</b>	<b>(227.2)</b>	<b>(227.2)</b>	<b>(227.2)</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	-2	-2	-2	-2	-2	-2
Part-time	-1	-1	-1	-1	-1	-1
Temporary						

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

SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. Existing positions currently in the Office of Tax Appeals as well as existing GF totalling 185.1 (92.6 in the first year) will be transferred to the new OAH.

Prepared by: Kevin Jardell, Assistant Commissioner Phone 465-5655  
Division: Commissioner's Office Date/Time 3/2/04 4:49 PM  
Approved by: Mike Miller, Commissioner Date 3/2/2004  
Agency: Department of Administration

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 8  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time: 02/27/04 9:20AM Revised Department: Labor and Workforce Development  
Title: Office of Administrative Hearings RDU: Labor Standards and Safety  
Sponsor: Rules Committee Component: Occupational Safety and Health  
Requester: Senate FIN Component Number: 970

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

See Attached Analysis..

Prepared by: Grey Mitchell, Director Phone 465-4855  
Division: Labor Standards and Safety Date/Time 2/27/04 9:20 AM  
Approved by: Greg O'Claray, Commissioner Date 2/27/2004  
Agency: Department of Labor and Workforce Development

FISCAL NOTE #8

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: CSSB 203(FIN)

ANALYSIS: (continued)

The Occupational Safety and Health (OSH) component currently contracts with a private attorney to act as a hearing officer for OSH Review Board cases under AS 18.60. The current contract, awarded through the competitive procurement process, establishes an hourly rate of \$125 and an annual amount of \$40,000.

This contract hearing officer has been the same individual for more than 15 years. The cases, which include workplace fatalities and serious injuries, require detailed understanding of a large body of complex federal regulations and interpretations. Due to the experience and efficiency of the current OSH Review Board contract hearing officer, significant cost increases are likely under this legislative proposal. The funding source of the OSH program is 50% federal funds and 50% Worker Safety Account. If hearing responsibility is transferred to the new Office of Administrative Hearings, the division will pay for hearing services through a reimbursable services agreement.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 9  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title: An act related to administrative hearings, to RDU: Statewide Support  
hearing officers, and to administrative law... Component: ABC Board  
Sponsor: Senate Rules Committee by Request  
Requester: S. Finance Component No.: 2690

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>	<b>(5.0)</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill establishes the Office of Administrative Hearings in the Department of Administration. The office would conduct all adjudicative administrative hearings to include alcoholic beverage licensing.

The number and cost of administrative hearings for the Alcoholic Beverage Control Board (ABC Board) can vary from year to year. Very often, a licensee will decide to settle their claim after their first meeting with a hearing officer.

Hearing officers are requested when the ABC Board takes action against a licensee or potential licensee and the matter cannot be resolved informally. Due process affords licensees or prospective licensees a formal hearing under the Administrative Procedures Act. These actions include, but are not limited to: Denial of a new license or renewal or sanctions against a licensee (fines, closure of business for a specified period of time, conditions on operating a license, etc.). Typically, the ABC Board budgets \$5,000 each year for this purpose. In FY 02 the ABC Board spent \$2,900 and in FY 03 it spent \$2,340. A decrement for \$5,000 is a fair estimate.

Prepared by: Douglas B. Griffin, Director Phone 269-4532  
Division: ABC Board Date/Time 2/27/04 4:52 PM  
Approved by: Commissioner William Tandeske Date 2/27/2004  
Agency: Department of Public Safety

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 10  
Bill Version: CSSB 203(FIN)  
( S ) Publish Date: 3/3/04

Revision Date/Time (Note if correction):

Dept. Affected: Health & Social Services

Title CONSOLIDATING CERTAIN ADMINISTRATIVE HEARING FUNCTIONS

RDU Departmental Support Services

Component Commissioner's Office

Sponsor SENATE(RLS)

Requester SENATE (FIN)

Component No. 317

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Certain administrative hearings under the following programs in the Department of Health and Social Services would be conducted by the Office of Administrative Hearings: 1) hospice licensure; 2) hospital and nursing home licensure; 3) assisted living home licensure; and 4) child care facility licensure. These functions are currently located in four separate divisions within the department.

Formal adjudicatory hearings in these areas are infrequent and the costs immaterial. For example in the Office of Children's Services for FY 03 and the first half of FY 04 the Office consumed 11 hours of hearing officer services for a total cost of approximately \$1,250.

Therefore, the department is submitting a zero fiscal note.

Prepared by: Sherry Hill, Special Assistant

Phone 465-1618

Division Office of the Commissioner

Date/Time 02/25/2004

Approved by: Joel S. Gilbertson, Commissioner

Date 02/25/2004

Agency Department of Health and Social Services

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 11  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title "An Act relating to administrative RDU \_\_\_\_\_  
hearings, hearing officers and administrative law..." Component Human Rights Commission  
Sponsor Senate Rules Committee \_\_\_\_\_  
Requester Senate Finance Committee Component No. 1

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(22.5)</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Human Rights Commission will reduce its expenditures for contract hearing examiners if hearings are conducted by the Office of Administrative Hearings without a Reimbursable Services Agreement.

