

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11166 SENATE JUDICIARY

Agency Name	Independent Agency or Part of Another Agency	Unique Features of Agency Structure or Operations	Year Established	How Many Agencies Conduct Hearings For?	How Is the Agency Funded?	Who has Final Decision: Hearing Officer or Agency?	Are Hearing Officers Cross-Trained or Do They Specialize?	Negative Experiences	Positive Experiences
Maryland Office of Administrative Hearings	Independent	Not applicable	1990	20	Agencies pay a prorated amount of the Office's budget, based on services provided.	90% hearing officer 10% agency	Cross-trained	None	<ul style="list-style-type: none"> Professional hearing officers who know the process are more efficient. Cross-training staff has reduced employee burnout. The Office is doing the same work with fewer employees than it had 10 years ago.
Michigan Bureau of Hearings	Part of another agency	Not applicable	1999	9	Agencies pay a prorated amount of the Office's budget, based on services provided.	80% agency 20% hearing officer	Cross-trained central pool, with some specialization.	No systematic problems, just internal growing pains.	Cross-trained hearing officers allow for more fluid scheduling.
Minnesota Office of Administrative Hearings	Independent	Cases heard by the Office include Workers' Compensation cases.	1976	about 45 state agencies & local govt. entities	Combination of general appropriations and billing agencies for services provided.	Most hearing officer	Specialized into 3 groups—one for Workers Compensation, one for environmental & natural resources cases, & another for everything else; moving towards cross-training.	None	The state has gained independence & fairness in decision-making.

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Missouri Office of Administrative Hearings Commission	Part of another agency	<ul style="list-style-type: none"> There are only 3 commissioners, appointed by the Governor for 6-year terms, who handle all the cases. In order for a licensing agency to revoke a person's license, the agency has to file its case with the Commission who makes a decision the agency must abide by or take to court. About 85% of the caseload is from the Dept. of Revenue. 	1965	102	General appropriations. Licensing agencies pay billed hourly fees into the general fund for services provided.	The Commission's decision is final.	Not applicable	None	Licensees are getting a fair, unbiased hearing.
Oregon Hearing Officer Panel	Part of another agency	Staff have physically remained in the agencies where they were, but now are employed by the Central Panel.	1999	75	60% federal funds, 35% billing agencies for services provided, 5% general appropriations.	97% hearing officer 3% agency	Specialized, with some cross-training.	Hard to create new culture and communicate effectively, given hearing officers' physical locations.	<ul style="list-style-type: none"> Neutrality of hearing officers is gained. Because hearing officers now work for one agency they can be allocated to where the demand for hearings services is.
Texas State Office of Administrative Hearings	Independent	The centralized office first included all agencies that didn't have hearing officers in-house. Other agencies were transferred later.	1992	60	Combination of general appropriations and billing agencies on an hourly or annual basis for services provided.	Most agency; hearing officer in some cases	Both—hearing officers are assigned to subject area teams, but hear a variety of cases.	Have had difficulties identifying appropriate method & level of funding.	<ul style="list-style-type: none"> There's been an increased public perception of fairness in the process. All agencies have access to high quality judicial services, delivered promptly & efficiently. The state has saved money overall.

LEGISLATIVE RESEARCH REPORT

MARCH 26, 2003



REPORT NUMBER 03.117

ADMINISTRATIVE ADJUDICATION IN ALASKA

PREPARED FOR SENATOR GENE THERRIAULT

BY PATRICIA YOUNG, MANAGER

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SUMMARY

You asked for an update of information presented in previous Legislative Research reports on the administrative adjudication process in the various executive branch agencies in Alaska. Specifically, you wished to know the number, the workloads, and the salary ranges of hearing officers, hearing examiners, and all other persons serving in that or a similar capacity, whether classified or exempt, on a fulltime, part time, or contractual basis. You wished to know the qualifications for the hearing officer positions and the other responsibilities and duties of the individuals who hold those positions. You also asked for information on the amount of time required for the administrative hearing process, the percentage of cases in which the State prevails, the percentage of hearings conducted by "in-house" staff, and the percentage of cases heard by contract hearing officers.

As in previous reports, we contacted the various state departments for this information. According to the responses, the following eight departments employ hearing officers on a regular basis: Administration, Community and Economic Development, Fish and Game, Health and Social Services, Labor and Workforce Development, Natural Resources, Revenue, Transportation and Public Facilities.

The Office of the Governor, other departments, and the Alaska Court and University Systems do not employ hearing officers although they may access hearing officers from the Department of Administration (DOA) for procurement or contract matters, or the Department of Labor and Workforce Development (DOLWD) for labor relations issues. Some departments note that they contract for hearing officer services for various agency-related purposes. For example, the Violent Crimes Compensation Board (Department of Public Safety) contracts with experienced outside attorneys when claimants disagree with the board's decisions; and the University contracts for procurement related claims and employment grievances. Although the Alaska State Commission on Human Rights (ASCHR) in the Office of the Governor investigates civil rights violations (which are not, technically, administrative hearings or appeals), the commission contracts with outside examiners for all such investigations.¹

¹ Until FY 2001, the Commission employed a full time hearing officer. According to Steve Koteff, chief of enforcement, ASCHR, contract costs during FY 02 were \$24,302 for work on 16 active cases, 3 of which went to a full hearing—a 62 percent savings over the cost of employing an in-house hearing officer for a comparable workload.

GOVERNING STATUTES AND THE ADMINISTRATIVE PROCEDURE ACT

We note that most administrative hearings—with the exception of occupational licensing, Medicaid, and unfair labor practice appeals—are conducted under statutes and regulations specific to the issue.

Adjudicative procedures under the Administrative Procedure Act (APA) are formal, adversarial, and expensive—much more so than in most administrative disputes. Generally, appeals governed by the APA involve complex issues surrounding an agency's decision to take away an important vested right such as an individual's livelihood—for example, a doctor's right to practice medicine. Because the process is akin to a criminal prosecution in court, it is designed to ensure the maximum procedural protections for all parties. As such, parties are usually represented by attorneys; parties who are not represented are at a much greater disadvantage in an APA proceeding than they would be in most non-APA adjudications.²

Table 1 lists the department and division or program, the positions responsible for agency hearings, the types and number of hearings conducted, the percent of hearings conducted by outside hearing officers, and the average length of time for the hearing process for each of these departments. Tables with additional detail on the various positions and on the hearings conducted by each department follow. We note that direct comparisons among positions are problematic because of the disparate nature of cases and the varying levels of hearing officer responsibility. Some hearing officers address very specific and limited topics while others must address a broad spectrum of issues and legal procedure. It should be noted, however, that limited focus does not necessarily reflect a lack of complexity in cases or an absence of the need for deep knowledge of a subject area, including relevant case law. In addition to differences in the complexity among types of cases, agencies account for decisions in different ways; for example, the Regulatory Commission of Alaska categorizes decisions as substantive or procedural, while others address only final case dispositions, and some may account for all decisions equally.

² Mark Handley, Senior Revenue Hearing Examiner. Mr. Handley can be reached at (907) 465-3752. We include as Attachment A, a memorandum from Mr. Handley regarding the APA and its relation to Department of Revenue appeals.

Table I: Hearings Conducted by State Agencies

Division/ Program	Positions Responsible for Hearings	Types of Hearings	Number of Hearings per Year	Percent Handled by Contract Hearing Officers	Average Length of Time Required
Department of Administration					
Office of Tax Appeals	Administrative Law Judge	Tax appeals from Dept. of Revenue; appeals referred from other agencies.	7 tax appeals and 30 non-tax appeals	All hearings are handled by OTA staff.	Tax appeals, no hearing—4 months; with hearing—12-18 months. Procurement & other DOA appeals—3 months. Other appeals vary widely by type, with the most complex averaging about 1 year.
	Hearing Officer	Procurement & contract appeals for all departments except DOT; longevity bonus, ethics & personnel board appeals; appeals referred by other agencies.			
Division of Motor Vehicles	Driver Improvement Specialists	Licensing & registration disputes, blood alcohol content, minor consuming or in possession, mandatory insurance, ownership disputes, & vehicle impoundment (for State Troopers).	Approximately 90 hearings per week	All hearings are handled by DMV staff.	45 to 60 days.
Department of Community & Economic Development					
Regulatory Commission of Alaska	Hearing Examiners	Licensing appeals, rate appeals, consumer appeals, management investigations, service expansions, telecommunications agreement arbitrations	518 substantive & 28 procedural orders in 2002	10%	Tariff filings: within 45 days. Consumer or other complaints: up to a year. Rate modifications: a year or more.
Division of Occupational Licensing	Administrative Hearing Officer	Licensing appeals, professional practice & enforcement complaints.	61 cases opened in 2002	All hearings are handled by division staff.	Approximately 10 months.
Department of Fish & Game					
Commercial Fisheries Entry Commission	Commissioners, Hearing Officers, Paralegals	Limited entry permit applications, transfers, and revocations; temporary transfers and one-year use permits.	Approximately 100 hearings per year	All hearings are handled by CFEC staff.	Approximately 19 months.

Table 1, continued

Division/ Program	Positions Responsible for Hearings	Types of Hearings	Number of Hearings per Year	Percent Handled by Contract Hearing Officers	Average Length of Time Required
Department of Health & Social Services					
Division of Medical Assistance	Hearing Examiner	Medicaid rate appeals, Medicaid provider sanction appeals	4-8 hearings & 50 scheduling or status conferences per year	All hearings are handled by division staff.	Approximately one year, providing the appellant has no appeals pending from prior rate years.
	Public Assistance Program Officers	Public assistance benefits appeals, fraud appeals.	Approximately 150 hearings per year		Decisions must be issued within 90 days of appeal.
Department of Labor & Workforce Development					
Alaska Labor Relations Agency	Hearing Examiner, Hearing Officer	Unfair labor practice, union certification, bargaining unit clarifications, strike classification, religious exemptions, contract enforcement, labor relations for Alaska Railroad Corp.	70-80 hearings per year.	All hearings are handled by division staff.	11 days in 2000; 33 days in 2001; 40 days in 2002.
Employment Security Division	Appeals Referees	Unemployment compensation claims & unemployment insurance tax appeals.	2,700-3,000 per year	All hearings are handled by division staff.	Within 30 days of the appeal filing date.
Workers' Compensa- tion Division	Chief of Arjudications; Hearing Officers	Workers' compensation appeals.	Approximately 600 cases/year settle before hearing; 250-350 orders per year	All hearings are handled by division staff.	211 days.
Labor Standards & Safety Division	Hearing Officer	Appeals of OSH citations; Wage & Hour dispute of fact or law, debarment, and employment preference hearings.	13 OSH hearings per year, 2-3 dispute of fact cases per year.	All hearings are conducted by contract hearing officer	13 months for OSH appeals; 1+ years for wage and hour appeals.
Vocational Rehabilitation Division	Disability Hearing Officer	Disability review with cessation of benefits.	42 in FFY 2002	All hearings are conducted by part-time hearing officer.	10 hours per review.

Table 1, continued

Division/ Program	Positions Responsible for Hearings	Types of Hearings	Number of Hearings per Year	Percent Handled by Contract Hearing Officers	Average Length of Time Required
Department of Natural Resources					
Division of Mining, Land & Water	Appeals Officer (Natural Resources Specialist III)	Land disposal or land use appeals	56 appeals per year	Hearings are handled by division staff.	6 months.
Forestry Division	Regional Foresters	Private, municipal, & trust land disposal & use appeals.	1 case in last 3 years.	Hearings are handled by division staff.	63 hours.
Department of Revenue					
Office of the Commissioner	Revenue Hearing Examiners	Oil & gas property tax, child support, PFD, unclaimed property, & gaming appeals.	887 cases in 2002	Division staff handle all but a very few cases: the OTA in Administration has taken a few oil & gas tax appeals.	PFD: 90 days; Child support: 60 days; tax/gaming/ unclaimed property: 120 days; State Assessment Review Board: within 10 days.
Department of Transportation & Public Facilities					
Office of the Commissioner	Chief Contracts Officer	Bid procedures and procurement & contract appeals.	Approximately 6 per year.	About 60%.	300 days.