Prepared by: Paula M. Haley, Executive Director  
Division: Alaska State Human Rights Commission  
Approved by: Linda J. Perez, Administrative Director  
Agency: Office of the Governor

Phone (907) 276-7474x241  
Date/Time 2/27/04 3:23 PM  
Date 2/27/2004

# FISCAL NOTE

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

Fiscal Note Number: 12  
 Bill Version: CSSB 203(FIN)  
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Office of Administrative Hearings RDU Banking, Securities & Corporations (115)  
 Component Banking, Securities & Corporations  
 Sponsor Rules by Request  
 Requester Senate Finance Component No. 1233

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

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

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

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation establishes an Office of Administrative Hearings in the Department of Administration. This new office would conduct hearings for banking (AS 06), securities (AS 45.55) and corporations (AS 10.06). The office will also conduct any hearings under the Uniform Partnership Act (AS 32.06) and for limited liability corporations (AS 10.50.408). The division has few hearings in any of these areas making it difficult to estimate, with any degree of reliability, the cost of hearings. Based upon the division's experience, there may be no hearings for several years. Last year there was a single hearing that cost \$75.0. The cost of hearings is a function of the complexity, level of expertise, and amount of time required to hear the case.

Prepared by: Mark Davis, Director Phone (907) 465-2521  
 Division Division of Banking, Securities & Corporations Date/Time 2/27/04 12:04 PM  
 Approved by: Edgar Blatchford, Commissioner Date 2/27/2004  
 Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 13  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Education  
Title An Act relating to administrative hearir RDU ACPE  
hearing hearing officers, and to administrative law judges;... Component Program Administration & Operations  
Sponsor (S)Rules  
Requester (S)FIN Component No. 2738

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
It has been at least fifteen years since an Alaska postsecondary institution requested a hearing under AS 14.48. The Alaska Commission on Postsecondary Education anticipates that any future costs related to this process would be diminimus and will not seek related budget authority.

Prepared by: Sheila King, Finance Officer Phone 465-6757  
Division Finance Date/Time 3/1/04 8:37 AM  
Approved by: Diane Barrans, Executive Director *Diane Barrans* Date 3/1/2004  
Agency Alaska Commission on Postsecondary Education

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 14  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
Title Office of Administrative Hearings RDU All  
Component All  
Sponsor Rules Committee by Request  
Requester Senate Finance Committee Component No. 633

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

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

OPER/ TING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	*	*	*
Travel	0.0	0.0	0.0	*	*	*
Contractual	0.0	0.0	0.0	*	*	*
Supplies	0.0	0.0	0.0	*	*	*
Equipment	0.0	0.0	0.0	*	*	*
Land & Structures	0.0	0.0	0.0	*	*	*
Grants & Claims	0.0	0.0	0.0	*	*	*
Miscellaneous	0.0	0.0	0.0	*	*	*
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>*</b>	<b>*</b>	<b>*</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts	0.0	0.0	0.0	*	*	*
1003 GF Match	0.0	0.0	0.0	*	*	*
1004 GF	0.0	0.0	0.0	*	*	*
1005 GF/Program Receipts	0.0	0.0	0.0	*	*	*
1037 GF/Mental Health	0.0	0.0	0.0	*	*	*
Other (Specify Type-Do not abbreviate)	0.0	0.0	0.0	*	*	*
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>*</b>	<b>*</b>	<b>*</b>

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

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Due to the delayed effective implementation date of this bill of July 1, 2007 there is no fiscal impact on the Department through FY2007. \* Impact in FY2008 and beyond is unknown at this time.

Prepared by: Tom Chapple Phone 269-7686  
Division Air & Water Quality Date/Time 2/24/04 6:18 PM  
Approved by: Kurt Fredriksson, Deputy Commissioner Date 2/24/2004  
Agency Department of Environmental Conservation

# FISCAL NOTE

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

Fiscal Note Number: 15  
Bill Version: CSSB 203 (FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Office of Administrative Hearings RDU Insurance (116)  
Component Insurance  
Sponsor Rules by Request  
Requester Senate Finance Component No. 354

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	38.3	84.1	92.5	101.8	112.0	123.2
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>38.3</b>	<b>84.1</b>	<b>92.5</b>	<b>101.8</b>	<b>112.0</b>	<b>123.2</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1004 )</b>	<b>38.3</b>	<b>84.1</b>	<b>92.5</b>	<b>101.8</b>	<b>112.0</b>	<b>123.2</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	38.3	84.1	92.5	101.8	112.0	123.2
<b>TOTAL</b>	<b>38.3</b>	<b>84.1</b>	<b>92.5</b>	<b>101.8</b>	<b>112.0</b>	<b>123.2</b>

Estimate of any current year (FY2004) cost: 90.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation establishes an Office of Administrative Hearings in the Department of Administration. This new office would conduct hearings for insurance (AS 21.06.180-230, AS 21.14.010 and AS 44.62.310 and 3 AAC 25.040). The division estimates needing additional funds to contract with the Department of Administration for 1,020 hours for six hearings. On average, a hearing can involve 170 hours at a cost of \$75.00/hour. Hours are expected to increase by 10% annually. Due to a variety of circumstances the number of hearings conducted in any year can vary.

The fund source for these hearings are receipt supported services (RSS) from licensing fees. When the funds are transferred to the new office on or after January 1, 2005, it is anticipated that receipts for licensing fees totaling \$38.3 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by the division.

Prepared by: Linda S. Hall, Director Phone (907) 269-7900  
Division Insurance Date/Time 3/1/04 4:15 PM  
Approved by: Edgar Blatchford, Commissioner Date 3/1/2004  
Agency Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 16  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

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

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 153.9

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	-2					
Part-time						
Temporary						

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

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

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office in FY05, it is anticipated that receipts from licensing fees (RSS) totaling \$159.5 will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
Division: Occupational Licensing Date/Time 2/27/04 8:46 AM  
Approved by: Edgar Blatchford, Commissioner Date 2/27/2004  
Agency: Department of Community and Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 17  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to administrative hearings, to RDU CIVIL  
hearing officers, and to administrative law judges;..." Component: Labor & State Affairs  
Sponsor: Senate Rules  
Requester: Senate Judiciary Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>*****</b>	<b>*****</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>*****</b>	<b>*****</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill establishes the Office of Administrative Hearings in the Department of Administration. The office will conduct all adjudicative administrative hearings for an extensive list of state programs, including alcoholic beverage licensing, charitable gaming, banking, occupational licensing, and oil and gas exploration, production, and pipeline transportation property taxes, among others.

The fiscal impact on the Department of Law will be during the first year or two of transition from the current structure of agency hearing officers to the centralized Office of Administrative Hearings. Hundreds of pages of regulations directing how the current adjudicative process is handled will need to be rewritten to implement the new process. Boards, commissions and agency staff will need to be trained. Whether or not the new workload can be absorbed with existing staff will depend on how

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
Division: Administrative Services Date/Time 2/12/04 2:03 PM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/12/2004  
Agency: Department of Law

FISCAL NOTE #17

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSSB 203(FIN)

ANALYSIS CONTINUATION

quickly the revised regulations need to be implemented. This will likely vary from agency to agency. If any of the regulations projects assume an urgency that existing staff cannot meet, outside contract counsel may be necessary to handle them. Given the uncertainty, we cannot estimate what the potential cost might be.



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 19  
Bill Version: CSSB 203(FIN)  
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Office of Administrative Hearings RDU Revenue Programs & Services  
Component Commissioner's Office  
Sponsor Rules Committee  
Requester Senate Finance Component No. 123

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	(198.1)	(396.2)	(396.2)	(396.2)	(396.2)	(396.2)
Travel	(1.8)	(3.5)	(3.5)	(3.5)	(3.5)	(3.5)
Contractual	(2.9)	(5.8)	(5.8)	(5.8)	(5.8)	(5.8)
Supplies	(0.8)	(1.5)	(1.5)	(1.5)	(1.5)	(1.5)
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(203.6)</b>	<b>(407.0)</b>	<b>(407.0)</b>	<b>(407.0)</b>	<b>(407.0)</b>	<b>(407.0)</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(22.9)	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)
1005 GF/Program Receipts						
1037 GF/Mental Health						
1133 CSED Admin	(128.3)	(256.6)	(256.6)	(256.6)	(256.6)	(256.6)
1007 Interagency Receipts	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
<b>TOTAL</b>	<b>(203.6)</b>	<b>(407.0)</b>	<b>(407.0)</b>	<b>(407.0)</b>	<b>(407.0)</b>	<b>(407.0)</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	-5	-5	-5	-5	-5	-5
Part-time						
Temporary						

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

This legislation would transfer the Department of Revenue's three hearing examiners and two support staff positions to the newly created Office of Administrative Hearings at the Department of Administration. Department of Revenue hearing examiners currently hear appeals of child support orders and modifications, Permanent Fund dividend eligibility cases and charitable gaming license cases. The fiscal note shows the transfer of five positions and the accompanying funding for those positions. The CSED Admin funding source is federal money allocated to the Department of Revenue as reimbursement for the cost of hearing child support cases. The Inter-agency receipt funding is the amount of the cost of hearing dividend eligibility cases. The general funds provide for the cost of other hearings such as charitable gaming, special racing events or unclaimed property. This fiscal note reflects the change in effective date from June 1, 2004, to January 1, 2005.

Prepared by: Steve Porter, Deputy Commissioner Phone 465-2365  
Division Department of Revenue Date/Time 3/2/04 9:54 AM  
Approved by: Steve Porter, Deputy Commissioner Date 3/2/2004  
Agency Department of Revenue

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(52.4)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>	<b>(104.8)</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

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Phone: 465-4785  
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Date: 3/2/2004

# **Independent Administrative Hearings Why Central Panels Are Needed In Alaska**

## **Alaska's Administrative Hearing System Fragmented**

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

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

## **Putting The House In Order**

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

### **Highly Qualified Adjudicators.**

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

### **Change of Focus**

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

### **Well-Trained Professionals**

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

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

### **Autonomy**

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

### **Oversight**

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

### **Accountability**

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

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

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

### **A Different Master.**

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

### **An Improved Standard.**

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

### **Reasonable Transition.**

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

### **Human Resources.**

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

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

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

### **Outstanding Environment.**

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

### **A Training Center.**

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

### **Applying High Standards.**

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

### **Wealth of Information.**

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

### **Real Expertise.**

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

### **Built in Review.**

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

### **More Respect.**

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

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

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

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

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

## High Public Approval.

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

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

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

## Summary

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

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

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

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

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

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

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

MODEL CODE OF JUDICIAL CONDUCT  
FOR STATE ADMINISTRATIVE LAW JUDGES©

Board of Governors

NATIONAL ASSOCIATION OF  
ADMINISTRATIVE LAW JUDGES

PREAMBLE

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

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

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

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

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### CANON 1

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

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

## CANON 2

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

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

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

### COMMENTARY

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

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

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

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

#### COMMENTARY

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

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

#### CANON 3

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

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

#### A. ADJUDICATIVE RESPONSIBILITIES

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

#### COMMENTARY

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

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

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

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

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

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

#### COMMENTARY

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

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

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

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

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

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

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

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

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

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

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

#### COMMENTARY

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

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

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

#### COMMENTARY

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

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

#### COMMENTARY

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

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

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

## B. ADMINISTRATIVE RESPONSIBILITIES

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

### COMMENTARY

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

## C. DISQUALIFICATION

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

### COMMENTARY

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

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

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

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

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

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

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

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

#### COMMENTARY

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

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

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

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

#### COMMENTARY

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

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

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

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

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

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

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

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

#### D. REMITTAL OF DISQUALIFICATION

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

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

#### COMMENTARY

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

#### CANON 4

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

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

- A. Speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.
- B. May appear at a hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official, unless otherwise prohibited by law.