Notes: Table does not include Administrative Law Judges on contract with DCED for pipeline issues, wage and hour investigators (DOLWD), paralegals (other than CFEC) or paralegal assistants, or employees of the Department of Law. The table also does not include the activity of technical experts with DNR's Division of Oil and Gas who serve as hearing officers in the various types of oil and gas appeals.

Sources: Departments of Administration, Community & Economic Development, Fish & Game, Health & Social Services, Labor & Workforce Development, Natural Resources, Revenue, and Transportation & Public Facilities..

Table 2: Department of Administration, Office of Tax Appeals

- ◆ **Positions:** Administrative Law Judge, range 26, fulltime, partially exempt; Hearing Officer, range 21, fulltime, classified.
- ◆ **Qualifications—Law Degree and Experience:** Both are attorneys licensed to practice in Alaska, although this is not a requirement for the hearing officer position. Incumbents have 6 and 5 years' experience respectively in these positions, plus prior experience in practicing law. The administrative law judge is appointed through the same process as other judges in Alaska, and is bound by the Code of Judicial Conduct.
- ◆ **Types of Cases:** Tax appeals from the Department of Revenue (this is the formal hearing step for tax appeals), procurement and contract appeals (for all departments except the Department of Transportation & Public Facilities), Longevity Bonus appeals, ethics and personnel board appeals that by statute go to the DOA commissioner, and a variety of appeals by contract with other departments, including environmental permit appeals and insurance and occupational licensing appeals.
- ◆ **Number of Hearings:** An average of 7 tax appeals and 30 non-tax appeals per year.
- ◆ **Average Length of Time Required:** The average time for a *tax appeal* from filing to final order for the first six months of FY2003 was about four months for cases that were resolved by summary judgment or settlement. Generally, about 60 percent of cases are resolved without an evidentiary hearing. Tax cases that require an evidentiary hearing generally take 12 to 18 months. *Procurement and other DOA appeals* take an average of three months. About 50 percent of procurement appeals are resolved based on the hearing officer's review of the file, and take about two months. About 20 percent require an evidentiary hearing, and take approximately six months. Finally, about 20 percent of the procurement cases settle, averaging five months. Average time for the *other appeals* varies widely depending on the type of case with the most complex appeals, like multi-party environmental permit cases, averaging about a year.
- ◆ **Prevailing Party:** There is no prevailing party in cases that settle, which is the outcome in about one-third of cases. The State prevails in approximately 90 percent of procurement appeals that are resolved without a hearing, and in about 65 percent of cases that require an evidentiary hearing. In other instances, the State generally prevails in roughly 60 percent of the cases.
- ◆ **Contract or "In-house" Hearing Officers:** The administrative law judge and hearing officer in OTA handle all cases.
- ◆ **Other Duties:** Administrative law judge—10-15 percent of time is spent on supervisory responsibilities (position is equivalent to a division director). Hearing officer—about 15 percent of time is spent assisting the commissioner's office or other divisions in tracking and addressing legislation and helping with procurement training.

Table 2, continued

- ◆ **Agency Representation:** The administrative law judge does not represent any agency but is independent. The hearing officer represents the commissioner of Administration in most appeals. Agencies are represented by appropriate division staff and/or assistant attorneys general.
- ◆ **Decisions and Review:** The administrative law judge's decision on tax appeals is final. The hearing officer's decision is final only on contract claims. On most other administrative appeals, a recommendation is made to the commissioner. All decisions may be appealed to the Superior Court.
- ◆ **Written Decisions & Public Information:** The administrative law judge is required to issue written decisions on tax appeals (AS 43.05.400-499). The record on tax appeals is confidential until the judge's decision becomes final—parties have 60 days to appeal to have a protective order applied to any of the case record. Once the decision is final, it is posted on the office's web site and copies are sent to libraries. The hearing officer issues written decisions on all appeals. Hearing officer decisions are public information, and are posted to the office's web site. Hard copies of decisions may be obtained by contacting the office.
- ◆ **Governing Statutes and/or Regulations:** Tax appeals are governed by AS 43.05.400-499. Contract claims are covered by AS 44.77. The State Procurement Code and Longevity Bonus statutes govern procurement and Longevity Bonus appeals.

Sources: Shelley Higgins, Administrative Law Judge, (907) 465-5641; Andrew Hemenway, Hearing Officer, (907) 465-2252.

Table 3: Department of Administration, Division of Motor Vehicles (DMV)

- ◆ **Positions:** Three Driver Improvement Specialists, range 16. All are fulltime, classified employees.
- ◆ **Qualifications—Law Degree and Experience:** Law degrees are not required, and incumbents are not attorneys. On the job training includes courses on fair hearings, appeals, and managing high volume caseloads at the National Judicial College in Reno, Nevada, as well as six months' training on DWI case law prior to conducting hearings. One incumbent has approximately 13 years' experience; the other two each have 1 year's experience.
- ◆ **Types of Cases** Appeals concern suspensions, revocations, cancellations, limitations, restrictions, or denial of licenses, registrations, titles, permits, or privileges; also, vehicle impoundment (for State Troopers).
- ◆ **Number of Hearings:** Each hearing officer conducts almost 30 hearings per week.
- ◆ **Average Length of Time Required:** 45-60 days (approximately 70 percent of hearings take 45 days; approximately 30 percent take 60-90 days).
- ◆ **Prevailing Party:** The state prevails in approximately 75 percent of the cases.
- ◆ **Contract or "In-house" Hearing Officers:** All hearings are conducted by DMV staff.
- ◆ **Other Duties:** Certify driving instructors; approve curriculum, license, and oversee driver education programs; approve limited licenses for work purposes; conduct driver improvement interviews with habitual offenders of traffic laws; conduct youth outreach in schools, as time allows.
- ◆ **Agency Representation at Hearings:** The agency is not represented at hearings.
- ◆ **Decisions and Review:** The Manager of Driver Licensing supervises the hearing officers. Decisions are final and may be appealed directly to Superior Court.
- ◆ **Written Decisions and Public Information:** Hearings may be conducted telephonically or in person and are recorded; decisions are verbal unless the case is particularly complicated; taped recordings are available to the driver and their representative from the division, for a fee.
- ◆ **Governing Statutes and/or Regulations:** Administrative review of DMV issues are covered generally at AS 28.05.141 (hearings and appeals) and more specifically at various sections of the title; e.g., AS 28.15.165--166 (license revocations resulting from chemical sobriety tests) and AS 28.15.183-184 (revocations of minors' licenses).

Source: Kerry Hennings, Manager, Driver Licensing, (907) 269-3770.

Table 4: Department of Community and Economic Development, Regulatory Commission of Alaska (RCA)

- ◆ **Positions:** Two Hearing Examiners, range 24, fulltime, partially exempt employees. Two Administrative Law Judges, on contract for pipeline issues. Contract ALJs serve 20-100 hours a month depending on caseload.
- ◆ **Qualifications—Law Degree and Experience:** *Hearing Examiner positions:* a law degree is required and both Hearing Examiners are licensed attorneys. One has approximately 20 years' experience in this and similar positions, and more than 15 years' experience teaching administrative law at the National Judicial College in Reno, Nevada. The other served as a district court judge for over 3 years and in private and public practice for over 10 years. *Administrative Law Judge positions:* The contracts for both pipeline ALJs require experience in pipeline ratemaking litigation.
- ◆ **Types of Cases:** Acquisition or transfer of certification, tariff and rate modifications, investigation into rate design, investigation into management practices, applications for service expansion, consumer appeals, arbitration of telecommunications interconnection agreements.
- ◆ **Number of Hearings:** In FY01, the commission issued 741 substantive orders and 33 procedural orders, for a total of 774. In FY02, the commission issued 518 substantive and 28 procedural orders, for a total of 546.
- ◆ **Average Length of Time Required:** Tariff filings must be approved, rejected, or suspended within 45 days. Under 3 AAC 48.105, decisions on petitions for reconsideration must be issued within 30 days. Other deadlines are governed by AS 42.05.175.
- ◆ **Prevailing Party:** Generally, the State is not a party to utility proceedings. The State sometimes appears in pipeline cases to represent its interests as a shipper.
- ◆ **Contract or "In-house" Hearing Officers:** Almost all Commission hearings are handled "in house." The only exception is that arbitration proceedings between telecommunications carriers are referred out if the Commission does not have the resources to complete them within statutory timelines.
- ◆ **Other Duties:** Conduct research for the commissioners. Preside over informal conferences, prehearing conferences, and discovery conferences. Draft decisions for commissioners. Attend adjudicatory meetings and other meetings, as requested.
- ◆ **Agency Representation at Hearings:** A representative of the agency's Public Advocacy Section attends hearings if designated as a party by the chair.

Table 4, continued

- ◆ **Decisions and Review:** The Commission, or a panel of three Commissioners, issues written decisions that are served on all parties of record. A party may file a petition for reconsideration that will be reviewed by all five commissioners. A party may file an appeal directly with the Superior Court or may file an appeal from an order on reconsideration.
- ◆ **Written Decisions and Public Information:** The Commission issues written decisions. All proceedings are subject to the Open Meetings Act. The Commission's records are subject to the Public Records Act.
- ◆ **Governing Statutes and/or Regulations:** AS 42.04—Regulatory Commission of Alaska. AS 4.05—Alaska Public Utilities Regulatory Act. AS 2.06—Pipeline Act. The RCA is not subject to the APA (AS 42.05.151). According to AS 42.05.151(b), the legislature required the Commission to adopt regulations governing practice and procedure. The Commission adopted those regulations in 3 AAC 48.010 to 3 AAC 48 188.

Source: Patricia Clark, Hearing Examiner, (907) 276-6222.

**Table 5: Department of Community and Economic Development,
Division of Occupational Licensing**

- ◆ **Position:** Administrative Hearing Officer, range 24, fulltime, partially exempt employee.
- ◆ **Qualifications—Law Degree and Experience:** The position requires a law degree, and incumbent is a licensed attorney with approximately 6 years' experience in the position.
- ◆ **Types of Cases:** All professional licensing in AS 08 except for attorneys. Also, tobacco enforcement cases since 2001 (18 current tobacco cases).
- ◆ **Number of Hearings:** Cases may be complex and take several months overall; hearings generally last from 1-2 days, but they may take 2-3 weeks. Cases may be very detailed, often requiring written orders on numerous motions, and resulting in 20-40 page decisions particularly for revocations of health care providers and real estate surety funds. During 2002, 61 cases were opened. Over the course of the last year, the hearing officer has averaged about 70 cases open at any given time; the majority of those are active, and the remainder are active cases on appeal to the court system, cases that are temporarily inactive due to stays (e.g., for bankruptcy proceedings), and cases on remand to the originating board or commission.
- ◆ **Average Length of Time Required:** Approximately 10 months.
- ◆ **Prevailing Party:** The State prevails in approximately 80 percent of disciplinary cases, and about 90 percent of licensing cases. (In cases such as real estate surety fund complaints, the state is not a party—these are essentially a small claims action between private parties, i.e., claimants v. realtors. Recovery for the claimant is recommended approximately 70 percent of the time.)
- ◆ **Contract or "In-house" Hearing Officers:** The division's hearing officer handles all cases.
- ◆ **Other Duties:** Hearings for other agencies as assigned (for example, discipline of Certified Nurse Aides by the Division of Medical Assistance). Hearing Officer provides orientation and training to new board and commission members on matters such as the appeal procedure, due process, and their role in the proceedings. In approximately 50 percent of cases, boards and commissions call the hearing officer into executive session at their next regularly scheduled meeting in order to discuss the decision that has been proposed and get advice as to their options in relation to it. Summary suspensions often have expedited consideration by the board. Hearing Officer Unit is responsible for preparing the official record on appeal to the Superior Court.
- ◆ **Agency Representation at Hearings:** Although an assistant attorney general provides advice on general matters to boards and commissions, once a complaint has been filed the attorney becomes strictly an advocate for the Division of Occupational Licensing and represents the Division at hearings.