#### COMMENTARY

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

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

#### COMMENTARY

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

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

#### CANON 5

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

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

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

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

#### COMMENTARY

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

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

#### B. AVOCATIONAL ACTIVITIES

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

#### C. CIVIC AND CHARITABLE ACTIVITIES

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

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

#### COMMENTARY

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

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

#### COMMENTARY

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

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

#### D. FINANCIAL ACTIVITIES

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

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

#### COMMENTARY

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

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

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

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

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

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

#### COMMENTARY

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

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

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

#### COMMENTARY

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

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

#### E. FIDUCIARY ACTIVITIES.

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

#### COMMENTARY

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

#### F. ARBITRATION.

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

#### G. PRACTICE OF LAW.

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

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

#### COMMENTARY

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

#### H. EXTRA-JUDICIAL APPOINTMENTS.

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

#### COMMENTARY

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

## CANON 6

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

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

#### A. COMPENSATION.

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

#### B. EXPENSE REIMBURSEMENT.

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

## CANON 7

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

#### POLITICAL CONDUCT IN GENERAL.

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

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

#### COMMENTARY

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

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

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

#### CANON 8

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

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

#### COMMENTARY

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

## EFFECTIVE DATE OF COMPLIANCE

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

9/99

**Independent Administrative Hearings  
Through A Central Panel**

**Informal Legislative Brief**

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

By David Stancliff  
Staff / Administrative Regulation Review Committee

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- II. Introduction to the Central Panel concept.
- III. Genesis of legislative action.
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*Poorly written, poorly administered, poorly enforced regulations are costly to an economy, a government, and society in general and will likely continue until a fair and impartial system of adjudication of those regulations is in place.*

## I. Overview

### Origin of Central Panels

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **IV. Legislative Action**

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

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

Mr. Felter explained that the lack of such details and inflated costs is not uncommon when states have not attempted to consolidate and centralize their hearing office functions. Many officers serve many different masters and in many cases have not been asked to keep track of and report specific costs of their hearing related duties.

**One of the most important reasons states find to centralize their hearing officers is to reduce cost and be better able to track the behavior and efficiency of hearing officers.**

Legislatures appreciate the ability to budget directly for centralized and well reported hearing office functions. Elected officials find it much easier to hold those they budget to high standards when performance is easily tracked.

When it became quite clear that Governor Knowles would veto HB 232, many legislators were uncomfortable with investing a lot of time and effort only to see the measure rejected by the Governor. There were also overtures by the Department of Law to work with the legislature to improve the hearing officer system. These good will gestures evaporated after the legislative session ended.

In an effort to avoid a future veto and to build a more active base of support for independent hearings among Alaskans, Representative Ogan elected to introduce in the 21<sup>st</sup> Legislature, a constitutional amendment requiring independent hearing officers through HJR-18.

Not only did this strategy involve a much cleaner and easy to understand document, it also quickly got the attention of the Governor's political advisors. It was much more difficult to raise fiscal objections since the resolution did not require a particular type of centralized effort. Throughout the 21<sup>st</sup> session, the administration vacillated between new promises of cooperation and fiscal warnings. In the end the effort for HJR - 18 was lost amidst a host of other budget driven priorities and failed to attract the attention it needed within the House leadership to achieve passage.

**With new leadership in the House and the Senate and a new administration of the same party and persuasion, the opportunity to more cooperatively establish independent hearing office functions has vastly improved.**

## Addressing One of the Main Objections to Independent Hearing Officers

### The In-house (agency) Expertise Issue.

- *Note: During hearings in the Alaska Legislature, one of the first issues that in-house hearing office advocates raised is the value of in-house expertise. Agencies desire hearing officers well versed in agency regulations and policy.*
- *Of course our state and federal constitutions recognize just the opposite in protecting due process. It would be unthinkable to allow a judge to be employed by an agency of the administration or the legislature.*
- *Results based data shows that impartial, well-trained hearing officers actually deliver higher quality, fairer, and more legally sustainable decisions if they are not under the watchful eye of a commissioner or director.*

### A national expert counters the in-house expertise argument this way.

Agency expertise may actually cause impairment in the adjudication process. Judge Edwin Felter includes the following remarks in his written presentation to the Colorado Bar. *“Even though a hearing officer may exhibit an attitude completely independent from the agency and its staff, physical location and continuous relationships with only the personnel of the employing agency may bias his analytical capacities, or they may contribute to an inclination to narrow his perspectives to only those social problems and regulatory objectives sought by this one agency.”*

Another commentator considers *“the unavoidable appearances of bias”* when a hearing officer, attached to an agency, presides in litigation by that agency against a private party.

Mr. Felter goes on to say that “there are two competing concepts in administrative law. One is the concept that adjudicators should be separate from the regulatory agencies they serve. The second is what the author calls administrative law. The proponents of the latter concept maintain that adjudicators by the agency are a necessary part of statutory mandated policy formulation. In contrast, the opponents of agency law hold that the best approach to policy formulation is the adoption of rules and regulations by the agency.”

One proponent of Central Panels states that, *“the vast majority of hearings now consist of large numbers of fairly fungible cases which involve private rights rather than proceedings in which the agency has a major stake in a policy making issue. Antiquated ideas that for decades have controlled administrative practice and procedure must give way to a more practical and economic system if the public and Congress are to continue to accept this means of dispute resolution.”*

## V. Options to Consider

The following options are provided for legislators and administration officials as they consider how best to improve Alaska's administrative hearing functions.

If a consensus can be reached on the good government principle of fair, efficient, timely, cost effective hearings that achieve the highest possible due process standards, then the only question remaining is how to do so in a responsible and affordable manner.

### Reform through Central Panel

The following primary issues in Central Panel reform are location of hearing officers, their qualifications, standards and duties within the central office, panel reporting requirements, and training of hearing officers.

#### **Location**

The degree of separation from agencies can vary but the goals for such separations are consistent.

Hearing officers should not have ex-parte contact with agency people. Physically removing them to a central office avoids the easy temptation through the normal fraternization that occurs in office settings. To physically relocate is not absolutely necessary if cost becomes too large a consideration and other acceptable mitigation measures can be taken.

#### **Qualifications**

Standards of conduct, qualifications, and standards of performance for hearing officers can all be established by the legislature.

#### **Duties**

Better guidelines for hearing functions, including efficiency and atmosphere, can also be established by the legislature. Providing hearings in a timely manner, avoiding endless cycles of remanding decisions within agencies, and carrying out duties in a judicial setting can also be established by the legislature.

## Standards

Establishing fair and balanced hearing rules and procedures can be accomplished through legislative action, as can other avenues of relief if the hearing process has not performed in a timely and responsible manner.

## VI. Three Main Focal Points of Interest

### 1. **Public.**

Delivery to the citizen of the most efficient, fair, professional, due process hearings possible.

### 2. **Business.**

The ability to help establish a more secure and inviting business climate through consistent, efficient, and fair hearings.

### 3. **Government.**

The upfront costs of relocation of hearing officers and functions are real. Less costly, time consuming, better prepared and defensible hearing dockets should offset these.

## VII. Mechanics

### To Establish Professional Hearing Offices

- |                               |  |
|-------------------------------|--|
| 1. <u>Ethical conduct.</u>    | Judicial Cannon should be applied to the hearing officer function.                         |
| 2. <u>Mission statements.</u> | The legislative branch of government should establish high expectations.                   |
| 3. <u>Oversight.</u>          | The legislature should establish a person to be responsible for hearing officer oversight. |
| 4. <u>Training.</u>           | The legislature should establish training requirements as well as cross training.          |

### To Provide Facilitation and Accountability

- |                                |   |
|--------------------------------|---|
| 1. <u>Central location.</u>    | The legislature shall establish where hearing office functions occur and centralize them to whatever extent affordable.               |
| 2. <u>Judicial atmosphere.</u> | Some states require hearing officers to robe and conduct their hearings in a judicial setting.  |
| 3. <u>Reporting.</u>           | The legislature can require the type of budgeting and reporting they deem best as well as performance evaluations and regular audits. |

## VIII. Various Solutions For Consideration

The following options are arranged to provide policy makers the ability to weigh major considerations, both real and political, into their decision process. They are obviously open for alteration and exist to stimulate further discussion and ideas.

### Plan A *Just change the rules*

1. Current hearing officers would basically remain in place and in their present locations at their same pay range.
2. New guidelines would be established by the legislature.
3. New budgeting procedures would be established for a more consolidated budget increment.
4. The legislature would place someone in an oversight position over all hearing officers that would be responsible for reporting to the legislature.

5. Annual performance reports would be required-including public surveys of how the hearing process is working.
6. Protections would be provided as an insulating factor to eliminate retribution fears from the agency they are operating in.
7. Establish basic professional standards for hearing officers including cross training and on going educational requirements. Allow a transition time for present hearing officers to gain that level of excellence.

**Positive:**

- a) Favorable public approval
- b) Least upsetting to agencies
- c) Least costly overall.

**Negative:**

- a) Results will happen slowly.
- b) Most vulnerable to internal bureaucratic resistance.
- c) Most dependent on pro-active (cooperative) administration.

**Plan B**                      *Create an affordable model with select officers*

1. Establish model system on a small scale
2. Determine what functions and hearing officers would be put into a central location.
3. As the new model succeeds, add in other hearing officers and functions as budgets allow.
4. Use the new model as an oversight office and a training facility for all hearing officers as well as a clearinghouse for adjudication cases that are not being handled well in the non-central locations.

**Positive:**

- a) Very few displacements of employees.

- b). Creation of an affordable model to demonstrate success.
- c). A new standard of expertise and autonomy for other hearing officers to work toward.

**Negative:**

- a) Some upfront costs of moving and office set up.
- b) Only a partial solution.
- c) Susceptible to administrative pressure if not carefully protected by the legislature.

**Plan C**

**A Select Central Panel**

1. Create a new central panel model and include all hearing office functions except those determined by the legislature to leave in place as is for the time being. Reasons for allowing an opt out provision would be established by the legislature and could include such items as cost, efficiency, or satisfaction with how the hearing officers are performing.

*\* New model will be complete with all the training and standards in place including professional qualifications.*

**Positive:**

- a) Faster results.
- b) Higher public satisfaction through better service.
- c) Less risk to agencies and less contested cases to the court system.

**Negative:**

- a) More resistance from bureaucrats
- b) Higher cost
- c) More complex and therefore more difficult to administer and set up.

## Plan D

### All hearing officers and functions included with all standards in place

1. Create the new model with an administrator, training requirements, professional qualifications, oversight, budget process, audit requirements, and performance requirements.