Table 5, continued

- ◆ ***Decisions and Review:*** The Hearing Officer drafts and signs a proposed decision. The commissioner and the appropriate board or commission receive a copy of the signed draft for review. The individual board or commission accepts, rejects, or modifies the proposed decision in accordance with the APA. Final decisions are written and include findings of fact and conclusions of law. A party may petition for reconsideration and/or appeal to the Superior Court.
- ◆ ***Written Decisions and Public Information:*** Copies of proposed decisions are sent by certified mail to parties, attorneys, and other individuals as required by the APA.
- ◆ ***Governing Statutes and/or Regulations:*** Administrative Procedures Act, AS 44.62.330-630.

Source: David Stebing, Administrative Hearing Officer, (907) 269-8170.

Table 6: Department of Fish & Game, Commercial Fisheries Entry Commission

The CFEC is under the Department of Fish & Game for administrative purposes. All positions in the CFEC are exempt. Hearing Officers report directly to the Commission regarding adjudicatory matters.

- ◆ **Positions:** Three Commissioners, range 26C; Adjudications Project Leader, range 23; Hearing Officer III, range 23; two Hearing Officer IIs, range 22; Managing Paralegal, range 18; Paralegal, range 15. Commissioners are appointed by the Governor, and the salary is set in statute.
- ◆ **Qualifications—Law Degree and Experience:** All hearing officers are required to have a law degree and two years of hearing officer or advocacy experience. Although not required, all current hearing officers are licensed to practice law in Alaska. The years of experience for the incumbents in the hearing officer positions range from 10 years to 22 years.
- ◆ **Types of Cases:** Hearing Officers handle permit transfers, limited entry permit appeals (often based on hardship and illness claims), and permit revocations. Paralegals handle temporary transfers, and one-year use permit appeals—often these hearings are conducted by telephone.
- ◆ **Number of Hearings:** Approximately 100 cases per year—several hundred cases per year in years when a fishery is limited.
- ◆ **Average Length of Time Required:** Approximately 19 months. A final decision takes approximately two weeks to write, from the time an applicant has fully presented the individual's claims. Cases are factually and legally complex. When cases are appealed to the courts, the process takes at least three years. Reversals of CFEC decisions by the court may be applied retroactively, requiring the commission to reopen previously closed fisheries, review previous applications, and accept new applications. Therefore, the CFEC must exercise extraordinary care in crafting decisions.
- ◆ **Prevailing Party:** The State does not really "win" or "lose" these cases. In most cases, appellants already have the benefits they are seeking to retain—applicants are either given permanent rights to fish, or denied permanent rights. Over the past ten years, the commission has decided for applicants in approximately 50 percent of the cases.
- ◆ **Contract or "In-house" Hearing Officers:** Commission hearing officers handle all cases.
- ◆ **Other Duties:** The Adjudications Project Leader has administrative responsibilities, tracks cases, and recalculates permit rankings within a particular fishery as cases are decided—requires approximately 20-30 percent of time.

Table 6, continued

- ◆ **Agency Representation:** Generally the agency is not represented, unless a case is particularly complex, or involves charges of fraud. Then one of the other hearing officers is assigned to represent the agency.
- ◆ **Decisions and Review:** Commissioners are required to review all hearing officer decisions. Commission decisions may be appealed to the Superior Court.
- ◆ **Written Decisions and Public Information:** Written decisions are issued on all cases, even for denials of hearings. Decisions are public information, and are sent to law libraries and to Westlaw. Summaries of decisions are posted on the CFEC website. Copies may also be obtained from the CFEC office.
- ◆ **Governing Statutes and/or Regulations:** The Commercial Fisheries Entry Commission and its procedures are governed by AS 16.43 and 20 AAC 05.1800. The CFEC is exempt from the Administrative Procedures Act.

Source: Frank Glass, Adjudications Project Leader, (907) 790-6926.

**Table 7: Department of Health & Social Services,
Division of Medical Assistance**

The hearings unit in the Division of Medical Assistance reports directly to the Deputy Commissioner of the Department of Health & Social Services.

- ◆ **Positions:** One Hearing Examiner, classified, range 24; two Public Assistance Program Officers, fulltime, classified, range 21.
- ◆ **Qualifications - Law Degree and Experience:** *Hearing examiners* must be attorneys licensed to practice in Alaska. The fulltime hearing examiner has held this position for less than a year but has over 10 years' legal experience. *Public Assistance Program Officers* are not required to have legal training; incumbents each had over 15 years' experience with the Division of Public Assistance before assuming these positions.
- ◆ **Types of Cases:** *Hearing Examiner*—Medicaid rate appeals; occasional appeals of sanctions for program violations by Medicaid providers. *Public Assistance Program Officers*—appeals from recipients who are denied welfare benefits or have had benefits reduced or modified; welfare fraud hearings. These hearings are appeals from either the Division of Public Assistance or the Division of Medical Assistance.
- ◆ **Number of Hearings:** *Hearing Examiner* holds approximately 4-8 Medicaid rate hearings and 50 scheduling or status conferences per year. These are extremely complex hearings, with thousands of pages of evidence, perhaps as many as 20 different issues involved, a variety of expert witnesses, and requiring substantial preparation. Decisions alone run 50-75 pages. *The Public Assistance Program Officers* hear over 100 cases a year from the Division of Public Assistance and over 50 from the Division of Medical Assistance.
- ◆ **Average Length of Time Required:** *Medicaid rate hearings:* Approximately one year, providing the appellant has no other pending appeals. Earlier appeals must be resolved first, so similar issues can be decided and applied to later appeals. *Public Assistance and Medical Assistance appeals:* Regulations require that the division notify appellants of the hearing date within 10 days of receiving an appeal. A decision must be issued within 90 days of the appeal.
- ◆ **Prevailing Party:** *Medicaid rate cases* usually do not have a clear prevailing party—the State prevails on some issues, and the facility on others. Some issues may be split between the parties' positions. *Public Assistance and Medical Assistance appeals* clearly have a prevailing party with either the State or the claimant prevailing.
- ◆ **Contract or "In-house" Hearing Officers:** Division hearing officers handle all hearings.

Table 7, continued

- ◆ **Other Duties:** The full time hearing examiner supervises the hearings unit, is sometimes asked to assist with special projects or hearings, or is consulted on the development of regulations—approximately 10-20 percent of time.
- ◆ **Agency Representation: Medicaid rate appeals:** The agency is represented by a Division of Medical Assistance hearing representative (Medical Assistance Administrator) or attorney. **Public Assistance and Medical Assistance appeals:** The Division of Public Assistance assigns a fair hearing representative.
- ◆ **Decisions and Review: Medicaid rate appeals:** The hearing examiner makes a recommendation to the commissioner, who issues the final decision. **Public Assistance and Medical Assistance appeals:** Decisions are final, but may be appealed to the division director. All final decisions may be appealed to the Superior Court.
- ◆ **Written Decisions and Public Information:** Written decisions are prepared on all cases. Medicaid decisions are public information—copies may be obtained by calling the office. Portions of the public assistance and medical assistance decisions are confidential.
- ◆ **Governing Statutes and/or Regulations: Medicaid rate appeals:** Administrative Procedure Act. **Public Assistance and Medical Assistance appeals:** "fair hearing regulations" in 7 AAC 49.010.

Source: Martha Beckwith, Administrator/Hearing Examiner, (907) 562-0631.

Table 8: Department of Labor, Alaska Labor Relations Agency

- ◆ **Positions:** One Hearing Examiner/Administrator, range 24, and one Hearing Officer/Investigator, range 21. Both are fulltime, classified, excluded employees. These positions are excluded because the incumbents conduct investigations and hearings of public employees who belong to labor organizations. Union membership by the positions would create the appearance of a conflict.
- ◆ **Qualifications—Law Degree and Experience:** The hearing examiner must have a law degree and be admitted to practice law. The incumbent is a licensed attorney with approximately 13 years' experience as a hearing officer/examiner, 5 of them in the present position. A law degree is not required for the hearing officer position, and the incumbent is not a lawyer but has approximately 12 years' experience in the position.
- ◆ **Types of Cases:** Unfair labor practice charges, bargaining unit clarifications, religious exemption claims, bargaining representative certification and decertifications, strike classification determinations, contract enforcement, labor relations issues for the Alaska Railroad Corporation.
- ◆ **Number of Hearings:** Because the agency emphasizes informal resolution of disputes, most cases are resolved informally or settled prior to final hearings. The effort expended to reach such resolution is reflected, but not explained, in the numbers of final decisions and orders issued. The agency does not count orders written on pre-hearing issues, such as motions for discovery, contempt, or continuances among the number of final decisions. During 2000, of 78 cases, the agency issued 5 final decisions; during 2001, of 70 cases, the agency issued 5 final decisions; and during 2002, of 79 cases, the agency issued 2 decisions.
- ◆ **Average Length of Time Required:** In 2000, the average case was 11 days; in 2001, 33 days; in 2002, the average case was 40 days.
- ◆ **Prevailing Party:** The State is not always a party in these cases. In 2000, there were no cases in which the State was a party. In 2001 and 2002, the State prevailed in every case in which it was a party.
- ◆ **Contract or "In-house" Hearing Officers:** Division staff conduct all hearings unless there is a conflict of interest with a hearing officer. The division would then use contract hearing officer services.
- ◆ **Other Duties:** The hearing examiner/administrator has administrative and supervisory duties, oversees the budget, and presides over most hearings. The hearing officer conducts investigations, supervises the elections process, presides over some hearings, and provides mediation services and primary public information services. Both oversee contract disputes, certification and decertification of unions, and strike votes, and conduct voting on certification. They produce a periodic newsletter, prepare the annual report for the governor and legislature, give public speeches and conduct outreach. The percentage of time spent on such activities is difficult to quantify since their duties are not narrowly prescribed, and caseload activity is difficult to predict.

Table 8, continued

- ◆ **Agency Representation at Hearings:** Hearings are held before a panel of three board members, one representative of labor, one of management, and one from the general public. The hearing examiner or hearing officer presides over the hearings, makes evidentiary rulings, and advises the panel on the law. The Public Employment Relations Act authorizes the board (not the hearing officer) to make the final decision. Attorneys usually represent parties.
- ◆ **Decisions and Review:** The hearing examiner and hearing officer may preside over hearings before the panel, or the board may, on a case-by-case basis, delegate to the hearing examiner or officer the authority to conduct a hearing alone. The hearing examiner presides over unfair labor practice disputes because they are conducted under the Administrative Procedures Act. The hearing officer does not investigate cases and also preside over them. The hearing examiner or officer drafts proposed decisions for the panel's review. Parties may appeal directly to the Superior Court.
- ◆ **Written Decisions and Public Information:** Decisions are public information and are mailed to parties. Copies of proceeding tapes can be obtained at the agency, and copies of decisions are available on the agency website.
- ◆ **Governing Statutes and/or Regulations:** Alaska Labor Relations Agency, AS 23.05.360-390; Public Employment Relations Act, AS 23.40.070-260; Alaska Railroad Corporation, Labor Relations, AS 42.40.705-890; Collective Bargaining Among Public Employees, 8 AAC 97.010-990. Unfair labor practices disputes are governed by the Administrative Procedures Act, AS 23.40.110-130. Under AS 23.05.370(a)(2), the board exercises general supervision and directs activities of staff.

Source: Mark Torgerson, Administrator/Hearing Examiner, (907) 269-4895.

Table 9: Department of Labor, Division of Employment Security

- ◆ **Positions:** One Appeals Referee III, range 21; four Appeals Referee IIs, range 19; and one Appeals Referee I (new hire), range 17. All positions are full-time, classified employees.
- ◆ **Qualifications—Law Degree and Experience:** Law degrees are not required for appeals referee positions, and only one of the incumbents is a lawyer. The Appeals Referee III has approximately 28 years' experience; the others have between 0 and 24 years of experience.
- ◆ **Types of Cases:** Unemployment insurance compensation appeals (UI and TRA/TAA benefits) and unemployment insurance tax appeals (e.g., employee/independent contractor disputes and contribution rate appeals).
- ◆ **Number of Hearings:** Approximately 2,700 to 3,000 annually (2,873 appeals filed in calendar year 2002). Appeals referees are each scheduled for approximately 20 hearings per week.
- ◆ **Average Length of Time Required:** Federal standard—Conduct hearings and issue 60 percent of first level written appeal decisions within 30 days after the appeal filing date; 80 percent within 45 days. (For calendar year 2002, the entire appeals tribunal unit issued 76 percent of first level decisions within 30 days; 95 percent within 45 days.)
- ◆ **Prevailing Party:** The appellant prevailed in approximately 30 percent of tribunal hearings conducted in calendar year 2002.
- ◆ **Contract or "In-house" Hearing Officers:** AS 23.20.410. One or more persons are appointed to be an appeal tribunal to hear and issue decisions.
- ◆ **Other Duties:** The Appeals Referee III supervises the other appeals referees.
- ◆ **Agency Representation at Hearings:** A representative of the Employment Security Division attends some of the first level hearings.
- ◆ **Decisions and Review:** There are two levels of appeal. First level decisions written by tribunal appeals referees become final if further appeal is not filed within 30 days after the decision date. First level decisions may be appealed to a second level, which is to the commissioner of Labor & Workforce Development. The appeals referee III presides at the second level and drafts proposed decisions for the commissioner's approval, modification, or reversal. A party may appeal the commissioner's decision to the Superior Court.
- ◆ **Written Decisions and Public Information:** Decisions are written and mailed to all interested parties as well as posted for public review on the Internet. Employment Security Tax appeal decisions from 1993 to the present are available on the Department's website or through the division. All first level tribunal decisions since 1998 are available on the website. All commissioner decisions since 1994 are also available. Archived decisions in all categories are gradually being loaded to the Internet.

Table 9, continued

- ♦ *Governing Statutes and/or Regulations:* Alaska Employment Security Act, Appeals, AS 23.20.410-470; and 8 AAC 85.150-157. The Alaska Administrative Procedure Act (APA) (AS 44.62) specifically excludes hearings arising under the Alaska Employment Security Act (AESA) (AS 23.20) from APA coverage.

Source: Stephen Long, Appeals Referee III, (907) 269-4886.

Table 10: Department of Labor, Division of Workers' Compensation

- ◆ **Positions:** One Chief of Adjudications, range 23, and six Hearing Officers, range 21. All are full time, classified positions.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not a requirement for either level of position, but all the current incumbents are attorneys licensed to practice law in Alaska or elsewhere. The chief of adjudications has held this position for 3.5 years. One hearing officer has approximately 18.5 years with the division; one has approximately 8.5 years' experience; one has 3.5 years' experience with the division; one has one year's experience with the division; and two have less than a year with the division.
- ◆ **Types of Cases:** Workers' Compensation Claims Adjudications.
- ◆ **Number of Hearings:** There are roughly 30,000 workers' compensation injuries reported each year. Hearing officers with the Workers' Compensation Board issue between 250 and 350 written decisions and orders per year. Approximately 600 cases per year settle prior to hearings. Hearing officers review settlement terms and provide details to the Board for a "best interest" review.
- ◆ **Average Length of Time Required:** An average of 211 days (approximately 197 days between the filing of an Affidavit of Readiness for Hearing and the date the case is heard, and 22 days between the closing of the hearing record and the issuance of the Decision and Order [D&O]).
- ◆ **Prevailing Party:** In the vast majority of workers' compensation cases, the State is not a party and has no independent interest. The dispute is normally between the employer/insurer and the injured worker.
- ◆ **Contract or "In-house" Hearing Officers:** All hearings are conducted by division staff, sitting with members of the Alaska Workers' Compensation Board. On occasion contract hearing officers are used when a conflict of interest exists or there is a need to fill in because of an excess caseload.
- ◆ **Other Duties:** The Chief of Adjudications supervises other hearing officers and compensation officers, in addition to chairing some hearings and writing decisions. Hearing officers may work on regulations needing clarification.
- ◆ **Agency Representation at Hearings:** All hearings are before a Workers' Compensation Board panel, which consists of a hearing officer acting as the commissioner of Labor and Workforce Development's designated representative, a representative of labor, and a representative of industry. The commissioner's designee serves as chair of the panel.
- ◆ **Decisions and Review:** The hearing officer conducts any necessary research and drafts a proposed decision for the panel, which makes the final decision. Parties may ask for reconsideration by the panel and/or appeal to Superior Court.

Table 10, continued

- ◆ **Written Decisions and Public Information:** Decisions are public information. Copies are available in the office, at the law library, on Westlaw, and on the department's website (decisions from 1988 to the present).
- ◆ **Governing Statutes and/or Regulations:** Hearings under the Alaska Workers' Compensation Act are found at AS 23.30.110 et seq. Regulations concerning proceedings before the Alaska Workers' Compensation Board are found at 8 AAC 45 and 8 AAC 46.

Source: Paul Grossi, Director, Division of Workers' Compensation, (907) 465-6046.

Table 11: Department of Labor, Division of Labor Standards and Safety

- ◆ **Positions:** There are no division staff positions for Hearing Officers; however, the department contracts for hearing officer services for Occupational Safety and Health (OSH) appeals. In OSH Review Board cases in which a state agency is the employer, an AK-OSH investigator will act as hearing officer. Wage & Hour investigators are trained as hearing officers and can act as such when required; however, the division contracts for W&H hearing officer services.
- ◆ **Qualifications—Law Degree and Experience:** Law degrees are not required for hearing officers; however, contractors for the OSH Review Board must have at least two years' experience with specialized Alaska and federal occupational safety and health law, as well as at least two years' experience as a hearing officer. Incumbent has 14 years' experience as the OSH Review Board hearing officer, and is an attorney with 23 years' experience prosecuting OSH and other employment-related cases. Wage and Hour cases require a specialized knowledge of Alaska Wage and Hour law.
- ◆ **Types of Cases:** *OSH*—appeals of citations and penalties assessed for violations of the Occupational Safety and Health Act. *Wage & Hour*—Cases include dispute of fact or law (Public Sector—Little Davis Bacon Prevailing Wage), debarment hearings (contractors having disregarded obligations to employees may be "debarred" from future public construction contracts for up to 3 years), and employment preference hearings.
- ◆ **Number of Hearings:** *OSH*—Hearings are often settled; however, the average for the past five years is 13 cases per year. *Wage & Hour*—The average number of dispute of fact hearings is 2-3 per year. Employment preference and debarment hearings are very infrequent with years elapsing between cases.
- ◆ **Average Length of Time Required:** *OSH*—Hearings from beginning to end can be one month to two or more years, with the average for the last five years being 13 months. *W&H*—Every effort is made to settle W&H cases; some are lengthy and take years to resolve, others are resolved in a year or so.
- ◆ **Prevailing party:** *OSH review board cases*—In 12 of the last 15 decisions, the State prevailed; however, some cases are dismissed, some are modified or partially dismissed, and in some cases, violations are reduced. *W&H cases*—The department prevailed 50 percent of the time in W&H cases for the past years.
- ◆ **Contract or "In-house" Hearing Officers:** The same contractor provides hearing officer services for the Occupational Safety and Health Board and for the Wage and Hours Section.
- ◆ **Agency Representation at Hearings:** *OSH*—An assistant attorney general routinely represents the department except when a state agency is the employer; in those cases, AK-OSH staff must represent the department. *W&H*—A representative of the division will normally attend a hearing. An investigator will be the advocate for the department presenting the case or assisting the advocate.

Table 11, continued

- ◆ **Decisions and Review: OSH cases**—The OSH Review Board makes decisions after hearings and on dispositive motions. The hearing officer is the delegated authority to decide non-dispositive and procedural motions. **W&H Cases**—The hearing officer prepares a recommended decision for review by the division director. From the date of the final agency decision, a party has 30 days to appeal to the Superior Court.
- ◆ **Written Decisions and Public Information:** Decisions are written and mailed to all interested parties. They are also available through the division.
- ◆ **Governing Statutes and/or Regulations:** **OSH**—AS 18.60.010 through AS 18.60.105, and 8 AAC 61.160-61.220. **Wage & Hour**—Employment Preference, AS 36.10.210; Title 36 Little Davis Bacon—AS 23.05.060, AS 36.10.075, AS 36.10.120, AS 36.05.030; Hearings, 8 AAC 30.100 and 8 AAC 30.110; Debarment, AS 23.050-060; 36.05.030; AS 36.05.090, and 8 AAC 30.200-.240.

Source: Robert Landau, Hearing Officer (907) 272-2266.

Table 12: Department of Labor, Division of Vocational Rehabilitation

- ◆ **Positions:** *Disability Determination Services:* One part-time Disability Hearing Officer, range 19, for Disability Determination Services (DDS), at 420 hours per year in FFY 02. *Vocational Rehabilitation Client Services:* By state and federal law, Vocational Rehabilitation Client Services must randomly select from a list of qualified attorneys maintained by the division to contract for impartial hearing officer services. The division and the State Rehabilitation Council (the governor's committee on employment and rehabilitation of individuals with disabilities) must identify hearing officers included on the list.
- ◆ **Qualifications:** *Disability Determination Services:* Three years of professional experience in reviewing and adjudicating Social Security and Supplemental Income disability insurance claims.
- ◆ **Types of Cases:** *Disability Determination Services:* Continuing disability review with cessation of benefits. Under Social Security Act, DDS must provide pre-hearing review prior to Administrative Law Judge appeal by Social Security Administration. *Vocational Rehabilitation Client Services:* Individuals served by the Division of Vocational Rehabilitation who are dissatisfied with any determination made by personnel of the division that effects the provision of vocational rehabilitation services.
- ◆ **Number of Hearings:** *Disability Determination Services:* 42 in FFY 02. *Vocational Rehabilitation Client Services:* The division emphasizes informal resolution of complaints. An informal review is conducted by an administrator of the division who nearly always resolves the matter. Mediation is also an option under the federal regulations. Full hearings are rare: there has been only one such hearing since FY 00.
- ◆ **Average Length of Time Required:** *Disability Determination Services:* 10 hours per review—includes reviewing the file, conducting the hearing, and writing the decision. *Vocational Rehabilitation Client Services:* Federal Regulation requires the hearing to be held within 60 days of the request; findings and the written decision must be provided to the individual within 30 days of the completion of the hearing.
- ◆ **Prevailing Party:** *Disability Determination Services:* The State is not a party in these cases. The dispute is between the claimant for disability benefits and the Social Security Administration. *Vocational Rehabilitation Client Services:* The State prevailed in the one case heard in the last three years.
- ◆ **Contract or "In-house" Hearing Officers:** *Disability Determination Services:* Currently, all hearings are conducted by the part-time hearing officer employed by the division; however, consideration is being given to contracting the hearings due to the expertise required and the minimum amount of time required. Retired, experienced, trained DDS hearing officer/adjudicators are available. *Vocational Rehabilitation Client Services:* All hearings are conducted by contracted hearing officers trained by the division with the help of national Rehabilitation Continuing Education Programs.

Table 12, continued

- ◆ **Other Duties: Disability Determination Services:** As hearings are only part time duties, the experienced adjudicator also performs duties as a disability adjudicator.
- ◆ **Agency Representation at Hearings: Disability Determination Services:** The part time DDS hearing officer is the agency representative. Attorneys or family members frequently represent claimants. **Vocational Rehabilitation Client Services:** The chief of Rehabilitation Services represents the division with help from an attorney from the Department of Law. A representative from the client assistance program may represent the individual.
- ◆ **Decisions and Review: Disability Determination Services:** The hearing officer conducts a file review, meets with the claimant, and writes a decision. Appeals are to the to an administrative law judge with the Social Security Administration. **Vocational Rehabilitation Client Services:** The contracted impartial hearing officer presides over the hearing with evidentiary rules applicable. A written decision is provided to the individual. Decisions are final; appeals are to the Superior Court.
- ◆ **Written Decisions and Public Information: Disability Determination Services:** All information is confidential under the Social Security Act. **Vocational Rehabilitation Client Services:** All information is confidential under the Rehabilitation Act of 1973 as amended.
- ◆ **Governing Statutes and/or Regulations: Disability Determination Services:** Social Security Act, section 205(b); 20 CFR 404.900-404.922, 404.992, 404.993, 404.1546, 416.946, 416.1400-416.1422, 416.1492, and 422.140. **Vocational Rehabilitation Client Services:** AS 23.15.010-23. The Rehabilitation Act of 1973 as amended in 1998—Title IV(I), P.L. 105-220, "The Workforce Investment Act." 34 CFR 361.57, and 8 AAC 98.510-550.