#### Positive:

- a) Highest public approval
- b) Fastest results in all sectors.
- c) The least likely to be undone by non-supportive administrations.
- d) greatest savings down-line

#### Negative:

- a) Highest upfront costs
- b) Most legislatively complex.
- c) Most threatening to bureaucracy.

## Plan E

### Amend the State Constitution

1. Define the issue and put it before voters for approval as an amendment to our state constitution.
2. Constitutional approach would not require dealing with the details until the public approved the reform through the voting process.
3. An example of constitutional language could be, "*Administrative hearing functions shall be separate and independent from all agencies of government.*"

#### Positive:

- a) Governor's signature not required.
  - b) Public ultimately affirms issue.
  - c) No specific costs or mandates on how to work out the details.
4. Likely to stimulate voters.

**Negative:**

- a) Subject to campaign distortion.
- b) Subject to unrealistic cost projections.
- c) Results will take longer.

**Plan F**                      *Request the Administration to undertake the reform*

1. Give the new administration the option of coming up with a plan to accomplish the objectives of central panels.

**Positive:**

- a) Demonstrates a high degree of trust and confidence in the administration.
- b) Relieves the legislature of being directly involved in the details.
- c) Allows the administration to accomplish a good government goal.

**Negative:**

- a) Absent legislative initiative, Central Panels will have to be of the highest priority to overcome the internal resistance to the concept.
- b) The task might become needlessly bogged down and many legislators would then be reluctant to push the Governor.

## VII. Staff Recommendations

*After several years of research and assessing the dynamics involved in implementing Central Panels, a few key suggestions are respectfully offered.*

### Cooperation and common goals

To achieve the least costly and best system of Central Panels, the Administration must be thoroughly involved and willing to stay focused on the broad based common goal of achieving the best possible hearing office function in Alaska. To enlist such support, the Legislature must be well informed and willing to share their support for reform with the Administration emphasizing a cooperative effort. This will necessitate a thorough presentation of a plan from concept to implementation as performed in other states and municipal governments.

### Build public support through a bi-partisan good government approach

Central Panels are supported nationally without political boundaries. Liberals and conservatives support the formation of Central Panels albeit occasionally for slightly different reasons. The well-established facts are that fair, due process-oriented hearings, serve all sectors of society and commerce very well. In addition they restore faith in government and make life easier for Commissioners and those who need to concentrate their day-to-day efforts on purely administrative duties. Once the effectiveness and efficiencies of Central Panels are in place, in-house adjudication is a burden most agency officials are happy to have off their plate.

### Reduce costs and errors through expertise

There is so much enthusiasm and interest in reforming Administrative Law and the adjudication on a national basis that many experts in the field are offering their assistance to government entities embarking on the reform. With each new state bringing about this reform, improved models are being offered and efficiencies of legislation and application improve. Alaska needs to avail itself to this expertise.

## X. Primary National and State Contacts

### National

Judge Edwin Felter  
Senior Administrative law Judge  
Colorado Division of Administrative Hearings  
303-764-1417.1      [ed.felter@state.co.us](mailto:ed.felter@state.co.us)

Mr. John Hardwicke  
Retired Chief Administrative Law Judge  
Maryland Division of Independent Hearings  
410-457-4224      [jhardwicke@aol.com](mailto:jhardwicke@aol.com)

Mr. Bob Boerner / National Conference of State Legislators  
Denver, Colorado  
303-764-1417      [bob.boerner@ncsl.org](mailto:bob.boerner@ncsl.org)

Mr. Thomas Dewberry / Chief ALJ / Maryland Office of Administrative Hearings  
Hunt Valley, Maryland  
410-229-4105

### Alaska

Mr. Ed Hein  
Independent Hearing Officer  
National Marine Fisheries / Juneau  
Board of Directors / Alaska Association of Administrative Law Judges  
907-586-7261      [ed.hein@noaa.gov](mailto:ed.hein@noaa.gov)

Dave Stancliff / Administrative Regulation Review Committee (ARRC) Staff  
Room 429 State Capitol  
907-465-3444      [dave\\_stancliff@legis.state.ak.us](mailto:dave_stancliff@legis.state.ak.us)

## Basic Goals In Establishing Independent Hearing Office

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

### Background

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

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

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

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

SB

217



Amendment to CSSB 217 (JRD)  
by Gruenberg

~~Amend the genetic testing language with~~  
page 2 line 10. After "Section" insert:

Amend <sup>U.S. Army</sup> "Written consent must clearly inform the person

of the nature of the genetic testing requested and the

right of privacy that is being waived."

**SB217 (version "Q")**

**Proposed amendments - Option 2a**

Page 2 line 30. Add a new section to chapter 18.13 as follows:

The requirements of this chapter do not apply to a "covered entity" as defined by and subject to the federal health insurance portability and accountability privacy rules (45 CFR Parts 160 and 164) or to licensees subject to regulations adopted under AS 21.36.162.

**Title 3. Community and Economic Development.**

**Part 2. Division of Insurance.**

**Chapter 26. Trade Practices.**

**Article 4. Privacy of Consumer Financial and Health Information.**

3 AAC 26 is amended by adding new sections to read:

**Section**

- 605. Purpose and scope
- 610. Initial privacy notice to consumers
- 615. Annual privacy notice to customers
- 620. Information included in privacy notices
- 625. Opt out notices and methods
- 630. Revised privacy notices
- 635. Privacy notices to group policyholders
- 640. Delivery of privacy notices
- 645. Limitation on disclosure of nonpublic personal financial information
- 650. Limitation on redisclosure and reuse of nonpublic personal financial information
- 655. Limitation on sharing account number information for marketing purposes
- 660. Exceptions to notice and opt out requirements for service providers and joint marketing
- 665. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions

- 670. Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information
- 675. Exceptions for surplus lines brokers, surplus lines insurers, and employees, agents, or other representatives of a licensee
- 680. Disclosure of nonpublic personal health information
- 685. Authorization to disclose nonpublic personal health information
- 690. Access to and maintenance of nonpublic personal information
- 695. Relationship to federal privacy laws
- 700. Nondiscrimination
- 705. Consumer information security program
- 710. Transition period for compliance
- 715. "Consumer" defined
- 749. Definitions

**3 AAC 26.605. Purpose and scope.** (a) The purpose of 3 AAC 26.610 - 3 AAC 26.749 is to protect the public by providing standards for the treatment by licensees of nonpublic personal information.

(b) The provisions of 3 AAC 26.610 - 3 AAC 26.675 apply only to nonpublic personal financial information.

(c) The provisions of 3 AAC 26.680 and 3 AAC 26.685 apply only to nonpublic personal health information.

(d) The provisions of 3 AAC 26.605 and 3 AAC 26.690 - 3 AAC 26.749 apply to both nonpublic personal financial and nonpublic personal health information. (Eff.

\_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 21.06.090 AS 21.36.162

**3 AAC 26.610. Initial privacy notice to consumers.** (a) A licensee shall provide a clear and conspicuous notice that accurately reflects the licensee's privacy policies and practices to

(1) a customer not later than when the licensee establishes a customer relationship, except as provided in (d) of this section; and

(2) a consumer before the licensee discloses nonpublic personal financial information about the consumer to a nonaffiliated third party, unless the disclosure is authorized under 3 AAC 26.665 and 3 AAC 26.670.

(b) A licensee is not required to provide an initial notice to a consumer under (a) of this section if

(1) the licensee does not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party except as authorized under 3 AAC 26.665 and 3 AAC 26.670 and the licensee does not have a customer relationship with the consumer; or

(2) a notice is provided by an affiliated licensee and the notice

(A) identifies each licensee to whom the notice applies; and

(B) accurately states the privacy policies and practices of each licensee and other institution.

(c) When an existing customer seeks to obtain or obtains a new insurance product or service that is to be used primarily for personal, family, or household purposes from a licensee, the licensee meets the requirements of (a) of this section if

(1) the licensee provides a revised policy notice in compliance with 3 AAC 26.630 covering the new insurance product or service; or

(2) the most recent notice given to the customer by the licensee was accurate with respect to the new insurance product or service.

(d) A licensee may provide the initial notice under (a)(1) of this section within a reasonable time after the licensee establishes a customer relationship if

(1) establishing the customer relationship is not at the customer's election, including when a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the acquisition or assignment; or

(2) providing the notice not later than when the licensee establishes a customer relationship as required under (a)(1) of this section would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time. (Eff.

\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 21.06.090 AS 21.36.162

**3 AAC 26.615. Annual privacy notice to consumers.** (a) A licensee shall provide clear and conspicuous notice to each customer that accurately reflects the licensee's privacy policies and practices at least once in every 12 consecutive month period in which a customer relationship exists.

(b) A licensee is not required to provide an annual notice to an individual who is no longer a customer. (Eff. \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 21.06.090 AS 21.36.162

**3 AAC 26.620. Information included in privacy notices.** (a) A licensee shall include in a privacy notice required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 the following:

(1) the categories of nonpublic personal financial information that the licensee collects by source of information including, if applicable, information

(A) from the consumer;

(B) about the consumer's transactions with the licensee or the licensee's affiliates;

(C) about the consumer's transactions with nonaffiliated third parties; and

(D) from a consumer-reporting agency;

(2) the categories of nonpublic personal financial information that the licensee discloses by source, as categorized under (1) of this subsection, and examples that illustrate the types of information in each category including, if applicable

(A) information from the consumer including assets, income, and other information from an application;

(B) name, address, social security number, and other identifying information;

(C) account balance, payment history, and other transaction information including the parties to a transaction; and

(D) consumer creditworthiness, credit history, and other information from consumer;

(3) except for persons to whom the licensee discloses information as allowed under 3 AAC 26.665 and 3 AAC 26.670, the categories of affiliates and nonaffiliated third parties to which the licensee discloses a consumer's nonpublic personal financial information; a licensee may comply with this paragraph

(A) by identifying the types of businesses in which the licensee engages;

(B) by describing the types of businesses in which the licensee engages in general terms and providing examples that illustrate the significant lines of business; or

(C) by identifying the categories of affiliates and nonaffiliated third parties using more detailed categories than described in (A) and (B) of this paragraph;

(4) the categories of nonpublic personal financial information that the licensee discloses about a consumer who is no longer a customer of the licensee;

(5) except for persons to whom the licensee discloses information as allowed under 3 AAC 26.665 and 3 AAC 26.670, the categories of affiliates and nonaffiliated third parties

to whom the licensee discloses nonpublic personal financial about a consumer who is no longer a customer of the licensee;

(6) if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under 3 AAC 26.660 and no other exception in 3 AAC 26.665 or 3 AAC 26.670 applies to the disclosure, a separate description of the categories of information that the licensee discloses and the categories of nonaffiliated third parties with whom the licensee has contracted;

(7) an explanation of the consumer's right under 3 AAC 26.645 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may opt out;

(8) a disclosure that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii) (Fair Credit Reporting Act) regarding the ability of a consumer to opt out of disclosures of information among affiliates;

(9) a description of the licensee's policies and practices regarding the protection of the confidentiality and security of nonpublic personal financial information including

(A) a description in general terms of persons authorized to access nonpublic personal financial information; and

(B) a statement regarding whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy;

(10) a disclosure that the licensee makes under (b) of this section.