Sources: Sandra Kelley, chief, Disability Determination Service, (907) 777-8109; and David Quisenberry, acting director, Division of Vocational Rehabilitation, (907) 465-6931.

**Table 13: Department of Natural Resources,
Division of Mining, Land & Water**

An appeal to DNR is typically a request that the commissioner review the work of subordinates to determine whether the commissioner's judgment applied to the facts would revise the answer. This question is almost never suited to a hearing officer, and so, it is no surprise that DNR holds very few hearings. What the department terms a "hearing officer" or "appeals officer" does very different work than in other agencies. It is usually someone skilled in working through the case to identify the issues involved for review by the commissioner.

This description of appeals within the Division of Mining, Land and Water is based on new reporting techniques implemented in the past seven months.

- ◆ **Positions:** Appeals Officer (Natural Resource Specialist III), range 18, classified. However, the first draft of almost every appeal decision is assigned to other division staff members, based on area of expertise. In addition, the division director, deputy commissioner, and commissioner have acted as hearing officers in a few cases.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not required. The minimum qualifications for a Natural Resource Specialist III are at least two years of journey level professional experience in natural resource management or a master's degree from an accredited institution in a natural resource field, law, public administration, planning, or economics. The incumbent has over 20 years' experience with the department.
- ◆ **Types of Cases:** State's best interest findings resulting in disposition of interest in State lands, or decision permitting the use of State lands—grazing leases, tideland leases, land conveyances, forest lands, surface mining, etc.
- ◆ **Number of Hearings and Appeals:** Approximately one oral hearing per year. Approximately 56 appeals per year.
- ◆ **Average Length of Time Required:** Median time to complete appeals is 51 days; mean (average) time to complete appeals is 6 months. Oral hearings are rarely held—they are discretionary. Because oral hearings are expensive and can cause long delays, they are only held when they are the best way to resolve a factual controversy, which is hardly ever the case. Approximately 11 hearings have been held in the last 11 years. In three cases, a contract hearing officer was hired; a division staff person handled one case; a staff person from another division handled one case; the division director acted as a hearing officer in two cases; the deputy commissioner handled one case; and the commissioner acted as the hearing officer for three cases.
- ◆ **Prevailing Party:** The State prevails in approximately 67 percent of the cases. The remaining appeals are granted, granted-in-part, or remanded back to the office that issued the original decision.

Table 13, continued

- ◆ **Contract or "In-house" Hearing Officers:** All appeals are handled by division staff. In the case of the approximately one oral hearing per year, a contract hearing officer handled the hearings on three occasions for 30 percent of the cases over the last 11 years.
- ◆ **Other Duties:** The appeals officer has other natural resource duties but mostly administers the division's appeal process in addition to finalizing draft appeal decisions (track incoming appeals, notify the appellant that the appeal has been received, assign the first draft of a decision to an appropriate staff person, draft some decisions). Other division staff members who draft appeal decisions all have other natural resource duties as their primary responsibility: land management, mineral management, water management, surveying, property appraisal, land planning, and land title tasks.
- ◆ **Agency Representation at Hearings:** In the approximately one oral hearing held per year, staff represents the division. The hearing officer does not serve as an advocate, but as a neutral party.
- ◆ **Decision and Review:** Appeals are only to the commissioner. Division staff members draft decisions for the approval of the commissioner; the commissioner makes the decision. Appellants may appeal the commissioner's decision to the Superior Court.
- ◆ **Written Decisions and Public Information:** All decisions are written and are public information as part of the State's public land records (unless they qualify for confidentiality under AS 38.05.035(a)(9), which is rarely the case). Any member of the public may inspect these records during normal business hours at the department's offices, or purchase a copy for 25 cents per page.
- ◆ **Governing Statutes and/or Regulations:** 11 AAC 02; AS 27.21.150, AS 27.21.240 (coal surface mining reclamation program); AS 41.17.082, AS 41.17.136-143 (Forest Practices Act); AS 38.05.065(d).

Source: Greg Curney, Natural Resource Specialist III, (907) 269-8510.

**Table 14: Department of Natural Resources,
Division of Forestry**

- ◆ **Positions:** The two Division of Forestry Regional Foresters act as hearing officers for Forest Resources and Practices Act (FRPA) appeals. The Northern Region forester handles appeals on decisions made within the Coastal Region; the Coastal Region forester handles appeals on decisions made within the Northern Region. Both are full-time, classified, Forester IV positions, range 22. Hearing officer duties are only a small part of their responsibilities.
- ◆ **Qualifications—Law Degree and Experience:** The incumbents in these positions have 3.5 years' (Northern Region) and 4 years' (Coastal Region) experience. Both incumbents have many years of experience in forest management in Alaska prior to holding their current position. These positions require a degree in forestry, but not a law degree. Both are trained as foresters, and neither has formal law training. The Department of Law has provided some training to the hearing officers in a formal session as well as through ongoing consultation on individual appeals and hearings. Hearing officers are expected to have a thorough knowledge of the FRPA and of forestry practices appropriate to the area under appeal.
- ◆ **Types of Cases:** FRPA appeals address implementation and enforcement actions on private, municipal, and trust land rather than state land.
- ◆ **Numbers of Hearings and Appeals:** Most forest practices issues are resolved without the need for a formal hearing process. As such, hearings are relatively rare. During 2000, there was 1 FRPA hearing and the decision was appealed. Since that time, there have been no hearings. The 2000 case required 62.5 hours of work by the hearing officer.
- ◆ **Average Length of Time Required:** Under pertinent statutory provisions, the state forester must immediately refer a matter to a hearing officer for determination of the validity of a stop work order. The hearing officer must consider any arguments and evidence presented by the respondent within 5 workdays after receipt of the stop work order and must make an immediate decision sustaining or reversing the order. The respondent can request the commissioner to reconsider the hearing officer's decision. This process must be completed within 30 days. Most cases—95 percent—are completed within this 5 day plus 30 day timeline. If the commissioner orders additional administrative review, such as additional fieldwork to gather information, the process could take up to twelve months to complete.
- ◆ **Prevailing Party:** The state prevailed in the last case.
- ◆ **Contract or "In-house" Hearing Officers:** All hearings are conducted by in-house personnel.
- ◆ **Other Duties:** Hearing officer duties constitute only a very small part of the responsibilities for FRPA hearing officers. The regional foresters are responsible for implementation of the forest management, fire management, and forest practices programs in their regions.

Table 14, continued

- ◆ ***Agency Representation at Hearings:*** An attorney from the Office of the Attorney General represents the Division of Forestry and works closely with a prosecution coordinator, and various Regional and Central Office staff members. The hearing officer is not acting as the division's representative and must "fully and impartially represent the interests of the state and the respondent." The hearing officer does not participate in preparation of the division's case.
- ◆ ***Decisions and Review :*** A decision by a hearing officer or by the commissioner under constitutes final agency action. A party may ask the commissioner to reconsider a hearing officer's decision, or appeal directly to Superior Court.
- ◆ ***Written Decisions and Public Information:*** Hearing officer decisions are written, and final decisions are public information. A member of the public may obtain a copy by submitting a request to the Division of Forestry.
- ◆ ***Governing Statutes and/or Regulations:*** Enforcement decisions under the Forest Resources and Practices Act (FRPA) are subject to the appeal and hearing process established by the Act in AS 41.17.131-.143 and 11 AAC 95.250. This process is specifically separate from the process under the Administrative Procedure Act (AS 41.17.139[a]).

Source: Martha Welbourn Freeman Natural Resource Manager IV/Forest Resources Program Manager, (907) 269-8473.

Table 15: Department of Natural Resources, Division of Oil and Gas

- ◆ **Positions:** The Division of Oil and Gas manages the state's oil and gas resources with a permanent staff of 55, consisting of highly specialized technical experts schooled as petroleum geologists, petroleum geophysicists, petroleum engineers, petroleum land managers, attorneys, petroleum economists, accountants, and natural resource specialists, who are assigned to five sections: resource evaluation, leasing and licensing, commercial, royalty accounting, and lease, permit and unit administration. All of these sections are involved with drafting some type of agency decision.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not required. Division staff members who handle oil and gas appeals have a variety of specialized experience. Most have advanced degrees and experience in petroleum geology, geophysics, engineering, and/or economics. Two staff members have law degrees with specializations and/or experience in natural resources law (the deputy director, who is also a lawyer with almost 15 years' experience in oil and gas issues, does not typically work on appeal decisions). The Department of Law provides assistance with all appeals and reconsideration decisions.
- ◆ **Types of Cases:** Permitting, reconsiderations of competitive oil and gas best interest findings, licensing, Alaska Coastal Management Plan consistency determinations, unitization decisions (expansions, contractions, formations, terminations), discovery royalty, royalty reduction, and termination of leases.
- ◆ **Contract or "In-house" Hearing Officers:** Most appeals have been handled "in-house" by a hearing officer who is qualified to understand the technical aspects of the facts or law involved but who did not take part in the original decision. In some cases, the commissioner may decide to sit as the hearing officer.
- ◆ **Other Duties:** All individuals that serve as decision makers on appeals have other duties as their primary responsibility: petroleum geologists, petroleum geophysicists, petroleum engineers, petroleum economists, lease sales manager, permitting manager, petroleum land manager, natural resource specialists.
- ◆ **Agency Representation at Hearings:** In an oral hearing, division staff represents the agency. The hearing officer or decision maker is a neutral party and does not serve as an advocate. If requested by the hearing officer, an attorney from the Department of Law attends the hearing and provides any procedural advice.
- ◆ **Decision and Review:** Professional staff from the appropriate section will draft a decision for either the director to sign or for the director and commissioner to cosign. Those decisions which only the director signs may be appealed to the commissioner. Once the commissioner makes a decision on the appeal, it is a final decision for purposes of appeal to the Superior Court. For division decisions that are co-signed by the director and the commissioner, the appropriate review is a request for reconsideration made to the commissioner. A decision on reconsideration is a final decision for purposes of appeal to the Superior Court. Some oil and gas decisions such as best interest findings on royalty-in-kind sales are made by the commissioner and ratified by the Legislature.

Table 15, continued

- ◆ **Written Decision and Public Information:** All Division of Oil and Gas decisions are written. In accordance with AS 38.05.035(9)(C) and (D), geological, geophysical, and engineering data, as well as cost and financial data, are confidential. Many written decisions made by the division contain confidential information. Decisions regarding administration of oil and gas leases and licenses, permitting decisions, and best interest findings for competitive oil and gas lease sales are examples of decisions that do not contain confidential information and are open to the public.
- ◆ **Governing Statutes and Regulations:** AS 38.05.035 and 11 AAC 02.

Source: Marie Crosley, Natural Resource Specialist V, (907) 269-8802.

Table 16: Department of Revenue, Office of the Commissioner

- ◆ **Positions:** One Revenue Hearing Examiner II, range 24, and two Revenue Hearing Examiner Is, range 22. All three are fulltime, partially exempt positions.
- ◆ **Qualifications—Law Degree and Experience:** Law degrees are not required by statute, but the Department policy has always been to hire lawyers for hearing officer positions. All three incumbents are licensed attorneys with several years' experience practicing law. Incumbents have been in their current positions from approximately two and a half to seven years.
- ◆ **Types of Cases:** Oil & gas taxes, child support, permanent fund dividend, gaming, unclaimed property, State Assessment Review Board (oil and gas property assessment appeals—see AS 43.56.210 [7]).
- ◆ **Number of Hearings:** During 2002, hearing examiners received approximately 887 cases and issued approximately 725 substantive decisions (less substantive decisions occur when parties withdraw, settle, or cases are remanded to a lower level).
- ◆ **Average Length of Time Required:** *Permanent Fund Dividend* appeals: approximately 90 days. *Child Support* appeals: approximately 60 days. *Tax, gaming, and unclaimed property* appeals: about 120 days. These time frames include the time before the actual hearing, used for scheduling, sending notice to the parties, pre-hearing conferences and orders relating to matters such as discovery and dispositive motions. *State Assessment Review Board* appeals (oil & gas property assessment appeals) are scheduled for the board's annual meeting, a few weeks after the deadline for filing appeals. The hearings are completed in a few days, and decisions are issued within 10 days after the hearing.
- ◆ **Prevailing Party:** The *Permanent Fund Dividend Division* prevails in about 60 percent of its cases. (A large percentage of these cases are disposed of by motions because the applicant is disqualified as a matter of law, based on the undisputed facts of the case.) In *child support* cases, the division's administrative order is upheld only about 40 percent of the time. This is because new income information usually becomes available after the parties appeal. *Tax, gaming, and unclaimed property* cases usually settle under the hearing officer's supervision, so both parties prevail in most cases. In cases that actually go to hearing, the State prevails over 90 percent of the time. *State Assessment Review Board* cases are more complex—the State may be only one of three potential parties (the State, the taxpayer, and any affected municipality)—but the State prevails about 70 percent of the time. In 2001, for example, the board heard only one appeal, but it was an appeal of the assessed valuation of the entire Trans Alaska Pipeline System. Values argued by the parties ranged from \$2.1 billion to \$5.8 billion. The Board rejected the state's assessed valuation of \$2.75 billion, and ordered that the property be assessed at \$3.1 billion. None of the parties prevailed on all their litigation positions.
- ◆ **Contract or "In-house" Hearing Officers:** *Hearing section* staff handle about 95 percent of the cases; contract hearing officers do about 5 percent of the work. The Office of Tax Appeals in the Department of Administration has been contracted with in the past to take some oil & gas tax appeals.

Table 16, continued

- ◆ **Other Duties:** The senior hearing examiner supervises the other hearing examiners and support staff and also serves as the legal counsel for the State Assessment Review Board, which hears appeals of oil and gas property tax assessments. In this capacity, the hearing examiner advises the board and drafts the board's decision for the chair's signature. The hearing section also provides paralegal and clerical support for the board. The senior hearing examiner also serves as the ethics supervisor for the Department of Revenue. Hearing examiners provide comments on language in draft regulations and may provide recommendations to clarify ambiguous language. Hearing examiners meet regularly with agency staff to try to improve the administrative appeals process by making it more efficient and easier for members of the public to understand and to participate.
- ◆ **Agency Representation at Hearings:** The agency is generally represented at child support and permanent fund dividend hearings, but not by attorneys. An auditor or an attorney with the Tax Division generally represents the state in gaming appeals. Two assistant attorneys general usually represent the state at State Assessment Review Board appeals.
- ◆ **Decisions and Review:** The hearing officers write proposed decisions for review by the commissioner or his/her designated representative. The senior hearing examiner has, in cases other than gaming and unclaimed property, the delegated authority to adopt decisions for the commissioner. Parties may appeal final decisions to the Superior Court.
- ◆ **Written Decisions and Public Information:** Parties are sent copies of decisions, but child support, permanent fund dividend, and oil and gas property tax decisions are confidential. Decisions by the State Assessment Review Board and gaming and unclaimed property decisions are public. Copies may be obtained at the division.
- ◆ **Governing Statutes and/or Regulations:** Department of Revenue hearing procedures are codified at 15 AAC 5.010-050; child support matters are governed by AS 25.27 and 15 AAC 125; permanent fund dividend matters are under AS 43.23.005-095 and 15 AAC 23; oil and gas exploration, production and pipeline transportation property tax is at AS 43.56 and 15 AAC 56.015-040. Gaming is at AS 5.15 and 15 AAC 160.

Source: Mark Handley, Revenue Hearing Examiner II, (907) 465-3752.

**Table 17: Department of Transportation & Public Facilities,
Office of the Commissioner**

- ◆ **Position:** Chief Contracts Officer, Range 23, classified position; approximately 20 percent of the position's duties involve protest and claim appeals, including administering hearing officer services contracts.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not required for the position, and the incumbent does not have one. But, he does have 20 plus years' experience in government procurement, contracting, and contract dispute resolution.
- ◆ **Types of Cases:** Disputes relating to bid procedures, bid/contract language, contract awards, contract performance, etc.
- ◆ **Number of Hearings:** Approximately six appeals per year go to hearing. In addition, an additional 6 appeals per year are adjudicated via an appeals officer directed decision (AOD).
- ◆ **Average Length of Time Required:** Complex hearings typically average 300 days to adjudicate.
- ◆ **Prevailing Party:** For the 10-year period of 1992 through September 12, 2002, 63 construction-related (claim & protest) appeals were directed to hearing. (This does not include those appeals receiving a directed decision). Of the 63 appeals, 33 were claims, 26 were protests, and 4 were in the lease category. In regard to resolution, 15 were settled by mutual agreement before a hearing was started; 43 were adjudicated through the hearing process or, in some instances, partially heard (i.e., settlement was reached during the hearing process); as of Sept. 11, 2002, 5 appeals were still before hearing officers. Of the 43 appeals adjudicated through the formal hearing process, 11 were resolved in appellate court as follows: 1 was remanded for settlement; the State prevailed on 10 (i.e., the original administrative decision of the department, after the hearing, was upheld).
- ◆ **Contract or "In-house" Hearing Officers:** The chief contracts officer does not act as the hearing officer in the administrative hearing. An attorney or other qualified professional with experience in construction-related protest or claim adjudication, as determined by the chief contracts officer, typically serves as the hearing officer. The chief contracts officer solicits for the hearing officer and administers all of the department's construction-related hearing officer services contracts.
- ◆ **Other Duties:** The chief contracts officer also administers certain construction related contracts and special procurement requests; provides various assistance and training; supervises subordinate staff members; prepares fiscal notes and position papers; and ensures compliance with department policies and procedures and state and federal laws and regulations.
- ◆ **Agency Representation at Hearings:** As an assist to the appeals officer, the chief contracts officer is instrumental in reviewing and applying case law to appeals adjudicated without the hearing process. He is also responsible for establishing and maintaining the guidelines under which the hearing is held.

Table 17, continued

- ◆ **Decisions and Review:** A hearing officer's decision is a recommendation for consideration. After review and recommendation by the chief contracts officer of the hearing officer's decision, the appeals officer can adopt, modify, remand for further consideration, or reject the decision for good cause. Either party to the appeal may then elevate their appeal to the Superior Court.
- ◆ **Written Decisions and Public Information:** All administratively adjudicated decisions are written. Parties are sent copies of final decisions, which are public documents.
- ◆ **Governing Statutes and/or Regulations:** The administrative adjudication of construction-related hearings is governed by the State Procurement Code (AS 36.30). Under AS 36.30.670(b), the provisions of the Administrative Procedure Act do not apply to hearings conducted under this chapter.

Source: Mark O'Brien, Chief Contracts Officer, (907) 465-6990.

We hope you find this information to be useful. Please contact us if you have questions or need additional information.

Attachment A

Memorandum from Mark Handley regarding the APA

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

TO: Patricia Young
Legislative Research Services

DATE: February 27, 2003

TELEPHONE: 465-3752

FROM: Mark T. Handley
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

You have asked for a brief explanation or history of why Department of Revenue administrative appeals are not governed by the Administrative Procedures Act (APA).

Appeals within the Department of Revenue are exempted from the administrative procedure act under AS 44.62.330(a).

The Administrative Procedures Act (APA).

The APA adjudicative procedures are tailored for the types of appeal that are governed by the APA. These appeals can be characterized as appeals that are likely to be rare and involve complex issues surrounding an agency's decision to take away an important vested right such as an individual's livelihood, a doctor's license to practice, for example. These appeals are the equivalent of capital crime trials in the world of administrative adjudications. The APA process is very formal, expensive and complicated. Both the state and the appellant are usually represented by attorneys. The APA process is designed to ensure the maximum procedural protections for all parties, much more than is required for the resolution of most administrative disputes. This process is relatively difficult for members of the public and lay agency staff to understand. Parties who are un-represented will be at much more of a disadvantage in one of these proceedings than they would be in most non-APA adjudications.

The APA only applies to a few types of cases. These tend to be low volume complex cases that require little special subject matter expertise, but a high level of legal expertise, to hear and litigate. The procedures are designed for attorneys, who litigate and sit as hearing officers in APA Hearings. APA procedure is more similar to court procedure, the procedure that attorneys are familiar with and are comfortable using, than the less formal procedure used in administrative adjudications where the parties are un-represented and the hearing officers are not

process to be followed in each case. This is true for tax and non-tax cases. These rules allow the hearing officer to tailor the process to the individual case to ensure that it is both fair and efficient.

Evolution of the Department of Revenue Hearing Procedures

Over the years, Revenue's administrative appeals caseload has shifted away from tax cases to a greater emphasis on permanent fund dividend, child support, and gaming appeals. The flexibility provided to the hearing officer at the formal hearing level, however, has allowed for the procedure in each of these types of cases to be tailored to the type of appeal without many changes in the regulations. Over the years the process has been steadily tweaked and fine-tuned by the hearing section with feedback from agencies and members of the public who participate in the process. The goal has been to make the process more efficient, less complicated, fairer and more accessible and understandable for the members of the public and agencies it serves. These parties are usually un-represented.

In CSED and PFD cases the informal conference has evolved into a quick internal agency review of the disputed agency action. This process ensures that someone other than the individual who made the original agency determination looks at the complaint, reviews the agency action and changes the determination if necessary. An agency review does not guarantee that a "conference" in the sense of a meeting between the parties takes place. With PFD and CSED, this step resolves a significant portion of the appeals. This is because either the agency corrects its determination or the member of the public decides not to appeal the agency determination after it has been explained in the administrative review decision.

Making this process more streamlined has helped to reduce both backlogs and the repetitive effort required by appellants. The current system is quicker and does not require the appellant to appear for two hearings to get a final order. This reduces the "wearing down effect" on appellants of the two-tiered appeals process, while maintaining its positive aspects.

These administrative reviews and informal conferences do not meet the due process requirements for a formal hearing, let alone an APA hearing, but this step reduces overall costs to both the agencies and the appellants. It is a simple review conducted by less expensive employees with very high caseloads. They succeed in significantly reducing the number of appeals that would otherwise require a formal hearing. Members of the public are well served by this system because many have their disputes resolved and their questions answered without having to take time off work to attend a formal hearing.

Appellants who do choose to go on to a full formal hearing still find the procedure to be fast, understandable, and user-friendly. The majority of PFD hearings, for example, seldom take more than 30 minutes, and a hearing officer might hear 8-10 cases in a day. In cases with limited issues, it is not uncommon for the hearing officer to explain the procedure, swear in the appellant, hear the testimony and cross-examination, and conclude the hearing in less than 15 minutes, with a written decision mailed at a later time. This level of efficiency could never be accomplished under the APA.

For example, in 2001 the State Assessment Review Board heard the appeal of the state's assessed valuation of the Trans-Alaska Pipeline System using non-APA procedures. The board was able to establish a procedure in the TAPS appeal that allowed the hearing to be scheduled less than 50 days after the notice of assessment and limited the hearing to three days. A final decision was issued less than ten days after the hearing. Tens of millions of dollars in annual tax liability were in dispute. There were eight attorneys representing the parties, thousands of pages of exhibits and at least six expert witnesses. In addition to establishing the procedure for the hearing, the board had to make several procedural rulings before and during the hearing. None of the parties appealed the board's decision, an indication that they were satisfied with the procedure. This case would not have been resolved as efficiently if the APA procedure had applied. The discovery issues alone would probably have taken several months to resolve.

Revenue's High Volume Caseload

CSED and PFD cases are the biggest part of the Hearing Section's workload. These cases tend to be much less complex than the type of appeals that follow APA procedures, although there are CSED and PFD cases that are very complex. Revenue procedures can be tailored to deal with these cases as efficiently as possible.

The PFD Division, for example, has developed a very strong motion practice, which is fairly unique in administrative appeals. In a large percentage of the cases the PFD Division files Motions to Dismiss or Motions for Summary Adjudication. This means that most cases that do not have merit can be decided without a hearing. In many other cases PFD applicants chose to conduct the hearing by correspondence. This allows the hearing officer to make factual determinations without an in-person or telephonic hearing.

Child support can be established or modified either in court or administratively. When child support is established or modified administratively, the hearing officer is filling a function served by Superior Court judges in divorce cases. The law that governs these cases is a court rule, Alaska Civil Rule of Procedure 90.3. This rule is the subject of a great deal of appellate case law. The rule places a great deal of responsibility on the judge or hearing officer applying the rule to balance conflicting equitable and legal principles to prevent injustice. The hearing officer really needs to be an attorney with expertise in family law.

In high-volume non-APA administrative hearings in departments other than the Department of Revenue, the hearing officer is often given much less discretion in establishing the procedure. This is often done so that non-attorney hearing officers with limited training can conduct hearings on a high volume basis, where there is not much at stake in the dispute, the issues are relatively simple, the hearing officer's authority to make substantive and procedural rulings is limited, and time is of the essence. Examples these would be DMV, public assistance, and unemployment cases.

This approach would not work as well with PFD or CSED cases. Alaskans view PFDs as an important right. It is one of the biggest benefits they receive as Alaskans. Because everyone

SB

217

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
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SENATOR DONALD C. OLSON

DISTRICT T

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Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomed
Elim
Emmonak
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
Teller
Unalakleet
Wainwright
Wales
White Mountain

January 28, 2004

MEMORANDUM

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Senator Donald Olson



Re: Schedule hearing for SB 217, State Genetic Privacy Laws

I respectfully request a Senate Judiciary Committee hearing of SB 217 at your earliest convenience. I have attached my sponsor statement, a list of states that already have similar laws, and a sectional analysis. Please contact me if you need additional information.

Thank you for your attention to this request.

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
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SENATOR DONALD C. OLSON

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SPONSOR STATEMENT

SB 217, State Genetic Privacy Laws

We are all familiar on how useful DNA identification has been for law enforcement and paternity disputes. But there is another side to this new technology and that is the special need for a genetic privacy law in Alaska.

On June 26, 2000, The Human Genome Project, a public consortium, and Celera Genomics, a private company, jointly announced the completion of a "working draft of the human genome." Spelling out the 3 billion "letters" of the human genome—the biochemical messages encoded in our DNA for manufacturing and operating a complete human being.

This is the stepping-stone in deciphering the blueprint that makes us human. Every human cell (hair, blood, fingernail parings, and body tissue) carries a complete set of our genes. Consequently, these genetic profiles will yield

information that could be used against us. For example, insurance companies can decide whether to issue life insurance based upon our gene make-up (i.e. predisposition to cancer, alcoholism, or other health concerns).

We have state laws to restrict access to medical records; however, the State of Alaska has yet to specify any protection of genetic information. Medical information is presumed confidential, but the increasing capability to store and rapidly transfer data escalates the challenge of protecting privacy.

At the present time, there is no national statute regarding genetic privacy laws. Fifteen states have required informed consent for a third party to perform or require a genetic test or to obtain genetic information. Twenty-three states require informed consent to disclose genetic information.

I have introduced SB 217 to give special consideration to the advancing biotechnology and protect our genetic privacy rights.

SECTIONAL ANALYSIS

CS SB 217 () "D" Version, Genetic Privacy

By Senator Olson's Office

Section 1. The legislative findings and purposes of the act are presented. In the first instance, it is acknowledged that the uniqueness of the DNA molecule contains information that is the very essence of an individual's being. Furthermore, laws to protect the privacy of this information from unwarranted or improper collection, retention, and disclosure are inadequate to protect an individual from potential stigmatization and discrimination.

The purposes of act are to define the rights of individuals to the privacy of their own genetic information, the circumstances under which they may be subject to genetic testing, and the circumstances under which DNA information may be collected, analyzed, retained, or disclosed.

Section 2. A new chapter is added to AS 18 entitled, **Chapter 13, Genetic Privacy**. It contains the following sections:

Sec. 18.13.010. Subsection (a) establishes a person's right to genetic privacy. It prohibits the collection, analyses, retention, and disclosure of DNA information without the written consent of the individual, their legal guardian, or authorized representative.

Subsection (b) provides a list of exceptions to the prohibition above. These exceptions are for DNA collection and analysis for law enforcement purposes, determination of paternity, medical procedures required by law or for emergency medical treatment purposes. Exception is also allowed for medical or scientific research and education if anonymity of the donor is preserved.

In subsection (c), the Department of Health and Social Services may develop a uniform written consent form. A person using the form to obtain the written consent requirements of this chapter is exempt from the civil and criminal liability actions that are established. An individual may revoke or amend their informed consent at any time.

Sec. 18.13.020. This section specifically creates a right of civil action for violations of an individual's right to genetic privacy in 18.13.010. Minimum liability for damages is set at \$5000 or \$100,000 if the profit or monetary gain resulted from the violation.

Sec. 18.13.030. In this section, a criminal action may be brought against person who knowingly violates an individual's right to genetic privacy in 18.13.030. Conviction of the crime is a class A misdemeanor.

Sec.18.18.040 is the definition section.

Section 3 establishes the applicability of the act.

SB 217 – An Act relating to genetic privacy.

States that require informed consent for a third party to either perform or require a genetic test or to obtain genetic information:

Arizona	New Jersey
Delaware	New Mexico
Florida	New York
Georgia	Oregon
Massachusetts	South Carolina
Michigan	South Dakota
Nebraska	Vermont
Nevada	

States that require informed consent to disclose genetic information:

Arizona	Missouri
Arkansas	Nevada
California	New Hampshire
Colorado	New Jersey
Delaware	New Mexico
Florida	New York
Georgia	Oregon
Hawaii	South Carolina
Illinois	Texas
Louisiana	Vermont
Maryland	Virginia
Massachusetts	

States that require written authorization to disclose genetic information:

Rhode Island
Washington

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB217CS(HES)-DHSS-DAS-01-28-04
() Publish Date: _____

Revision Date/Time (Note if correction):
Title GENETIC PRIVACY

Dept. Affected: Health & Social Services
RDU Departmental Support Services
Component Information Technology Services

Sponsor OLSON
Requester SENATE (HES)

Component No. 2754

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
1061 (CIP Receipts)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

If enacted, this bill will cost the Department of Health and Social Services approximately \$3.4 in legal services from the Department of Law. The Department of Law would have to create regulations and a uniform consent form and this would take approximately 30 hours of service. Funding for this is available internally within DHSS.

Prepared by: Janet Clarke, Director
Division Administrative Services
Approved by: Joel S. Gilbertson, Commissioner
Agency Department of Health and Social Services

Phone 465-1630
Date/Time 01/28/2004
Date 01/28/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB217-LAW-LegsRegs-1
 Bill Version: SB 217
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to genetic privacy, and RDU Administration and Support
amending Rule 82, Alaska Rule of Civil Procedure...." Component Legislation & Regulations
 Sponsor Senator Olson
 Requester Senate Health, Education & Social Svces 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						
TOTAL OPERATING	****	****	****	****	****	****

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

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

FUND SOURCE (Thousands of Dollars)

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

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 adds Chapter 13 to AS 18 in order to define the rights of individuals whose genetic information is collected, retained, or disclosed and the rights of the individuals' blood relatives. It defines the circumstances under which an individual may be subject to genetic testing and the circumstances under which such genetic information may be collected, retained, or disclosed, and it protects against discrimination by an insurer or employer based upon an individual's genetic characteristics. It defines the circumstances under which a DNA sample or genetic information may be used for research. The bill allows the Attorney General to bring an action against a person who violates this chapter, or intervene in a civil action brought under this chapter, if in the opinion of the Attorney General, the action is of general public importance.

Prepared by: Kathryn A. Daughettee, Director
 Division Administrative Services
 Approved by: Kathryn Daughettee for Gregg D. Renkes, Attorney General
 Agency Department of Law

Phone 465-3673
 Date/Time 1/23/04 11:39 AM
 Date 1/23/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

In terms of actions brought or an intervention by the Attorney General, this legislation will have no foreseeable fiscal impact on the Department of Law. There is an indeterminable fiscal impact occurring contingent on to what extent regulations related to this new chapter impact Department of Law attorneys in their development and finalization.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB217-ACS-TC-1-22-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Genetic Privacy BRU Alaska Court System
Component Trial Courts
Sponsor Senator Olson
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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 Alaska Court System does not anticipate any fiscal impact from the passage of SB 217.

Prepared by: Doug Wooliver Administrative Attorney Phone _____
Division Alaska Court System Date/Time 1/22/04 4:27 PM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 1/22/2004
Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB217-DPS-LS-1-23-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title An Act relating to genetic privacy RDU Statewide Support
Component Laboratory Services
Sponsor Senator Olson
Requester Senate Health, Educ. & Social Svcs Component No. 527

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

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 requires informed consent of an individual before obtaining genetic information from the individual's DNA. The bill states that an individual's genetic information and DNA sample are private and must be protected, and requires that DNA samples from an individual be promptly destroyed upon the request of that individual. It provides for a criminal penalty for unlawfully obtaining, retaining, or disclosing genetic information (Class A Misdemeanor).

This bill does not appear to affect current DPS DNA collection and handling protocols because DNA and associated genetic information obtained in connection with AS 44.41.035 (the DNA Registration System) and criminal investigations are exempted (Sec. 18.13.020 27, Sec 18.13.030 12 and 28, Sec.18.13.040 12). It is noted that the criminal penalties for unlawful disclosure of DNA information under AS 44.41.035 are more severe.

No fiscal impact is anticipated for the Department of Public Safety.

Prepared by: Chris W. Beheim Phone 269-5743
Division Statewide Services Date/Time 1/23/04 8:50 AM
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Agency Department of Public Safety

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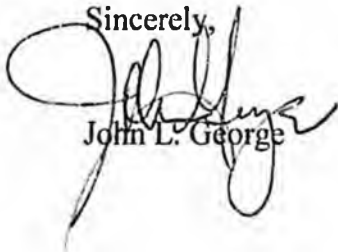
The Honorable Ralph Seekins, Chair
Senate Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Seekins,

RE: SB 217

Last week I testified on behalf of American Council of Life Insurers on SB 217. In my testimony to the Senate Labor and Commerce Committee on SB 217, I referenced proposed regulations promulgated by the Alaska Division of Insurance. Enclosed for the Judiciary Committee bill folder is a copy of the regulation that is in the process of being adopted. The regulation covers privacy of financial and health information. The regulations closely follow the National Association of Insurance Commissioners privacy model. The NAIC model was developed with great thought and consideration, in order to safeguard the privacy of individuals, while providing the necessary access to certain information by insurers.

Sincerely,



John L. George

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 insurance 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:

- 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, premium, 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-5, Alternative 2

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(7) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method by which the consumer may exercise that right. The licensee may use this statement if the licensee discloses nonpublic personal financial information other than as allowed under 3 AAC 26.660 - 3 AAC 26.670.

Sample Statement A-6:

If you prefer that we not disclose nonpublic personal financial information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures, other than disclosures allowed by law. If you wish to opt out of

disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)].

A-7-Confidentiality and security (all institutions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(9) to describe the licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information.

Sample Statement A-7:

We restrict access to nonpublic personal financial information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal financial information. (Eff. ___/___/____, Register ____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.625. Opt out notices and methods. (a) If a licensee is required to provide an opt out notice under 3 AAC 26.645, the licensee shall provide to each of the licensee's consumers a clear and conspicuous opt out notice that accurately explains the consumer's right to opt out under 3 AAC 26.645.

(b) The opt out notice required in (a) of this section must

(1) state that the licensee discloses or reserves the right to disclose nonpublic personal financial information about a consumer to a nonaffiliated third party;

(2) identify the categories of nonpublic personal financial information that the licensee discloses or reserves the right to disclose as described in 3 AAC 26.620(a)(2);

(3) identify the categories of nonaffiliated third parties to which the licensee discloses nonpublic personal financial information as described in 3 AAC 26.620(a)(3);

(4) state that a consumer can opt out of disclosure of the nonpublic personal financial information identified in paragraphs (2) and (3) of this subsection;

(5) identify the insurance products or services that a consumer seeks to obtain or obtains from the licensee for which the consumer may opt out;

(6) provide a reasonable means for a consumer to opt out, which may include

(A) providing check-off boxes in a prominent position on the opt out notice or on a separate form provided with the opt out notice;

(B) providing a separate reply form with the opt out notice that does not contain check-off boxes;

(C) if a consumer agrees to electronic delivery of information, providing an electronic opt out form that the consumer can send by electronic mail or can process through the licensee's web site; or

(D) providing a toll-free telephone number that a consumer may call to opt out.

(b) A licensee does not meet the requirements of (a)(6) of this section if a consumer is required

(1) to write a letter in order to opt out; or

(2) to use check-off boxes that the licensee provided with the initial notice in order to opt out, but the licensee did not include check-off boxes with a subsequent notice.

(c) A licensee may provide the opt out notice required under 3 AAC 26.645 at the same time and on the same written or electronic form as the initial notice required under 3 AAC 26.610 is provided.

(d) If a licensee provides an opt out notice to a consumer after the initial notice required under 3 AAC 26.610 is provided, the licensee shall provide the consumer the opt out notice and a copy of the initial notice in writing or electronically, if the consumer agrees to electronic delivery of that information.

(e) If two or more consumers jointly obtain an insurance product or service from a licensee

(1) the licensee may provide a single opt out notice;

(2) the licensee shall provide an explanation in the opt out notice of how the licensee will treat a direction by a consumer to opt out;

(3) each consumer may individually opt out either

(A) by one consumer's direction to opt out as applying to all of the consumers who jointly obtain an insurance product or service from the licensee; or

(B) by each consumer's direction to opt out as applying only to that consumer; and

(4) a licensee may not require all consumers to opt out before the licensee implements a direction by one consumer to opt out.

(f) If a consumer opts out, the licensee shall comply with the opt out direction as soon as reasonably practicable after the licensee receives the opt out direction from the consumer.

(g) A consumer may opt out of disclosure at any time.

(h) When a customer relationship terminates, a consumer's opt out direction

(1) continues in effect unless revoked by the consumer in writing or electronically, if the consumer agrees to electronic delivery of information;

(2) remains in effect for all nonpublic personal financial information that the licensee collected during or related to the customer relationship; and

(3) does not apply to a new customer relationship established after termination of the customer relationship to which the opt out direction applied. (Eff. ___/___/___,

Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.630. Revised privacy notices. (a) A licensee may not directly or through an affiliate disclose nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice provided to the consumer under 3 AAC 26.610 unless

(1) the licensee has provided the consumer a clear and conspicuous revised notice that accurately describes the licensee's privacy policies and practices;

(2) the licensee has provided the consumer a new opt out notice that complies with 3 AAC 26.625;

(3) the licensee has given the consumer a reasonable opportunity to opt out before disclosing information to a nonaffiliated third party; and

(4) the consumer does not opt out.

(b) Except as allowed under 3 AAC 26.660 - 3 AAC 26.670, a licensee shall provide a revised notice to a consumer before

(1) disclosing a new category of nonpublic personal financial information to a nonaffiliated third party;

(2) disclosing nonpublic personal financial information to a new category of nonaffiliated third party; and

(3) disclosing nonpublic personal financial information about a consumer who is no longer a customer to a nonaffiliated third party, if that consumer has not had an opportunity to opt out.

(c) A licensee is not required to provide a revised notice to a consumer if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee has adequately described in the licensee's initial notice under 3 AAC 26.610 or a prior revised notice under this section. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.635. Privacy notices to group policyholders. (a) Unless a licensee provides the privacy notices required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 directly to a covered individual described in 3 AAC 26.715(d), the licensee shall provide the privacy notices

to the plan sponsor, group or blanket insurance policyholder, group annuity contract holder, or workers' compensation policyholder in the manner described in 3 AAC 26.610 - 3 AAC 26.630.

(b) The privacy notice provided under (a) of this section must describe the licensee's privacy practices with respect to nonpublic personal financial information about individuals covered under the policies, contracts, or plans. (Eff. ____/____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.640. Delivery of privacy notices. (a) A licensee shall provide a notice required under 3 AAC 26.610 - 3 AAC 26.749 to each consumer in the manner each consumer elects to receive the notice.

(b) A licensee may meet the requirements of (a) of this section

(1) by delivering a printed copy of the notice by hand to the consumer;

(2) by mailing a printed copy of the notice to the last known address of the consumer;

(3) if a consumer agrees to electronic delivery of information, by providing the notice by electronic mail or by posting the notice on the licensee's web site and requiring the consumer to acknowledge viewing the notice before obtaining a particular insurance product or service;

(4) for an isolated transaction with a consumer, by posting the notice on the licensee's web site and requiring the consumer to acknowledge viewing the notice before obtaining the insurance product or service;

(5) for annual notices,

(A) by making the licensee's current privacy notice available to the customer upon request, if a customer has directed the licensee to refrain from sending the customer information regarding the customer relationship; or

(B) by continuously posting the licensee's current privacy notice in a clear and conspicuous manner on the licensee's web site, if the customer uses the licensee's web site to access insurance products or services and the customer has agreed to receive notices on the web site.

(c) A licensee may not meet the requirements of (a) of this section

(1) by only posting a sign in the licensee's office of the licensee's privacy policies and practices;

(2) by generally publishing advertisements of the licensee's privacy policies and practices; or

(3) by sending a notice by electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(d) A licensee shall provide notices required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 in a manner that allows the customer to retain the notice or to obtain a written notice in the future, which may include

(1) hand-delivering a printed copy of the notice to the consumer;

(2) mailing a printed copy of the notice to the last known address of the customer;

or

(3) for a customer who obtains an insurance product or service electronically and agrees to receive notice on the licensee's web site, continuously publishing the licensee's current privacy notice on the web site.

(f) A licensee may provide a joint privacy notice from the licensee and the licensee's affiliates or other financial institutions identified in the notice, if the notice accurately reflects the privacy policies and practices of the licensee, the licensee's affiliates, and the other financial institutions.

(g) A licensee may provide a notice on behalf of another financial institution.

(h) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may comply with the notice requirements in 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 by providing a single notice to the consumers. (Eff. ___/___/_____,

Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.645. Limitation on disclosure of nonpublic personal financial information. (a) Except as allowed under 3 AAC 26.605 - 3 AAC 26.749, a licensee may not directly or through an affiliate disclose to a nonaffiliated third party nonpublic personal financial information unless

(1) the licensee has provided the consumer the initial notice required under 3 AAC 26.610;

(2) the licensee has provided the consumer the opt out notice required under 3 AAC 26.625;

(3) the licensee has given the consumer a reasonable opportunity to opt out by a means that may include the following:

(A) by mailing the notices to the consumer and allowing the consumer to opt out by mailing a form, calling a toll-free telephone number, or other reasonable means within 45 days from the date the licensee mailed the notices;

(B) if a customer opens an on-line account with the licensee and agrees to receive the notices electronically, and the customer is allowed to opt out by any reasonable means within 30 days from the date the customer acknowledges receipt of the notices sent in conjunction with opening the account;

(C) for an isolated transaction with a consumer, by providing the notices at the time of the transaction and requesting that the consumer decide whether to opt out before completing the transaction; and

(4) the consumer does not opt out.

(b) A licensee may allow a consumer to opt out of disclosure

(1) of certain nonpublic personal financial information;

(2) to certain nonaffiliated third parties; or

(3) both (1) and (2) of this subsection. (Eff. ____/____/____, Register

____)

Authority: AS 21.06.090

AS 21.36.162

3 AAC 26.650. Limitation on redisclosure and reuse of nonpublic personal financial information. (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in 3 AAC 26.665 or 3 AAC 26.670, the licensee may only disclose or use the information by

(1) disclosing the information to the affiliates of the nonaffiliated third party from which the licensee received the information;

(2) disclosing the information to the licensee's affiliates only if the affiliates agree to disclose and use the information only to the extent that the licensee may disclose and use the information; or

(3) disclosing and using the information under an exception in 3 AAC 26.665 or 3 AAC 26.670 in the ordinary course of business to carry out the activity for which the licensee received the information.

(b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in 3 AAC 26.665 or 3 AAC 26.670, the licensee may disclose the information only

(1) to an affiliate of the nonaffiliated financial institution;

(2) to an affiliate of the licensee if the affiliates agree to disclose the information only to the extent that the licensee is allowed to disclose the information; or

(3) to any other person, if the disclosure is allowed by law when made directly to the person by the nonaffiliated financial institution.

(c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in 3 AAC 26.665 or 3 AAC 26.670, the nonaffiliated third party may disclose and use the information only by

(1) disclosing the information to the licensee's affiliates;

(2) disclosing the information to the nonaffiliated third party's affiliates but only if those affiliates agree to disclose and use the information only to the extent that the nonaffiliated third party may disclose and use the information; and

(3) using the information under an exception in 3 AAC 26.665 or 3 AAC 26.670 in the ordinary course of business to carry out the purpose for which the nonaffiliated third party received the information.

(d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in 3 AAC 26.665 or 3 AAC 26.670, the nonaffiliated third party may disclose the information only

(1) to an affiliate of the licensee;

(2) to an affiliate of the nonaffiliated third party, if the affiliate agrees to disclose the information only to the extent that the nonaffiliated third party is allowed to disclose the information; or

(3) to any other person, if the disclosure is allowed by law when made directly to the person by the nonaffiliated third party. (Eff. ___/___/_____, Register ____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.655. Limitation on sharing account number information for marketing purposes. (a) Except as provided in (b) of this section, a licensee may not disclose directly or through an affiliate a policy number or similar form of access number or access code for a consumer's policy or transaction account to a nonaffiliated third party for use in telemarketing, direct mail marketing, or electronic mail marketing to a consumer.

(b) A licensee may disclose a policy number or similar form of access number or access code for a consumer's policy or transaction account

(1) to a consumer-reporting agency;

(2) to a licensee's service provider for the sole purpose of marketing the licensee's own products or services only if the service provider is not authorized to directly initiate charges to the account;

(3) to a licensee who is a producer for the sole purpose of marketing the licensee's own products or services; or

(4) to a participant in an affinity or similar program if the participants in the program are identified to the customer at the time the customer enters into the program.

(c) For purposes of this section

(1) policy number or similar form of access number or access code for a consumer's policy or transaction account does not include a number or code that is in an encrypted form, only if the licensee does not provide the recipient with a means to decode the number or code; and

(2) "consumer's policy or transaction account" means an account other than a deposit account or a credit card account; "consumer's policy or transaction account" does not include an account to which a third party cannot initiate charges. (Eff. ___/___/_____, Register ____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.660. Exceptions to notice and opt out requirements for service providers and joint marketing. (a) A licensee is not subject to the requirements in 3 AAC 26.625 and 3 AAC 26.645 when the licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or on behalf of the licensee, if the licensee

(1) has provided the initial notice as required under 3 AAC 26.610; and

(2) enters into a contractual agreement with the nonaffiliated third party that prohibits the nonaffiliated third party from disclosing or using the information, including using the information under an exception in 3 AAC 26.665 or 3 AAC 26.670, other than to carry out the purpose for which the licensee disclosed the information.

(c) For purposes of this section

(1) "services" may include marketing the licensee's own products or services or marketing financial products or services offered under a joint agreement between the licensee and one or more financial institutions; and

(2) "joint agreement" means a written contract under which a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service. (Eff.

____/____/____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.665. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions. (a) A licensee is not subject to the requirements for initial notice in 3 AAC 26.610(a)(2), the opt out requirements in 3 AAC 26.625 and 3 AAC 26.645, or the requirements in 3 AAC 26.660 if the licensee discloses nonpublic personal financial information to a nonaffiliated third party and

(1) the information is necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes; or

(2) the information is used in connection with,

(A) servicing or processing an insurance product or service that a consumer requests or authorizes;

(B) maintaining or servicing a consumer's account with the licensee or with another entity as part of a private label credit card program or other extension of credit on behalf of the entity

(C) a proposed or actual securitization; secondary market sale, including the sale of servicing rights; or similar transaction related to a transaction of a consumer;

(D) acquiring reinsurance, stop loss insurance, or excess loss insurance; or