(b) If a licensee discloses nonpublic personal financial information as allowed under 3 AAC 26.665 or 3 AAC 26.670, the licensee

(1) is not required to list the persons subject to the exceptions in a notice required under 3 AAC 36.610 or 3 AAC 26.615; and

(2) shall state that the licensee makes disclosures to other affiliates or nonaffiliated third parties as allowed by law.

(c) If a licensee reserves the right to disclose all nonpublic personal financial information about consumers that the licensee collects, the licensee may comply with (a)(2) of this section by stating in the privacy notice that the licensee reserves the right to disclose all nonpublic personal financial information collected and is not required to describe each category and provide examples of nonpublic personal financial information disclosed.

(d) A licensee has not adequately categorized the information the licensee discloses under (a)(2) of this section, if the licensee uses only general terms.

(e) If a licensee discloses nonpublic personal financial information under 3 AAC 26.660 to a nonaffiliated third party to market products or services that the licensee offers alone or jointly with another financial institution, the licensee complies with (a)(6) of this section if in the privacy notice the licensee

(1) lists the categories of nonpublic personal financial information the licensee discloses using the same categories and examples the licensee uses to comply with the applicable requirements of (a)(2) of this section; and

(2) states whether the nonaffiliated third party is

(A) a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) a financial institution with whom the licensee has a joint marketing agreement.

(f) If a licensee does not disclose and does not reserve the right to disclose nonpublic personal financial information to an affiliate or a nonaffiliated third party except as allowed under 3 AAC 26.665 or 3 AAC 26.670, the licensee may comply with the requirements of this section

(1) by stating in the privacy notice that the licensee does not disclose and does not reserve the right to disclose nonpublic financial information to an affiliate or a nonaffiliated third party except as allowed under state law; and

(2) by providing the information required under (a)(1), (a)(9), a(10), and (e) of this section in the privacy notice.

(g) A licensee meets the requirements in 3 AAC 26.610(a)(2) and 3 AAC 26.625(d) for a consumer who is not a customer if the licensee provides, at the same time that the opt out notice required in 3 AAC 26.625 is delivered, a short-form initial notice to the consumer that

(1) is clear and conspicuous;

(2) states that the licensee's privacy notice is available upon request; and

(3) explains a reasonable means for the consumer to obtain the privacy notice,

which may include providing

(A) a toll-free telephone number that the consumer may call to request the privacy notice; or

(B) if the consumer conducts business in the licensee's office, a copy of the privacy notice immediately upon request.

(h) A licensee may include in the notices required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 the following:

(1) the categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose;

(2) the categories of affiliates or nonaffiliated third parties to whom the licensee does not currently disclose nonpublic personal financial information, but to whom the licensee may disclose nonpublic personal financial information in the future;

(3) other information that applies to the licensee and to the consumer.

(i) A licensee may use the sample statements provided in Appendix A of this section to comply with the applicable requirements regarding the content of notices in this section.

#### APPENDIX A – SAMPLE STATEMENTS

A licensee, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample statements, if the statement is accurate for each institution that uses the notice. Disclosure of certain information, including assets, income, and information from a consumer-reporting agency, may give rise to obligations under 15 U.S.C. 1681 (Federal Fair Credit Reporting Act), such as the requirement to allow a consumer to opt out of disclosures to affiliates or through designation as a consumer-reporting agency if a disclosure is made to nonaffiliated third parties.

##### A-1–Categories of information a licensee collects (all institutions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(1) to describe the categories of nonpublic personal financial information the licensee collects.

Sample Statement A-1:

We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or any others; and
- Information we receive from a consumer-reporting agency.

**A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)**

A licensee may use one of these statements, if applicable, to meet the requirement of 3 AAC 26.620(a)(2) to describe the categories of nonpublic personal financial information the licensee discloses. A licensee may use these statements if the licensee discloses nonpublic personal financial information other than as allowed by the exceptions in 3 AAC 26.660 - 3 AAC 26.670.

Sample Statement A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal financial information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates, or any others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”];

and

- Information we receive from a consumer-reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Statement A-2. Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

**A-3–Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)**

A licensee may use this statement to meet the requirements of 3 AAC 26.620(a)(2), (3), (4), and (5) to describe the categories of nonpublic personal financial information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this statement if the licensee does not disclose nonpublic personal financial information to any party, other than as allowed by the exceptions in 3 AAC 26.665 and 3 AAC 26.670.

Sample Statement A-3:

We do not disclose any nonpublic personal financial information about our customers or former customers to anyone, except as allowed by law.

**A-4–Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)**

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information. This statement may be used if the licensee discloses nonpublic

personal financial information other than as allowed by the exceptions in 3 AAC 26.660 - 3 AAC 26.670, as well as when allowed by the exceptions in 3 AAC 26.665 and 3 AAC 26.670.

Sample Statement A-4:

We may disclose nonpublic personal financial information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal financial information about you to nonaffiliated third parties as allowed by law.

**A-5-Service provider/joint marketing exception**

A licensee may use one of these statements to meet the requirements of 3 AAC 26.620(a)(5) related to the exception for service providers and joint marketers in 3 AAC 26.660. If a licensee discloses nonpublic personal financial information under this exception, the licensee shall describe the categories of nonpublic personal financial information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Statement A-5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements: