

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11344 SENATE STATE AFFAIRS

1 type. Notwithstanding AS 36.30.015(d), the chief administrative hearing officer may
2 contract for or hire a hearing officer without notifying or securing the approval of the
3 Department of Law.

4 **Sec. 44.21.550. Code of hearing officer conduct.** (a) The chief
5 administrative hearing officer shall, by regulation, adopt a code of hearing officer
6 conduct. Hearing officers of the office and of each other agency shall comply with the
7 code.

8 (b) The chief administrative hearing officer shall consider all complaints
9 against hearing officers employed or retained by the office or another agency alleging
10 violations of the code. If the chief administrative hearing officer determines that the
11 conduct alleged constitutes a violation of the code, the officer shall investigate the
12 complaint and may hold a hearing on it. If the chief administrative hearing officer
13 determines that a violation has occurred, the officer shall submit written findings to
14 the agency that employed or retained the hearing officer together with
15 recommendations for corrective or disciplinary action. If the hearing officer is
16 employed or retained by the office, the chief administrative hearing officer shall take
17 appropriate corrective or disciplinary action. The chief administrative hearing officer
18 shall, by regulation, establish procedures to implement this section, including
19 procedures for filing, investigating, and holding hearings on complaints.

20 (c) In substantial compliance with the regulations adopted under this section,
21 the attorney general shall handle a complaint filed against the chief administrative
22 hearing officer under this section.

23 **Sec. 44.21.560. Procedure for hearings.** (a) The chief administrative
24 hearing officer shall, by regulation, establish procedures for administrative hearings
25 conducted by the office. Each administrative hearing under the jurisdiction of the
26 office or that has been transferred to the office by an agency shall be conducted in
27 accordance with statutes that apply to that hearing, including, if applicable, the
28 Administrative Procedure Act (AS 44.62). However, to the extent regulations adopted
29 by an agency for the conduct of an administrative hearing conflict with regulations
30 adopted by the chief administrative hearing officer under this subsection, the
31 regulations adopted by the chief administrative hearing officer control.

1 (b) When an agency receives a request for a hearing that will be conducted by
2 the office under AS 44.21.530, the agency shall immediately notify the office. The
3 agency shall compile and transmit to the office the agency file and all materials
4 relevant to the matter.

5 (c) A hearing officer employed or retained by the office shall, within 90 days
6 after the date a case is assigned for hearing, prepare a proposed decision, unless
7 another time period is provided by law or regulation or agreed to by the parties and the
8 chief administrative hearing officer. If the proposed decision is not timely issued, the
9 agency decision that is the subject of the hearing is the final agency decision and the
10 party requesting the hearing may appeal from that decision to the superior court or as
11 otherwise provided by law for appeals of final agency decisions.

12 (d) A proposed decision in an administrative hearing shall be in a form that
13 may be adopted as the final decision by the agency with authority to make the final
14 decision. The proposed decision is a public record unless otherwise provided by law.
15 A copy of the proposed decision shall be served by the office on each party in the case
16 and the attorneys representing those parties in the hearing. Notwithstanding
17 AS 44.62.500(b) and except as provided by other statute, the agency with authority to
18 make a final decision in the case shall, within 30 days after the date the proposed
19 decision is served, do one or more of the following:

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

21 (2) return the case to the hearing officer to take additional evidence or
22 make additional findings or for other specific proceedings;

23 (3) exercise its discretion by revising the proposed enforcement action,
24 order, award, remedy, sanction, or penalty, and adopt the proposed decision as revised;

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

29 (5) in writing reject, modify, or amend an interpretation or application
30 in the proposed decision of a statute or regulation directly governing the agency's
31 actions by specifying the reasons for the rejection, modification, or amendment, and

1 issue a final agency decision.

2 **Sec. 44.21.570. Disqualification of hearing officer.** (a) The chief
3 administrative hearing officer or a hearing officer employed or retained by the office is
4 disqualified from a case in which the officer cannot accord a fair and impartial hearing
5 or for other reasons established in the code of hearing officer conduct.

6 (b) A party may request the disqualification of the chief administrative hearing
7 officer or a hearing officer by filing an affidavit, before the taking of evidence at a
8 hearing, stating with particularity the grounds upon which it is claimed that a fair and
9 impartial hearing cannot be accorded by that officer. Notwithstanding
10 AS 44.62.450(c), upon receipt of the affidavit, the hearing officer assigned to the
11 administrative hearing shall make a determination. If the affiant objects to the
12 decision, the matter shall be decided by the chief administrative hearing officer, whose
13 decision is final, or if the hearing is assigned to the chief administrative hearing
14 officer, by the attorney general, whose decision is final.

15 **Sec. 44.21.580. Agency cooperation.** (a) All agencies shall cooperate with
16 the chief administrative hearing officer and with other hearing officers of the office in
17 the matters involving the duties of the office.

18 (b) Except as provided under AS 44.21.570 or by regulation adopted under
19 this chapter, an agency may not select or reject a particular hearing officer for
20 assignment to an administrative hearing.

21 (c) After an administrative hearing is referred by an agency to the office for
22 hearing, the agency may not take further adjudicatory action with respect to the
23 proceeding, except as a party litigant or to render a final decision as provided by law.

24 **Sec. 44.21.590. Administrative hearing records.** (a) The office shall
25 acquire, organize, and make available to the public records relating to administrative
26 hearings of the office and of other agencies. The records must include information,
27 materials, and data bases used in the conduct of hearings, and the proposed and final
28 agency decisions. All court decisions resulting from appeals from final agency
29 decisions shall also be collected and included in the records. The office shall make
30 final agency decisions available on line through an electronic data base.

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

1 Sec. 44.21.599. Definitions. In AS 44.21.510 - 44.21.599,

2 (1) "administrative hearing" means a contested case before an agency
3 in which

4 (A) the matter is heard by a hearing officer who does not
5 represent or have authority to make decisions for the agency in its capacity as a
6 party to the proceedings;

7 (B) the parties may present testimony and evidence not
8 previously considered by the agency; and

9 (C) the hearing officer has authority to make factual findings,
10 legal rulings, and issue a proposed or final agency decision; an administrative
11 hearing does not include a public non-adjudicative hearing;

12 (2) "agency" means an agency of the executive branch of state
13 government, including an officer, division, or other subunit of an agency, a public
14 corporation, and the University of Alaska;

15 (3) "hearing officer" means an individual who presides over the
16 conduct of an administrative hearing and who is retained or employed by an agency
17 for that purpose;

18 (4) "office" means the office of administrative hearings established in
19 AS 44.21.510.

20 * Sec. 3. AS 04.11.510(b) is amended to read:

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

24 (1) if an application is denied, the notice of denial shall be furnished
25 the applicant immediately in writing stating the reason for the denial in clear and
26 concise language; the notice of denial must inform the applicant that the applicant is
27 entitled to an informal conference with either the director or the board, and that, if not
28 satisfied by the informal conference, the applicant is then entitled to a formal hearing
29 conducted before a hearing officer from the office of administrative hearings
30 (AS 44.21.510) [THE BOARD]; if the applicant requests a formal hearing, the office
31 of administrative hearings [BOARD] shall adhere to AS 44.62.330 - 44.62.630

1 (Administrative Procedure Act); all interested persons may be heard at the hearing and
2 unless waived by the applicant and the board, the formal hearing shall be held in the
3 area for which the application is requested;

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

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

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

18 * Sec. 4. AS 05.20.080 is amended to read:

19 Sec. 05.20.080. Application of Administrative Procedure Act. The
20 procedure for review of the orders or actions of the department, its agents or
21 employees, is the same as that contained in AS 44.62 (Administrative Procedure Act).
22 Administrative hearings on contested cases shall be conducted by the office of
23 administrative hearings (AS 44.21.510).

24 * Sec. 5. AS 05.90.001(b) is amended to read:

25 (b) The Department of Public Safety, with the concurrence of the Department
26 of Transportation and Public Facilities, may grant, and for cause cancel, permission to
27 conduct a special racing event as provided in this section upon terms and conditions
28 and at times and places the department may determine. If an applicant's permission is
29 refused or cancelled, the applicant may request the Department of Public Safety for a
30 hearing. The hearing shall be conducted under the provisions of AS 44.62 [THE]
31 (Administrative Procedure Act) by the office of administrative hearings

1 (AS 44.21.510) [(AS 44.62)].

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

3 (f) Hearings required or authorized under this title are not subject to
4 AS 44.62.330 - 44.62.630, except as required by AS 44.62.560 and 44.62.570. The
5 department shall adopt regulations, consistent with the provisions of this title,
6 establishing procedures for hearings held under this section. Administrative
7 hearings on contested cases shall be conducted by the office of administrative
8 hearings (AS 44.21.510).

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

10 (c) A board may summarily suspend a licensee from the practice of the
11 profession before a final hearing is held or during an appeal if the board finds that the
12 licensee poses a clear and immediate danger to the public health and safety. A person
13 is entitled to a hearing conducted by the office of administrative hearings
14 (AS 44.21.510) [BEFORE THE BOARD] to appeal the summary suspension within
15 seven days after the order of suspension is issued. A person may appeal an adverse
16 decision of the board on an appeal of a summary suspension to a court of competent
17 jurisdiction.

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

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

27 (1) issue an order directing the person to stop the act or practice;
28 however, reasonable notice of and an opportunity for a hearing must first be given to
29 the person, except that the commissioner may issue a temporary order before a hearing
30 is held; a temporary order remains in effect until a final order affirming, modifying, or
31 reversing the temporary order is issued or until 15 days after the person receives the

1 notice and has not requested a hearing by that time; a temporary order becomes final if
2 the person to whom the notice is addressed does not request a hearing within 15 days
3 after receiving the notice; if the hearing involves AS 08.08 or a regulation adopted
4 under that chapter, the commissioner or the commissioner's designee shall be the
5 hearing officer at the hearing and shall issue a final order within 10 days after the
6 hearing; otherwise the hearing shall be conducted by the office of administrative
7 hearings (AS 44.21.510);

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

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

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

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

19 (c) The department may summarily suspend a license before final hearing or
20 during the appeals process if the department finds that the licensee poses a clear and
21 immediate danger to the public welfare and safety if the licensee continues to practice.
22 An individual whose license is suspended under this subsection is entitled to a hearing
23 conducted by the office of administrative hearings (AS 44.21.510) not
24 [DEPARTMENT NO] later than seven days after the effective date of the order. The
25 individual may appeal the suspension after the hearing to the superior court.

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

27 (c) The board may summarily suspend the license of a licensee who refuses to
28 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
29 whose license is suspended under this section is entitled to a hearing conducted by the
30 office of administrative hearings (AS 44.21.510) [BOARD] within seven days after
31 the effective date of the order. If, after a hearing, the board upholds the suspension,

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

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

3 (c) The board may summarily suspend the license of a licensee who refuses to
4 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
5 whose license is suspended under this section is entitled to a hearing conducted by the
6 office of administrative hearings (AS 44.21.510) [BOARD] within seven days after
7 the effective date of the order. If, after a hearing, the board upholds the suspension,
8 the licensee may appeal the suspension to a court of competent jurisdiction.

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

10 (f) The department may summarily suspend a license before a final hearing is
11 held or during an appeal if the department finds that the licensee poses a clear and
12 immediate danger to the public health and safety. A person is entitled to a hearing
13 conducted by [BEFORE] the office of administrative hearings (AS 44.21.510)
14 [DEPARTMENT] to appeal the summary suspension within seven days after the order
15 of suspension is issued. A person may appeal an adverse decision of the department
16 on an appeal of a summary suspension to a court of competent jurisdiction.

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

18 (f) The department may summarily suspend a license before a final hearing is
19 held or during an appeal if the department finds that the licensee poses a clear and
20 immediate danger to the public health and safety. A person is entitled to a hearing
21 conducted by [BEFORE] the office of administrative hearings (AS 44.21.510)
22 [DEPARTMENT] to appeal the summary suspension within seven days after the order
23 of suspension is issued. A person may appeal an adverse decision of the department
24 on an appeal of a summary suspension to a court of competent jurisdiction.

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

26 (c) The division may summarily suspend a license before final hearing or
27 during the appeals process if the division finds that the licensee poses a clear and
28 immediate danger to the public health and safety if the licensee continues to practice.
29 A licensee whose license is suspended under this section is entitled to a hearing
30 conducted by the office of administrative hearings (AS 44.21.510) not [DIVISION
31 NO] later than seven days after the effective date of the order. The licensee may

1 appeal the suspension after a hearing to a court of competent jurisdiction.

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

3 (i) The department may summarily suspend a licensee from practice of the
4 profession under this chapter, for a period of not more than 30 days, before a final
5 hearing is held or during an appeal if the department finds that the licensee poses a
6 clear and immediate danger to the public health and safety. A person is entitled to a
7 hearing conducted by [BEFORE] the office of administrative hearings
8 (AS 44.21.510) [DEPARTMENT] to appeal the summary suspension within seven
9 days after the order of suspension is issued. A person may appeal an adverse decision
10 of the department on an appeal of summary suspension to a court of competent
11 jurisdiction.

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

13 (c) The department may summarily suspend a license before final hearing or
14 during the appeals process if the department finds that the licensee poses a clear and
15 immediate danger to the public welfare and safety if the licensee continues to practice.
16 A person whose license is suspended under this subsection is entitled to a hearing
17 conducted by the office of administrative hearings (AS 44.21.510) not
18 [DEPARTMENT NO] later than seven days after the effective date of the order. The
19 person may appeal the suspension after the hearing to the superior court.

20 * Sec. 17. AS 08.62.046(c) is amended to read:

21 (c) The master, owner, operator, or agent of the master, owner, or operator, of
22 a vessel required to employ a pilot under this chapter may object to the proposed rate
23 for a specific pilotage service by filing a written notice of objection, containing the
24 grounds for the objection and relevant evidence demonstrating that the rate is not
25 reasonable, with the board within 60 days after the final date of publication of the
26 proposed rate in a newspaper of general circulation. The pilot organization that
27 proposed the rate has until 15 days after the close of the period for filing objections to
28 the proposed rate to provide its written response to the notice of objection and relevant
29 evidence demonstrating that the rate is reasonable. If the pilot organization does not
30 respond to the notice of objection by the close of the 15-day period for response to the
31 objection, the board may not take action on the proposed rate and the proposed rate

1 does not take effect. If the pilot organization does respond to the notice of objection
2 before the close of the response period, the board shall request that the office of
3 administrative hearings (AS 44.21.510) hold a hearing to determine whether the
4 proposed rate is reasonable. If, after the hearing, the board finds that the proposed
5 rate is reasonable, the rate is approved and takes effect retroactive to January 1 of the
6 calendar year in which the rate would have taken effect under (b) of this section if no
7 objection had been filed. If the board finds that the proposed rate is not reasonable,
8 the proposed rate is disapproved and does not take effect. In determining what
9 constitutes a reasonable rate, the board shall consider the following factors:

10 (1) current and historical rates charged for comparable pilotage
11 services;

12 (2) the actual time aboard the vessel, time engaged in preparing to
13 provide the pilotage services, seasonal and weather conditions, and risks;

14 (3) the reasonable expenses incurred in providing the pilotage services
15 such as dispatch, transportation, overhead, and other associated expenses;

16 (4) the financial effect of pilotage expenses on the owner of the vessel,
17 except that this factor shall only be considered if the owner provides all financial
18 information that the board determines is necessary to determine the financial effect;

19 (5) the number of vessels and volume of pilotage services at issue in
20 the dispute and the number of members of the pilot organization;

21 (6) the effect of the determination on the income of affected pilots
22 relative to prior years, taking into account changes in vessel tonnage and vessel traffic
23 in the pilotage region from year-to-year;

24 (7) prior determinations under this subsection; and

25 (8) other factors the board considers relevant.

26 * Sec. 18. AS 08.64.331(c) is amended to read:

27 (c) The board may summarily suspend a license before final hearing or during
28 the appeals process if the board finds that the licensee poses a clear and immediate
29 danger to the public health and safety if the licensee continues to practice. A person
30 whose license is suspended under this section is entitled to a hearing conducted by the
31 office of administrative hearings (AS 44.21.510) not [BOARD NO] later than seven

1 days after the effective date of the order and the person may appeal the suspension
2 after a hearing to a court of competent jurisdiction.

3 * Sec. 19. AS 08.65.120(c) is amended to read:

4 (c) The board may summarily suspend a license before final hearing or during
5 the appeals process if the board finds that the licensee poses a clear and immediate
6 danger to the public health and safety if the licensee continues to practice. A person
7 whose license is suspended under this section is entitled to a hearing conducted by the
8 office of administrative hearings (AS 44.21.510) not [BOARD NO] later than seven
9 days after the effective date of the order and the person may appeal the suspension
10 after a hearing to a court of competent jurisdiction.

11 * Sec. 20. AS 08.68.275(c) is amended to read:

12 (c) The board may summarily suspend a license before final hearing or during
13 the appeals process if the board finds that the licensee poses a clear and immediate
14 danger to the public health and safety. A person whose license is suspended under this
15 section is entitled to a hearing conducted by the office of administrative hearings
16 (AS 44.21.510) [BOARD] within seven days after the effective date of the order. If,
17 after a hearing, the board upholds the suspension, the licensee may appeal the
18 suspension to a court of competent jurisdiction.

19 * Sec. 21. AS 08.86.204(b) is amended to read:

20 (b) The board may summarily suspend the license of a licensee who refuses to
21 submit to a physical or mental examination under AS 08.86.075. A person whose
22 license is suspended under this subsection is entitled to a hearing conducted by the
23 office of administrative hearings (AS 44.21.510) [BOARD] within seven days after
24 the effective date of the order. If, after the [A] hearing, the board upholds the
25 suspension, the licensee may appeal the suspension to a court of competent
26 jurisdiction.

27 * Sec. 22. AS 08.88.037(b) is amended to read:

28 (b) If it appears to the department that a person has engaged in or is about to
29 engage in an act or practice in violation of a provision of this chapter or a regulation
30 adopted under it and that action is warranted in the public interest, the department
31 shall notify all commission members by telephone, telegraph, or facsimile of a

1 proposed order or action, and, if a majority of the members of the commission
2 approve, the department may

3 (1) after reasonable notice of and an opportunity for a hearing is given
4 to the person, issue an order directing the person to stop the act or practice; the
5 department may issue a temporary order before a hearing is held; a temporary order
6 remains in effect until a final order affirming, modifying, or reversing the temporary
7 order is issued or until 15 days have elapsed after the person receives the notice and
8 has not requested a hearing; a temporary order becomes final if the person to whom
9 the notice is addressed does not request a hearing within 15 days after receiving the
10 notice; if a hearing is requested, a hearing shall be conducted by a hearing officer
11 from the office of administrative hearings (AS 44.21.510) within 30 days; the
12 commission shall issue a final order within 10 days after the hearing;

13 (2) bring an action in superior court to enjoin the act or practice and to
14 enforce compliance with this chapter, a regulation adopted under it, or an order issued
15 under it;

16 (3) examine or have examined the books and records of a person
17 whose business activities require licensure under this chapter and the department may
18 require the person to pay the reasonable costs of the examination; and

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

21 * Sec. 23. AS 08.88.460(b) is amended to read:

22 (b) A copy of a claim filed with the commission under (a) of this section shall
23 be sent to each real estate licensee alleged to have committed the misconduct resulting
24 in losses, to the principal real estate broker employing a licensee alleged to have
25 committed the conduct resulting in losses, and to any other real estate licensee
26 involved in the transaction at least 20 days before any hearing held on the claim by the
27 office of administrative hearings (AS 44.21.510) [COMMISSION].

28 * Sec. 24. AS 08.88.460(d) is amended to read:

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

31 (1) [THE] commission makes an award to the claimant from the real

1 estate surety fund;

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

3 (3) [THE] claim is withdrawn by the claimant before the office of
4 administrative hearings (AS 44.21.510) [COMMISSION] holds a hearing on the
5 claim.

6 * Sec. 25. AS 08.88.472(c) is amended to read:

7 (c) The commission may contract under AS 36.30 (State Procurement Code)
8 with a person for the person to perform [HEARING AND] legal services for the
9 commission with regard to a claim against the real estate surety fund filed in court.
10 The contract may cover one or more claims.

11 * Sec. 26. AS 08.92.040(c) is amended to read:

12 (c) If the department determines that a person is acting as a promoter in
13 violation of this chapter, the department may order the person to stop the violation.
14 Upon receipt of the order, the person affected has the right to be heard and to present
15 proof to the hearing officer from the office of administrative hearings
16 (AS 44.21.510) [DEPARTMENT] that the violation has not occurred. Upon [IN THE
17 DEPARTMENT'S DISCRETION OR UPON] application made by the recipient of the
18 order, the office of administrative hearings may [DEPARTMENT SHALL]
19 schedule a hearing at the earliest possible time. After the hearing the department may
20 affirm, modify, or set aside the order.

21 * Sec. 27. AS 10.06.633(b) is amended to read:

22 (b) A corporation may not be dissolved under this section unless the
23 commissioner has given the corporation written notice of its delinquency, failure, or
24 noncompliance by mail as provided by (i) of this section. If the corporation fails,
25 within 60 days after the requirements of (i) of this section have been satisfied, to
26 contest the alleged neglect, omission, delinquency, or noncompliance by a written
27 request for a hearing conducted by [BEFORE] the office of administrative hearings
28 (AS 44.21.510) [COMMISSIONER] or fails to correct the asserted neglect, omission,
29 delinquency, or noncompliance, it may be dissolved under (d) of this section.

30 * Sec. 28. AS 10.06.865 is amended to read:

31 Sec. 10.06.865. Cancellation of certificates issued and filings accepted.

1 The commissioner may, within one year after a filing, and after written notice to the
2 corporation or individual making the filing, cancel a certificate issued or filing
3 accepted under this chapter, on any ground existing at the time of issuance or filing for
4 which the commissioner could have originally refused to issue the certificate or accept
5 the filing. The notice of cancellation must state the reason for the cancellation. A
6 corporation or individual may request a hearing conducted by [BEFORE] the office
7 of administrative hearings (AS 44.21.510) [COMMISSIONER] within 90 days after
8 receipt of the notice. Cancellation becomes final if the corporation or individual does
9 not request a hearing within 90 days after receipt of notice. Notice of cancellation
10 shall be sent by certified mail with return receipt requested. If the return receipt is not
11 received by the department within a reasonable time and the department has made
12 diligent inquiry as to the address of the corporation, notice may be made by
13 publication in a newspaper of general circulation in the vicinity of the registered office
14 of the corporation or the address of the individual who made the filing, and the
15 cancellation becomes final 60 days after publication of the notice if the person or
16 corporation does not request a hearing.

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

18 (b) If the department fails to promptly notify the office of administrative
19 hearings (AS 44.21.510) of the application and the office fails to begin a hearing
20 within 15 business days after the application is filed or within a longer period to which
21 the licensee or subject person consents, the order shall be considered rescinded.

22 * Sec. 30. AS 10.13.860 is amended by adding a new subsection to read:

23 (b) Administrative hearings under this chapter shall be conducted by the office
24 of administrative hearings (AS 44.21.510).

25 * Sec. 31. AS 10.25.375 is amended to read:

26 **Sec. 10.25.375. Cancellation of certificates issued and filings accepted.**

27 The commissioner may, within one year after a filing, and after written notice to the
28 cooperative or individual making a filing, cancel a certificate issued or filing accepted
29 under this chapter, on any ground existing at the time notice of cancellation is made
30 for which the commissioner could have originally refused to issue the certificate or
31 accept the filing. The notice of cancellation must state the reason for the proposed

1 cancellation. A cooperative or individual may request a hearing within 90 days after
2 receipt of the notice. The notice of cancellation becomes final if the cooperative or
3 individual does not request a hearing within 90 days after receipt of notice. Notice of
4 cancellation must be sent by certified mail with return receipt requested. If the return
5 receipt is not received by the department within a reasonable time and the department
6 has made diligent inquiry as to the current address of the corporation, notice may be
7 made by publication in a newspaper of general circulation in the vicinity of the
8 registered office of the cooperative or the address of the individual who made the
9 filing, and the cancellation becomes final 60 days after publication of the notice. If a
10 hearing is requested, the hearing shall be conducted by the office of
11 administrative hearings (AS 44.21.510).

12 * Sec. 32. AS 10.50.408(c) is amended to read:

13 (c) If, following a hearing conducted by the office of administrative
14 hearings (AS 44.21.510), the commissioner determines the presence of the
15 delinquency, failure, or misrepresentation providing grounds for involuntary
16 dissolution under this section, the company may appeal to the superior court. The
17 court shall either sustain the commissioner or direct the commissioner to take action
18 the court considers proper.

19 * Sec. 33. AS 14.11.016(b) is amended to read:

20 (b) A district may appeal an adverse decision of the department under (a) of
21 this section by filing a written notice of appeal with the commissioner within 15 days
22 after the date of the department's decision. The notice of appeal must state the legal
23 and factual basis for the appeal and the precise relief sought. The failure of the district
24 to include an issue in a notice of appeal constitutes a waiver of the right to have the
25 issue considered. Not later than 10 days after receipt by the commissioner of a notice
26 of appeal, the chief administrative hearing officer of the office of administrative
27 hearings (AS 44.21.510) [COMMISSIONER] shall appoint a hearing officer who is
28 qualified under AS 44.62.350(c) to consider the appeal. If the hearing officer finds
29 that the notice of appeal does not raise a reasonable issue of fact or law, the hearing
30 officer shall issue a written decision denying the appeal. Denial of an appeal by a
31 hearing officer is a final decision that may be appealed under (d) of this section. If the

1 hearing officer finds that the notice of appeal raises a reasonable issue of fact or law,
2 the hearing officer shall conduct a hearing on those issues and recommend a decision
3 to the board. The hearing officer shall issue a decision on the appeal not later than 60
4 days after being appointed. The board shall consider the recommended decision of the
5 hearing officer at its next regularly scheduled meeting and may adopt all, part, or none
6 of the recommended decision or may remand the issue to the hearing officer for
7 further hearings. The board shall issue its decision in writing within 10 days after
8 consideration of the hearing officer's decision.

9 * Sec. 34. AS 14.18.090(a) is amended to read:

10 (a) The board shall enforce compliance by school districts and regional
11 educational attendance areas with the provisions of this chapter and the regulations
12 and procedures adopted under it by appropriate order made in accordance with
13 AS 44.62. After a hearing conducted by the office of administrative hearings
14 (AS 44.21.510) and a finding by the board that a district or a regional educational
15 attendance area is not in compliance with this chapter and is not actively working to
16 come into compliance, the board shall institute appropriate proceedings to abate the
17 practices found by the board to be a violation of this chapter.

18 * Sec. 35. AS 14.20.040 is amended by adding a new subsection to read:

19 (b) Hearings under AS 14.20.030 shall be conducted by the office of
20 administrative hearings (AS 44.21.510).

21 * Sec. 36. AS 14.25.037(b) is amended to read:

22 (b) In the conduct of a hearing under this chapter, the hearing officer from
23 the office of administrative hearings (AS 44.21.510) [BOARD] may issue
24 subpoenas, administer oaths, compel the attendance and testimony of witnesses,
25 compel the taking of depositions and the submission of affidavits, and compel the
26 production of documents and records. The hearing officer's [BOARD'S] powers
27 under this subsection do not extend to prehearing discovery. However, upon good
28 cause shown, the hearing officer [BOARD] may permit the preservation of witness
29 testimony if the hearing officer [BOARD] cannot successfully compel the witness to
30 attend a hearing. The board may authorize hearing officers to [CONDUCT
31 HEARINGS UNDER THIS CHAPTER AND] issue binding decisions. A binding [;

1 THE] decision of a hearing officer may be appealed to the board. The board shall
2 adopt procedures for appeals from a hearing officer's binding decision.

3 * Sec. 37. AS 14.30.193(b) is amended to read:

4 (b) If a due process hearing is requested by either a school district or a parent,
5 the school district shall contact the office of administrative hearings (AS 44.21.510)
6 [DEPARTMENT] to request appointment of a hearing officer. The chief
7 administrative hearing officer [DEPARTMENT] shall select a hearing officer
8 through a random selection process, from a list maintained by the office
9 [DEPARTMENT] under (g) of this section. Within five working days after receipt of
10 the request, the chief administrative hearing officer [DEPARTMENT] shall provide
11 to the school district and the parent a notice of appointment, including the name and a
12 statement of qualifications, of the hearing officer that [THE DEPARTMENT
13 DETERMINES] is available to conduct the hearing.

14 * Sec. 38. AS 14.30.193(c) is amended to read:

15 (c) The school district and the parent each have the right to reject, without
16 stating a reason, one hearing officer appointed under this section. The rejecting party
17 shall notify the office of administrative hearings [DEPARTMENT] of that rejection
18 in writing within five days after receipt of the [DEPARTMENT'S] notice of
19 appointment. If a hearing officer is rejected under this subsection, the chief
20 administrative hearing officer [DEPARTMENT] shall, within five working days
21 after receipt of the written rejection, provide a notice of appointment, including the
22 name and a statement of qualifications, of another hearing officer that [THE
23 DEPARTMENT DETERMINES] is available to conduct the hearing. Each
24 appointment is subject to a right of rejection under this subsection by a party who has
25 not previously rejected an appointment.

26 * Sec. 39. AS 14.30.193(g) is amended to read:

27 (g) The office of administrative hearings [DEPARTMENT] shall maintain a
28 list of qualified hearing officers and shall provide for qualification of hearing officers
29 through a training program that is open to all individuals who meet the criteria set by
30 the office [DEPARTMENT] by regulation. The list of qualified hearing officers shall
31 be maintained as a public record.

1 * Sec. 40. AS 14.37.060(b) is amended to read:

2 (b) A prospective licensee who was denied licensure may appeal the
3 department's decision by requesting a hearing conducted by the office of
4 administrative hearings (AS 44.21.510), on the form provided by the department,
5 within 15 days after receipt of the notice of denial of licensure.

6 * Sec. 41. AS 14.37.130(g) is amended to read:

7 (g) An applicant whose application is denied may appeal the department's
8 decision, on the form provided by the department, by requesting a hearing conducted
9 by the office of administrative hearings (AS 44.21.510) within 15 days after receipt
10 of the notice of denial of application.

11 * Sec. 42. AS 14.37.170(d) is amended to read:

12 (d) A licensee or other person to whom a notice has been provided under (a)
13 or (c) of this section may appeal the department's decision to impose an enforcement
14 action described in (a) or (b)(2) - (8) of this section by filing a written request for a
15 hearing conducted by the office of administrative hearings (AS 44.21.510), on the
16 form provided by the department, within 15 days after receipt of the notice of
17 enforcement action.

18 * Sec. 43. AS 14.48.130(b) is amended to read:

19 (b) The commission shall investigate the complaint and may attempt to effect
20 a settlement by persuasion and conciliation. A [THE COMMISSION MAY
21 CONSIDER A] complaint may be considered after 30 davs' [DAYS] written notice
22 by registered mail to the institution or agent, or both, giving notice of a time and place
23 for hearing on the complaint. The hearing shall be conducted in accordance with
24 AS 44.62 (Administrative Procedure Act) by the office of administrative hearings
25 (AS 44.21.510).

26 * Sec. 44. AS 17.20.060 is amended to read:

27 **Sec. 17.20.060. Suspension and reinstatement of emergency permit.** The
28 commissioner may suspend immediately upon notice a permit issued under
29 AS 17.20.050 if it is found that the conditions of the permit have been violated. The
30 holder of a suspended permit may apply for the reinstatement of the permit, and the
31 commissioner, immediately after prompt hearing conducted by the office of

1 administrative hearings (AS 44.21.510) and an inspection of the establishment, shall
2 reinstate the permit if it is found that adequate measures have been taken to comply
3 with and maintain the conditions of the permit as originally issued or as amended.

4 * Sec. 45. AS 17.20.120 is amended to read:

5 Sec. 17.20.120. **Application for sale of new drugs.** The application provided
6 for in AS 17.20.110 is effective on the 60th day after the filing of it. If the
7 commissioner finds, after notice to the applicant and providing an opportunity for a
8 hearing conducted by the office of administrative hearings (AS 44.21.510), that the
9 drug is not safe for use under the conditions prescribed, recommended, or suggested in
10 the proposed labeling, the commissioner shall, before the effective date of the
11 application, issue an order refusing to permit the application to become effective. An
12 order refusing an application to become effective may be revoked by the
13 commissioner.

14 * Sec. 46. AS 17.20.360 is amended to read:

15 Sec. 17.20.360. **Attorney general to prosecute; hearing before report of**
16 **criminal violation.** The attorney general, to whom the commissioner of
17 environmental conservation or the commissioner of health and social services, as the
18 case may be, reports a violation of this chapter, shall institute appropriate proceedings
19 in the superior court without delay and prosecute them in the manner required by law.
20 Before a violation of this chapter is reported to the attorney general, the person against
21 whom the proceeding is contemplated shall be given appropriate notice and an
22 opportunity to respond to the appropriate commissioner in a hearing conducted by
23 the office of administrative hearings (AS 44.21.510), orally or in writing, in person
24 or by attorney, with regard to the contemplated proceeding.

25 * Sec. 47. AS 18.07.071 is amended by adding a new subsection to read:

26 (d) A hearing under this section shall be conducted by the office of
27 administrative hearings (AS 44.21.510).

28 * Sec. 48. AS 18.07.081(a) is amended to read:

29 (a) The department, a member of the public who is substantially affected by
30 activities authorized by the certificate, or another applicant for a certificate of need
31 may initiate a hearing to obtain modification, suspension, or revocation of an existing

1 certificate of need by filing an accusation with the commissioner as prescribed under
2 AS 44.62.360. A revocation, modification, or suspension of an outstanding certificate
3 may not be undertaken unless it is in accordance with AS 44.62.330 - 44.62.630. A
4 hearing under this subsection shall be conducted by the office of administrative
5 hearings (AS 44.21.510).

6 * Sec. 49. AS 18.18.030(b) is amended to read:

7 (b) The department may, without a hearing, summarily suspend a license of a
8 hospice program if it finds that the actions or deficiencies of the program have caused,
9 or present an immediate threat of causing, serious injury to a hospice program client.
10 A licensee is entitled to a hearing conducted by the office of administrative
11 hearings (AS 44.21.510) [BEFORE THE DEPARTMENT] to appeal the summary
12 suspension within seven days after the order of suspension is issued. A licensee may
13 appeal an adverse decision of the department on an appeal of a summary suspension to
14 the superior court. A summary suspension remains in effect until the department finds
15 that the actions or deficiencies are corrected, the license is revoked, or the licensee is
16 successful in appealing the suspension.

17 * Sec. 50. AS 18.18.030(c) is amended to read:

18 (c) The department may, without a hearing, reduce a hospice license to a
19 provisional license for a period of time established by the department if the department
20 finds that the licensee is temporarily unable to comply with 18.18.005 - 18.18.390 or
21 is in the process of becoming decertified under the Medicare program but is taking
22 appropriate steps to bring the program into compliance with 18.18.005 - 18.18.390 or
23 Medicare certification requirements. A licensee is entitled to a hearing conducted by
24 the office of administrative hearings [BEFORE THE DEPARTMENT] to appeal a
25 reduction to a provisional license under this subsection within seven days after the
26 order to reduce the license is issued. A licensee may appeal an adverse decision of the
27 department on an appeal of the order reducing the license to a provisional license to
28 the superior court. A program with a provisional license under this subsection may
29 not accept new clients. If the program fails to correct its deficiencies and does not
30 successfully appeal the order reducing the license to provisional status within the
31 period stipulated in the provisional license, the department shall revoke the license.

1 * Sec. 51. AS 18.20.180 is amended to read:

2 Sec. 18.20.180. Approval of applications. The commissioner of the
3 department shall give every applicant an opportunity for a fair hearing conducted by
4 the office of administrative hearings (AS 44.21.510). If, after giving reasonable
5 opportunity for development and presentation of applications in the order of relative
6 need, the commissioner of the department finds that a project application complies
7 with the requirements of AS 18.20.170 and conforms with the state plan, the
8 commissioner shall approve and recommend the application and forward it to the
9 surgeon general.

10 * Sec. 52. AS 18.20.330(a) is amended to read:

11 (a) Notwithstanding AS 44.62.330 - 44.62.630, the department, by regulation,
12 shall establish a hearing procedure by which a nursing facility may present evidence to
13 refute a deficiency found by the department, and by which it may appeal a sanction
14 imposed by order of the department under AS 18.20.310. A request for a hearing shall
15 be made in writing within 10 days after service of the department's order on the
16 nursing facility. Except for an order that takes effect immediately under
17 AS 18.20.310(b)(1), a request under this subsection has the effect of staying the
18 department's order until the hearing is concluded and the department makes a final
19 determination. The hearing shall be conducted by the office of administrative
20 hearings (AS 44.21.510).

21 * Sec. 53. AS 18.55.790 is amended to read:

22 Sec. 18.55.790. Pleadings and hearing. The complaint must contain a notice
23 of a hearing conducted by the office of administrative hearings (AS 44.21.510)
24 [BEFORE THE CORPORATION OR DESIGNATED AGENT] and the time and
25 place fixed for the hearing. The hearing shall be not less than 10 days nor more than
26 30 days after the service of the complaint. The complaint must state that the parties in
27 interest may file an answer to the complaint, appear, and give testimony at the place
28 and time fixed in the complaint.

29 * Sec. 54. AS 18.60.093(f) is amended to read:

30 (f) If an employer fails without good cause to appear at a hearing held under
31 this section after receiving proper notice of the hearing, the OSHA Review Board may

1 order the employer to pay all reasonable expenses incurred by the board or the office
2 of administrative hearings (AS 44.21.510) for the hearing, including the board's
3 actual travel expenses and per diem and actual travel expenses and per diem for the
4 hearing officer.

5 * Sec. 55. AS 18.67.040(a) is amended to read:

6 (a) Upon application made under the provisions of this chapter, the board shall
7 consider the application and rule on it. The board may, upon its own motion, order a
8 hearing, specifying the time and place it is to be held after consulting with the office
9 of administrative hearings (AS 44.21.510). If [; IF] a hearing is ordered, the board
10 shall give notice to the applicant. If, after consideration without a hearing, the
11 decision is unfavorable to the applicant, in whole or in part, the board shall furnish the
12 applicant a written statement of the reason for the ruling. If, within 30 days after
13 receipt of this statement, the applicant requests a hearing on the application, the board
14 shall specify a time and place for a hearing after consulting with the office of
15 administrative hearings. and shall give notice to the applicant. If a request for a
16 hearing is not made within the specified time, the decision of the board is final.

17 * Sec. 56. AS 18.67.040(b) is amended to read:

18 (b) For the purpose of carrying out the provisions of this chapter, the office of
19 administrative hearings (AS 44.21.510) shall [BOARD OR ITS HEARING
20 OFFICER MAY] hold the hearings, sit and act at the times and places, and take the
21 testimony that the [BOARD OR THE] hearing officer considers advisable. The
22 [BOARD OR ITS] hearing officer may administer oaths or affirmations to witnesses.
23 The hearing officer [BOARD] has full powers of subpoena and compulsion of
24 attendance of witnesses and production of documents, but a subpoena may not be
25 issued except under the signature of a member of the board. Application to a court for
26 aid in enforcing the subpoena may be made in the name of the board only by a board
27 member. Subpoenas are served by any person designated by the hearing officer or
28 the board.

29 * Sec. 57. AS 18.67.040(c) is amended to read:

30 (c) The applicant and any other person having a substantial interest in a
31 proceeding may appear and be heard, produce evidence, and cross-examine witnesses

1 in person or by an attorney. The [BOARD OR ITS] hearing officer also may hear
2 other persons who, in the judgment of the [BOARD OR THE] hearing officer, may
3 have relevant evidence to submit.

4 * Sec. 58. AS 18.80.060(c) is amended to read:

5 (c) A commissioner or an employee authorized by the commission may
6 administer oaths, certify to all official acts, and issue subpoenas, subpoenas duces
7 tecum, and other process to compel the attendance of witnesses and the production of
8 testimony, records, papers, accounts, and documents in any inquiry or [,] investigation
9 [, HEARING, OR PROCEEDING] before the commission in the state. The hearing
10 officer of the office of administrative hearings (AS 44.21.510) may administer
11 oaths, certify to all official acts, and issue subpoenas, subpoenas duces tecum, and
12 other process to compel the attendance of witnesses and the production of
13 testimony, records, papers, accounts, and documents in any hearing held under
14 this chapter. The commission, a commissioner, or an employee authorized by the
15 commission may petition a court of this state to enforce its subpoenas, subpoenas
16 duces tecum, and other process. The hearing officer may petition a court of this
17 state to enforce subpoenas, subpoenas duces tecum, and other process issued by
18 the hearing officer.

19 * Sec. 59. AS 18.80.120 is amended to read:

20 Sec. 18.80.120. Hearing. If the informal efforts to eliminate the alleged
21 discrimination are unsuccessful, the executive director shall inform the commission of
22 the failure, and the commission shall provide the respondent and the complainant with
23 notice of the failure and shall serve written notice, together with a copy of the
24 complaint, requiring the person, employer, labor organization, or employment agency
25 charged in the complaint to answer the allegations of the complaint at a hearing
26 [BEFORE THE COMMISSION]. The hearing shall be held by the office of
27 administrative hearings (AS 44.21.510) [COMMISSION] at the location of the
28 [COMMISSION] office unless a party requests a change of venue for good cause
29 shown, and the office [COMMISSION] grants the request. The case in support of the
30 complaint shall be presented before the office [COMMISSION] by the executive
31 director of the commission or a designee who shall be a bona fide resident of the

1 state. The person charged in the complaint may file a written answer to the complaint
2 and may appear at the hearing in person or otherwise, with or without counsel, and
3 submit testimony. The executive director has the power reasonably and fairly to
4 amend the complaint, and the person charged has the power reasonably and fairly to
5 amend the answer. The office of administrative hearings [COMMISSION] is not
6 bound by the strict rules of evidence prevailing in courts of law or equity. The
7 testimony taken at the hearing shall be under oath and shall be recorded.

8 * Sec. 60. AS 18.80.145(b) is amended to read:

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

14 * Sec. 61. AS 18.80.145(c) is amended to read:

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

20 * Sec. 62. AS 21.06.170(a) is amended to read:

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

1 special authorization considered. A hearing officer from the office of
2 administrative hearings (AS 44.21.510) conducting a hearing under this title may,
3 in the course of the hearing, exercise the powers granted to the director under
4 this subsection.

5 * Sec. 63. AS 21.06.170(d) is amended to read:

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

13 * Sec. 64. AS 21.06.180(a) is amended to read:

14 (a) The office of administrative hearings (AS 44.21.510) [DIRECTOR] may
15 hold hearings for any purpose within the scope of this title considered to be necessary
16 by the director.

17 * Sec. 65. AS 21.06.180(b) is amended to read:

18 (b) The office of administrative hearings (AS 44.21.510) [DIRECTOR] shall
19 hold a hearing if required by a provision of this title, or upon written demand to the
20 director by a person aggrieved by an act, threatened act, or failure of the director to
21 act, or by a report, regulation, or order of the director (other than an order for the
22 holding of a hearing, or an order on hearing or under it). A demand must specify the
23 grounds to be relied upon at the hearing as a basis for the relief. Unless postponed by
24 mutual consent or for good cause shown, the hearing shall be held within 30 days after
25 receipt by the director of the written demand.

26 * Sec. 66. AS 21.06.200 is amended to read:

27 Sec. 21.06.200. Notice of hearing. Not less than 20 days in advance, the
28 hearing officer [DIRECTOR] shall give notice of the time and place of the hearing,
29 stating the matters to be considered at the hearing. If the persons to be given notice are
30 not specified in the provision under which the hearing is held, the hearing officer,
31 with assistance from the director, shall give notice to all persons whose pecuniary

1 interests are to be directly and immediately affected by the hearing.

2 * Sec. 67. AS 21.06.210(a) is amended to read:

3 (a) The hearing officer [DIRECTOR] shall allow a party to the hearing to
4 appear in person and by counsel, to be present during the giving of all evidence, to
5 have a reasonable opportunity to inspect all documentary evidence and to examine
6 witnesses, to present evidence in support of the party's interest, and to have subpoenas
7 issued by the hearing officer [DIRECTOR] to compe^l attendance of witnesses and
8 production of evidence in the party's behalf.

9 * Sec. 68. AS 21.06.210(b) is amended to read:

10 (b) The hearing officer [DIRECTOR] shall permit to become a party to the
11 hearing by intervention, if timely, any person who was not an original party to the
12 proceeding and whose pecuniary interests are to be directly and immediately affected
13 by the director's order made upon the hearing.

14 * Sec. 69. AS 21.06.210(d) is amended to read:

15 (d) Upon written request seasonably made by a party to the hearing and at that
16 person's expense, the hearing officer [DIRECTOR] shall cause a full stenographic
17 record of the proceedings to be made by a competent reporter. If transcribed, a copy
18 of the stenographic record shall be furnished to the director, without cost to the
19 director or the state, and shall be a part of the director's record of the hearing. If
20 transcribed, a copy of the stenographic record shall be furnished to any other party to
21 the hearing at the request and expense of the other party. If no stenographic record is
22 made or transcribed, the hearing officer [DIRECTOR] shall prepare an adequate
23 record of the evidence and of the proceedings.

24 * Sec. 70. AS 21.06.210(f) is amended to read:

25 (f) If the parties agree, the hearing officer [DIRECTOR] may conduct a
26 hearing under this section by teleconference.

27 * Sec. 71. AS 21.06.210(h) is amended to read:

28 (h) The hearing officer [DIRECTOR] may close a hearing to the public when
29 the hearing officer [DIRECTOR] finds the closure is necessary to protect a person
30 against unwarranted injury or is in the public interest.

31 * Sec. 72. AS 21.06.220(a) is amended to read:

1 (a) In conducting the hearing, the hearing officer [DIRECTOR] shall sit in a
2 quasi-judicial capacity. Within 30 days after termination of the hearing, rehearing, or
3 reargument, the director shall make an order on hearing, covering matters involved in
4 the hearing, rehearing, or reargument, and shall give a copy of the order to the same
5 persons given notice of the hearing.

6 * Sec. 73. AS 24.60.030 is amended by adding a new subsection to read:

7 (i) Except for supplying information requested by the hearing officer or
8 responding to contacts initiated by the hearing officer, a legislator or legislative
9 employee may not attempt to influence the outcome of an administrative hearing
10 conducted by the office of administrative hearings (AS 44.21.510) by directly or
11 indirectly contacting or attempting to contact the hearing officer assigned to the
12 hearing unless the

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

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

18 * Sec. 74. AS 25.27.150(e) is amended to read:

19 (e) The hearing officer from the office of administrative hearings
20 (AS 44.21.510) [CONFERENCE OFFICER] shall inform the obligor of the informal
21 conference decision either at the informal conference hearing or within 15 days after
22 the hearing.

23 * Sec. 75. AS 25.27.150(f) is amended to read:

24 (f) If the hearing [CONFERENCE] officer determines that withholding will
25 continue, the obligor may request a formal hearing as provided in the department's
26 regulations.

27 * Sec. 76. AS 25.27.160(b) is amended to read:

28 (b) Except as provided in (c) of this section, the notice and finding of financial
29 responsibility served under (a) of this section must state

30 (1) the sum or periodic payments for which the alleged obligor is
31 found to be responsible under this chapter;

1 (2) the name of the alleged obligee and the obligee's custodian;
2 (3) that the alleged obligor may appear and show cause in a hearing
3 held by the office of administrative hearings (AS 44.21.510) [AGENCY] why the
4 finding is incorrect, should not be finally ordered, and should be modified or
5 rescinded, because

6 (A) no duty of support is owed; or

7 (B) the amount of support found to be owed is incorrect;

8 (4) that, if the person served with the notice and finding of financial
9 responsibility does not request a hearing within 30 days, the property and income of
10 the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270
11 in the amounts stated in the finding without further notice or hearing.

12 * Sec. 77. AS 25.27.160(c) is amended to read:

13 (c) If the agency is establishing only a medical support order, the notice and
14 finding of financial responsibility must state

15 (1) that health care insurance shall be provided for the child to whom
16 the duty of support is owed if health care insurance is available to the alleged obligor
17 at a reasonable cost and that the alleged obligor and the other parent shall share
18 equally the cost of the health care insurance and the costs of reasonable health care
19 expenses not covered by insurance;

20 (2) the name of the alleged obligee and the obligee's custodian;

21 (3) that the alleged obligor may appear and show cause in a hearing
22 held by the office of administrative hearings [AGENCY] why the finding is
23 incorrect, should not be finally ordered, and should be modified or rescinded, because

24 (A) no duty of support is owed;

25 (B) health care insurance for the child is not available to the
26 alleged obligor at a reasonable cost;

27 (C) adequate health care is available to the child through the
28 Indian Health Service or other insurance coverage; or

29 (D) there is good cause to allocate the costs of health insurance
30 or uninsured health care expenses unequally between the parents;

31 (4) that, if the person served with the notice under this subsection does

1 not request a hearing within 30 days, a copy of the medical support order will be sent
2 to the person's employer under AS 25.27.063(b) without further notice or hearing for
3 inclusion of the child in family health coverage if it is available through the person's
4 employer.

5 * Sec. 78. AS 27.21.150(a) is amended to read:

6 (a) Within 30 days after an applicant is notified under AS 27.21.140(c) of the
7 commissioner's decision concerning the application, the applicant or a person who is
8 or may be adversely affected by the decision may request a hearing to review the
9 reasons for the decision. The office of administrative hearings (AS 44.21.510)
10 [COMMISSIONER] shall hold the hearing within 30 days after the request, and the
11 commissioner, after consulting with the office, shall notify the interested parties of
12 the hearing at the time the applicant is notified. AS 44.62 (Administrative Procedure
13 Act) applies to a hearing under this section except as provided by regulations adopted
14 under this chapter and under AS 44.21.560.

15 * Sec. 79. AS 27.21.150(c) is amended to read:

16 (c) The hearing officer from the office of administrative hearings who is
17 [PERSON] presiding at the hearing may administer oaths, subpoena witnesses,
18 subpoena written or printed materials, compel the attendance of witnesses or the
19 production of materials, and take evidence including [BUT NOT LIMITED TO]
20 evidence derived from site inspections of the land that will be affected by the permit or
21 revision and other surface coal mining operations conducted by the applicant in the
22 general vicinity of the operation proposed in the application. On the motion of a party
23 or by order of the commissioner, a verbatim record of a hearing required by this
24 chapter shall be made and a transcript made available.

25 * Sec. 80. AS 27.21.170(g) is amended to read:

26 (g) A person with a valid legal interest that might be adversely affected by
27 release of a bond or deposit under this section or a federal, state, or municipal agency
28 that has jurisdiction over an environmental, social, or economic impact involved in the
29 permittee's operation or that has authority to develop and enforce environmental
30 standards with respect to the permittee's operation, may, within 30 days after the last
31 publication of notice required by (a) of this section, file written objections to the

1 request with the commissioner and may request a hearing. A permittee whose request
2 for release of all or part of a bond or deposit is disapproved may request a hearing
3 within 30 days after receipt of written notification of the disapproval under (e) of this
4 section. If a hearing is requested, the commissioner shall, after consulting the office
5 of administrative hearings (AS 44.21.510), inform the interested parties of the time
6 and place of the hearing, and the office of administrative hearings shall hold the
7 hearing within 30 days after the request for the hearing. The commissioner shall
8 publish the date, time, and location of the hearing in a newspaper of general
9 circulation in the locality for two consecutive weeks. The office of administrative
10 hearings [COMMISSIONER] shall conduct the public hearing and any appeal
11 according to the AS 44.62 (Administrative Procedure Act) except as provided by
12 regulations adopted under this chapter or under AS 44.21.560.

13 * Sec. 81. AS 27.21.190(b) is amended to read:

14 (b) The commissioner may not approve an application for revision of a permit
15 unless the commissioner finds that reclamation required by this chapter and the
16 regulations adopted under it can be accomplished under the necessary revisions to the
17 reclamation plan. The commissioner shall establish guidelines for determining the
18 extent of revision for which all permit application requirements and procedures,
19 including notice and hearing, shall apply. A revision that, in the commissioner's
20 determination, requires significant revisions to the applicant's reclamation plan must,
21 at a minimum, be subject to a notice and hearing requirement. with the hearing to be
22 held by the office of administrative hearings (AS 44.21.510).

23 * Sec. 82. AS 27.21.240(c) is amended to read:

24 (c) A person who is or may be adversely affected by a notice of violation or
25 cessation order issued under (a) or (b) of this section, or by a modification, vacation,
26 or termination of the notice or order, may apply to the commissioner for review of the
27 notice or order within 60 days after receipt of the notice or order by the operator or
28 permittee or within 60 days after the modification, vacation, or termination of the
29 notice or order. On receipt of the application, the commissioner shall provide for an
30 investigation and an investigation report, as the commissioner considers appropriate.
31 At the request of the applicant or another person who is or may be adversely affected,

1 the commissioner shall provide for a public hearing to enable the applicant to present
2 information relating to the notice or order or the modification, vacation, or termination
3 of the notice or order. The filing of an application for review under this subsection
4 may not operate as a stay of the order or notice. The commissioner, after consulting
5 with the office of administrative hearings (AS 44.21.510), shall give the applicant
6 and other interested persons written notice of the time and place of the hearing at least
7 five days before the hearing. AS 44.62 ([THE] Administrative Procedure Act
8 [(AS 44.62)] applies to a hearing under this subsection except as provided by
9 regulations adopted under this chapter or under AS 44.21.560.

10 * Sec. 83. AS 27.21.240(e) is amended to read:

11 (e) An applicant for review under (c) of this section may file with the
12 commissioner a written request for temporary relief from a notice or order issued
13 under (a) or (b) of this section before completion of the review of the notice or order.
14 The written request must include a detailed statement of the reasons in support of the
15 request. The commissioner shall expeditiously issue an order granting or denying the
16 temporary relief. If the applicant requests temporary relief from a cessation order
17 issued under (a) or (b) of this section, the commissioner shall issue an order granting
18 or denying the temporary relief within 10 days after the commissioner receives the
19 written request. The commissioner may grant the temporary relief under this
20 subsection only

21 (1) after the office of administrative hearings [COMMISSIONER]
22 holds a hearing in the locality of the permit area on the request for temporary relief in
23 which the parties have an opportunity to be heard;

24 (2) if the applicant shows that there is substantial likelihood that the
25 findings of the commissioner under (d) of this section will be favorable to the
26 applicant; and

27 (3) if the temporary relief will not adversely affect the health or safety
28 of the public or cause significant, imminent, environmental harm to land, air, or water
29 resources.

30 * Sec. 84. AS 34.45.400(c) is amended to read:

31 (c) At the formal hearing, the hearing officer from the office of

1 administrative hearings (AS 44.21.510) [DEPARTMENT] may subpoena witnesses
2 and may administer oaths and make inquiries necessary to determine the validity of
3 the claim. The person aggrieved may present arguments and evidence relevant to the
4 decision or action of the department. If, after the hearing, the department determines
5 that a correction is warranted, the department shall make the correction.

6 * Sec. 85. AS 36.30.615 is amended to read:

7 Sec. 36.30.615. **Hearing on protest appeal.** A hearing on a protest appeal
8 shall be conducted in accordance with AS 36.30.670 and regulations adopted by the
9 commissioner to the extent they do not conflict with regulations adopted under
10 AS 44.21.560.

11 * Sec. 86. AS 36.30.630(a) is amended to read:

12 (a) Except as provided in (b) of this section, a hearing shall be conducted
13 according to AS 36.30.670 and, to the extent they do not conflict with regulations
14 adopted under AS 44.21.560, regulations adopted by the commissioner of
15 administration on a contract controversy appealed to the commissioner of
16 administration or the commissioner of transportation and public facilities or referred to
17 either commissioner under AS 36.30.620(f).

18 * Sec. 87. AS 36.30.635(a) is amended to read:

19 (a) After consultation with the using agency and the attorney general and after
20 a hearing conducted according to AS 36.30.670 and, to the extent they do not
21 conflict with regulations adopted under AS 44.21.560, regulations adopted by the
22 commissioner of administration, the commissioner of administration or the
23 commissioner of transportation and public facilities may debar a person for cause from
24 consideration for award of contracts. Notice of a debarment hearing shall be provided
25 in writing at least seven days before the hearing. The debarment may not be for a
26 period of more than three years.

27 * Sec. 88. AS 36.30.650 is amended to read:

28 Sec. 36.30.650. **Hearing on a suspension.** (a) A person suspended under
29 AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and, to the
30 extent that they do not conflict with regulations adopted under AS 44.21.560,
31 regulations adopted by the commissioner of administration if the person files a written

1 request for a hearing with the commissioner of administration or the commissioner of
2 transportation and public facilities, as appropriate, within seven days after receipt of
3 the notice of suspension under AS 36.30.645.

4 (b) If a suspended person requests a hearing, the commissioner of
5 administration or the commissioner of transportation and public facilities, as
6 appropriate, after consulting with the office of administrative hearings
7 (AS 44.21.510), shall schedule a prompt hearing unless the attorney general
8 determines that a hearing at the proposed time is likely to jeopardize an investigation.
9 A hearing may not be delayed longer than six months after notice of the suspension is
10 provided under AS 36.30.645.

11 * Sec. 89. AS 36.30.670(a) is amended to read:

12 (a) The chief administrative hearing officer (AS 44.21.510)
13 [COMMISSIONER OF ADMINISTRATION OR THE COMMISSIONER OF
14 TRANSPORTATION AND PUBLIC FACILITIES] shall act as a hearing officer [OR
15 APPOINT A HEARING OFFICER] for a hearing conducted under this chapter. The
16 hearing officer shall arrange for a prompt hearing and notify the parties in writing of
17 the time and place of the hearing. The hearing shall be conducted in an informal
18 manner. The provisions of AS 44.62 (Administrative Procedure Act) do not apply to a
19 hearing conducted under this chapter.

20 * Sec. 90. AS 36.30.675(a) is amended to read:

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

27 * Sec. 91. AS 39.25.120(b) is amended to read:

28 (b) A person holding a position in the partially exempt service is not required
29 to complete an assessment and is not eligible for a hearing [BY THE PERSONNEL
30 BOARD] in case of dismissal, demotion, or suspension. Positions in the partially
31 exempt service are specifically exempt from the rules established under

1 AS 39.25.150(3) - (10), (12), (13), and (16).

2 * Sec. 92. AS 39.25.120(c) is amended by adding a new paragraph to read:

3 (20) the chief administrative hearing officer, chief assistant, and
4 hearing officers of the office of administrative hearings established in AS 44.21.510.

5 * Sec. 93. AS 39.25.170(a) is amended to read:

6 (a) An employee in the classified service who is dismissed, demoted, or
7 suspended for more than 30 working days in a 12-month period shall be notified in
8 writing by the employer of the action and the reason for it, [AND] may be heard
9 publicly by a hearing officer from the office of administrative hearings
10 (AS 44.21.510). [THE PERSONNEL BOARD] and may be represented by counsel at
11 the hearing. In order to be heard, the complainant shall request a hearing within 15
12 days of dismissal, demotion, or suspension.

13 * Sec. 94. AS 39.25.176(a) is amended to read:

14 (a) If a person refuses to respond to a subpoena issued under AS 39.25.175, or
15 refuses to testify at a hearing authorized by AS 39.25.170, the hearing officer
16 [PERSONNEL BOARD] may apply to the superior court for an order requiring the
17 person to respond to the subpoena or to testify.

18 * Sec. 95. AS 39.35.030(d) is amended to read:

19 (d) The governor shall appoint two physicians authorized to practice medicine
20 in the state to serve as members of the board and two physicians authorized to practice
21 medicine in the state to serve as alternate members to the physician members of the
22 board. The physicians are members of the board only for the purpose of assisting the
23 hearing officer from the office of administrative hearings (AS 44.21.510) in
24 hearing appeals to determine medical eligibility for disability benefits under
25 AS 39.35.400 and 39.35.410. If the administrator, after making a reasonable effort to
26 secure the participation of two physician members or alternates to serve on a disability
27 appeal, is unable to do so, the hearing officer [BOARD] may hear the appeal with the
28 assistance [PARTICIPATION] of only one physician member or alternate [, IN
29 WHICH CASE, FOR PURPOSES OF A QUORUM, THE BOARD SHALL BE
30 CONSIDERED TO HAVE ONLY ONE PHYSICIAN AS A MEMBER]. The Public
31 Employees' Retirement Board and the Teachers' Retirement Board may submit to the

1 governor a list of recommended physicians to serve on the board. Physician members
2 serve at the pleasure of the governor.

3 * Sec. 96. AS 39.35.047(b) is amended to read:

4 (b) In the conduct of a hearing under this chapter, the hearing officer from
5 the office of administrative hearings (AS 44.21.510) [BOARD] may issue
6 subpoenas, administer oaths, compel the attendance and testimony of witnesses,
7 compel the taking of depositions and the submission of affidavits, and compel the
8 production of documents and records. The hearing officer's [BOARD'S] powers
9 under this subsection do not extend to prehearing discovery. However, upon good
10 cause shown, the hearing officer [BOARD] may permit the preservation of witness
11 testimony if the hearing officer [BOARD] cannot successfully compel the witness to
12 attend a hearing. The board may authorize hearing officers to [CONDUCT
13 HEARINGS UNDER THIS CHAPTER AND] issue binding decisions. The binding
14 [; THE] decision of a hearing officer may be appealed to the board. The board shall
15 adopt procedures for appeals from a hearing officer's binding decision.

16 * Sec. 97. AS 39.35.522(c) is amended to read:

17 (c) The board may arrange with the office of administrative hearings
18 (AS 44.21.510) to conduct a hearing on an appeal under this section.

19 * Sec. 98. AS 39.45.025(a) is amended to read:

20 (a) The Public Employees Retirement Board established by AS 39.35.030
21 shall

22 (1) hold regular and special meetings it considers necessary to carry
23 out its responsibilities relating to the deferred compensation program for state
24 employees; all meetings are open to the public and the board shall keep a full record of
25 all its proceedings;

26 (2) adopt, with modifications it considers proper, regulations
27 recommended by the administrator for carrying out the deferred compensation
28 program for state employees;

29 (3) consider matters referred to it by the administrator in connection
30 with changes in policy and revisions of the deferred compensation program for state
31 employees;

1 (4) act as an appeals board, arrange with the office of administrative
2 hearings (AS 44.21.510) to hold hearings at the request of an employer, employee,
3 surviving spouse, or a beneficiary on decisions made by the administrator that relate to
4 the deferred compensation program for state employees, and submit its findings to the
5 administrator;

6 (5) prescribe the policies for the proper operation of the deferred
7 compensation program for state employees and take other action that it considers
8 necessary to carry out the intent and purpose of the program.

9 * Sec. 99. AS 39.52.120 is amended by adding a new subsection to read:

10 (e) Except for supplying information requested by the hearing officer or
11 responding to contacts initiated by the hearing officer, a public officer may not attempt
12 to influence the outcome of an administrative hearing conducted by the office of
13 administrative hearings (AS 44.21.510) by directly or indirectly contacting or
14 attempting to contact the hearing officer assigned to the hearing unless the

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

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

19 * Sec. 100. AS 39.52.350(c) is amended to read:

20 (c) If the subject of the accusation denies that a violation of this chapter has
21 occurred, the attorney general shall refer the matter to the chief administrative
22 hearing officer (AS 44.21.510). who [PERSONNEL BOARD, WHICH] shall appoint
23 a hearing officer to conduct a hearing.

24 * Sec. 101. AS 41.17.045(a) is amended to read:

25 (a) The governor may initiate the removal of a board member for inefficiency,
26 neglect of duty, or misconduct in office by delivering to the member a written copy of
27 the charges and giving the member an opportunity to be heard in person or by counsel
28 at a public hearing before a hearing officer of the office of administrative hearings
29 (AS 44.21.510) [THE GOVERNOR OR THE GOVERNOR'S DESIGNEE] on at least
30 10 days' written notice by registered mail. The member has a right of confrontation
31 and cross-examination of witnesses testifying.

1 * Sec. 102. AS 41.17.139(a) is amended to read:

2 (a) Unless otherwise specified, proceedings under AS 41.17.131 - 41.17.139
3 are not subject to AS 44.62 (Administrative Procedure Act). A hearing under
4 AS 41.17.136 or 41.17.138 shall be held before [THE STATE FORESTER, A
5 REGIONAL FORESTER, OR ANOTHER EMPLOYEE OF THE DIVISION WITH
6 SIMILAR QUALIFICATIONS ACTING AS] a hearing officer of the office of
7 administrative hearings (AS 44.21.510). A hearing on an appeal under
8 AS 41.17.087 and a hearing under AS 41.17.082(b) shall also be held before a
9 hearing officer of the office of administrative hearings [THE COMMISSIONER
10 OR THE COMMISSIONER'S DESIGNEE. A PERSON WHO HAS ASSISTED IN
11 THE PREPARATION OF THE DIVISION'S CASE IS INELIGIBLE]. Hearings are
12 not limited by common law, statutory, or judicial rules of evidence; however, the
13 hearing officer may admit only that evidence that appears to be reliable and
14 trustworthy. All hearings shall be open to the public. Written or oral testimony may
15 be submitted. A party to a hearing may make written or oral argument, secure the
16 issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, and
17 cross-examine witnesses. The hearing officer shall endeavor, in conducting any
18 hearing, to ensure that the respondent understands the proceedings and that the facts
19 supporting the position of each party have been adequately presented.

20 * Sec. 103. AS 43.23.015(g) is amended to read:

21 (g) If an individual is aggrieved by a decision of the department determining
22 the individual's eligibility for a permanent fund dividend or the individual's authority
23 to claim a permanent fund dividend on behalf of another, the individual may, upon
24 payment of a \$25 appeal fee, request the department to review its decision. Within 12
25 months after the administrative appeal is filed and after a hearing conducted by the
26 office of administrative hearings (AS 44.21.510), the department shall provide the
27 individual with a final written decision. If the individual is aggrieved by the decision
28 of the department after all administrative proceedings, the individual may appeal that
29 decision to the superior court in accordance with AS 44.62.560. An appeal to the court
30 under this section does not entitle the aggrieved individual to a trial de novo. The
31 appeal shall be based on the record of the administrative proceeding from which

1 appeal is taken and the scope of appeal is limited to matters contained in the record of
2 the administrative proceeding. If, as a result of an administrative proceeding or a court
3 appeal, the individual prevails, the \$25 appeal fee shall be returned to the individual
4 by the department.

5 * Sec. 104. AS 43.23.066(c) is amended to read:

6 (c) AS 44.62.330 - 44.62.630 apply to a hearing requested by an individual
7 under (b)(3) of this section. The hearing shall be conducted by the office of
8 administrative hearings (AS 44.21.510).

9 * Sec. 105. AS 43.23.068(c) is amended to read:

10 (c) AS 44.62.330 - 44.62.630 apply to a hearing requested by an individual
11 under (b)(3) of this section. The hearing shall be conducted by the office of
12 administrative hearings (AS 44.21.510).

13 * Sec. 106. AS 43.23.072(c) is amended to read:

14 (c) Except as provided in (d) of this section, AS 44.62.330 - 44.62.630 apply
15 to a hearing requested by an individual under (b) of this section. The hearing shall be
16 conducted by the office of administrative hearings (AS 44.21.510) and

17 (1) is limited to issues of identity of the individual and whether an
18 amount is still owing in the claim under AS 23.20; and

19 (2) may be conducted telephonically or in writing.

20 * Sec. 107. AS 43.70.075(m) is amended to read:

21 (m) The department may initiate suspension of a business license endorsement
22 or the right to obtain a business license endorsement under this section by sending the
23 person subject to the suspension a notice by certified mail, return receipt requested, or
24 by delivering the notice to the person. The notice must contain information that
25 informs the person of the grounds for suspension, the length of any suspension sought,
26 and the person's right to administrative review [BEFORE THE DEPARTMENT]. A
27 suspension begins 30 days after receipt of notice described in this subsection unless
28 the person delivers a timely written request for a hearing to the department in the
29 manner provided by regulations of the department. If a hearing is requested under this
30 subsection, a hearing officer of the office of administrative hearings (AS 44.21.510)
31 [DEPARTMENT] shall determine the issues by using the preponderance of the

1 evidence test and shall, to the extent they do not conflict with regulations adopted
2 under AS 44.21.560, conduct the hearing in the manner provided by regulations of the
3 department. A hearing under this subsection is limited to the following questions:

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

8 (2) if the department does not allege a conviction of AS 11.76.100,
9 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
10 acting within the scope of the agency or employment of the person, violate a provision
11 of (a) or (g) of this section;

12 (3) within the 24 months before the date of the department's notice
13 under this subsection, was the person, or an agent or employee of the person while
14 acting within the scope of the agency or employment of the person, convicted of
15 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a
16 provision of (a) or (g) of this section.

17 * Sec. 108. AS 43.70.075(q) is amended to read:

18 (q) The department may adopt regulations that do not conflict with
19 regulations adopted under AS 44.21.510 to establish an administrative hearing
20 process for actions taken [BY THE DEPARTMENT] under this section. AS 44.62
21 (Administrative Procedure Act) does not apply to a hearing under this section.

22 * Sec. 109. AS 44.62.350(a) is amended to read:

23 (a) The governor shall assign a qualified, unbiased, and impartial hearing
24 officer, with experience in the general practice of law, to conduct hearings under this
25 chapter that are not conducted by the office of administrative hearings
26 (AS 44.21.510). A [. THE] hearing officer may perform other duties in connection
27 with the administration of this chapter and other laws.

28 * Sec. 110. AS 44.62.450(a) is amended to read:

29 (a) A hearing in a contested case shall be presided over by a hearing officer.
30 Unless the hearing is conducted by the office of administrative hearings
31 (AS 44.21.510), the [THE] agency itself shall determine whether the hearing officer

1 hears the case alone or whether the agency hears the case with the hearing officer.

2 * Sec. 111. AS 44.77.040(a) is amended to read:

3 (a) The Department of Administration, after consulting with the office of
4 administrative hearings (AS 44.21.510), shall fix a time for hearing the appeal and
5 shall notify the claimant and the officer who approved the voucher and give them a
6 reasonable opportunity to be heard. The hearing shall be conducted by the office of
7 administrative hearings.

8 * Sec. 112. AS 45.30.040(c) is amended to read:

9 (c) Whenever it determines that there may be a violation of the provisions of
10 this chapter by a manufacturer or dealer of mobile homes, the department may give
11 notice of hearing, and, within 30 days after giving notice, [HOLD] a hearing shall be
12 held by the office of administrative hearings (AS 44.21.510) to determine whether
13 there has been a violation. After notice and hearing,

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

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

23 * Sec. 113. AS 45.55.935 is amended to read:

24 **Sec. 45.55.935. Hearings.** (a) The administrator shall adopt regulations,
25 consistent with the provisions of this chapter and with regulations adopted under
26 AS 44.21.560, governing administrative hearings conducted by the office of
27 administrative hearings (AS 44.21.510) [ADMINISTRATOR OR A DESIGNEE OF
28 THE ADMINISTRATOR] for the following:

29 (1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in
30 these instances, the administrator shall promptly send a notice of opportunity for
31 hearing to the issuer of the securities and to all persons who have filed with the

1 department a notice of intention to sell the securities; and

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

7 (b) In conducting a hearing in accordance with (a) of this section, the hearing
8 officer [ADMINISTRATOR] may issue a subpoena to compel the attendance of any
9 witness or party and to compel production of evidence.

10 * Sec. 114. AS 45.55.950(e) is amended to read:

11 (e) Every hearing in an administrative proceeding shall be public unless the
12 hearing officer, [ADMINISTRATOR] in the exercise of discretion, grants a request
13 joined in by all the respondents that the hearing be conducted privately.

14 * Sec. 115. AS 45.57.020(a) is amended to read:

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

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

21 (2) a hearing has been ordered within that time and, after [UPON] the
22 hearing conducted by the office of administrative hearings (AS 44.21.510), the
23 department has decided [ADJUDICATED] that the offeror proposed to make fair,
24 full, and effective disclosure to offerees of all information material to a decision to
25 accept or reject the offer.

26 * Sec. 116. AS 45.57.020(b) is amended to read:

27 (b) A hearing shall begin within 20 days of the date of filing of the statement,
28 and adjudication shall be made within 30 days of the filing unless extended by the
29 hearing officer [DEPARTMENT] for the convenience of the parties or protection of
30 the offerees.

31 * Sec. 117. AS 46.03.820(c) is amended to read:

1 (c) In the commissioner's discretion or upon application made by the recipient
2 of an order within 15 days of receipt of the order, the department, after consulting
3 with the office of administrative hearings (AS 44.21.510), shall schedule a hearing
4 at the earliest possible time. The hearing shall be scheduled within five days of the
5 receipt of the application. The submission of an application or the scheduling of a
6 hearing does not stay the operation of the department's order issued under (a) of this
7 section.

8 * Sec. 118. AS 46.03.850(e) is amended to read:

9 (e) The office of administrative hearings (AS 44.21.510) [DEPARTMENT]
10 shall hold a hearing within 20 days after the department receives [RECEIPT OF] a
11 request for one under (d) of this section. After the hearing, the department may
12 rescind, modify, or affirm the compliance order.

13 * Sec. 119. AS 46.14.410(a) is amended to read:

14 (a) If a municipality or a local air quality district has an approved local air
15 quality control program under AS 46.14.400 and the department determines that the
16 program is being implemented in a manner that fails to meet the terms of the
17 cooperative agreement or is otherwise being inappropriately administered, the
18 department shall give written notice setting out its determination to the municipality or
19 local air quality district. Within 45 days after [GIVING] written notice was given, the
20 office of administrative hearings (AS 44.21.510) [DEPARTMENT] shall conduct a
21 public hearing on the matter. The hearing shall be recorded by any means that ensures
22 an accurate record.

23 * Sec. 120. AS 46.15.065(c) is amended to read:

24 (c) The commissioner shall make investigations as necessary of rights asserted
25 by declarations filed under this section and shall determine each existing appropriation
26 and mail a summary of the determination to each person who has filed a declaration
27 with respect to the specified area or source. Any person adversely affected by a
28 determination may file with the commissioner a request for a hearing within 20 days
29 of the date the notice is mailed. If a hearing is requested, the commissioner shall,
30 after consulting with the office of administrative hearings (AS 44.21.510), send a
31 notice of the time and place of the hearing to each person who has filed a declaration.

1 * Sec. 121. AS 46.35.090(c) is amended to read:

2 (c) A hearing officer appointed by the chief administrative hearing officer
3 (AS 44.21.510) [UNDER AS 44.62.350] shall preside at hearings under this section,
4 rule on the admission and exclusion of evidence, advise the deciding officers on
5 matters of law, and participate in posthearing deliberations.

6 * Sec. 122. AS 46.35.090(e) is amended to read:

7 (e) The commissioner, after consultation with other state agencies and local
8 government, shall adopt regulations governing the conduct of adjudicatory hearings
9 under this section that do not conflict with regulations adopted under
10 AS 44.21.560. The commissioner may enter into cooperative agreements with local
11 governments and federal agencies for the joint holding of adjudicatory hearings. To
12 the extent feasible, regulations adopted under this section must conform to
13 adjudicatory hearing procedures for the review of permit decisions under AS 46.03
14 and AS 46.04. Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures
15 to review permit decisions under AS 46.35.010 - 46.35.210, or under AS 46.03 or
16 AS 46.04, need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure
17 Act).

18 * Sec. 123. AS 46.40.100(b) is amended to read:

19 (b) A party that is authorized under (g) of this section may file a petition
20 showing that a district coastal management program is not being implemented. A
21 petition filed under this subsection may not seek review of a proposed or final
22 consistency determination regarding a specific project. On receipt of a petition, the
23 council, after giving public notice in the manner required by (f) of this section, shall
24 arrange with the office of administrative hearings (AS 44.21.510) to conduct
25 [CONVENE] a hearing to consider the matter. A hearing called under this subsection
26 shall be held in accordance with regulations adopted by the council to the extent that
27 they do not conflict with regulations adopted under AS 44.21.560. After hearing,
28 the council may order that the coastal resource district or a state resource agency take
29 any action with respect to future implementation of the district coastal management
30 program that the council considers necessary, except that the council may not order
31 that the coastal resource district or a state agency take any action with respect to a

1 proposed or final consistency determination that has been issued.

2 * Sec. 124. AS 46.40.100(f) is amended to read:

3 (f) Upon receipt of a petition under (b) of this section and after consulting
4 with the office of administrative hearings, the council shall give notice of the
5 hearing at least 10 days before the scheduled date of the hearing. The notice must

6 (1) contain sufficient information in commonly understood terms to
7 inform the public of the nature of the petition; and

8 (2) indicate the manner in which the public may comment on the
9 petition.

10 * Sec. 125. AS 47.30.031(a) is amended to read:

11 (a) The board shall adopt regulations under AS 44.62 (Administrative
12 Procedure Act) consistent with state law and the fiduciary responsibilities imposed by
13 law on members of boards of directors of corporations having trust responsibilities
14 and consistent with regulations adopted under AS 44.21.560.

15 * Sec. 126. AS 47.45.050 is amended to read:

16 Sec. 47.45.050. Department hearing. The Department of Administration
17 may arrange with the office of administrative hearings (AS 44.21.510) to hold a
18 [DEPARTMENTAL] hearing upon the request of an applicant or recipient who has
19 been disqualified. Before this hearing the department shall by certified mail notify an
20 applicant or recipient in plain and comprehensive language the exact reason for the
21 disqualification. Form letters using only referral to state statutes or department
22 regulations, or otherwise vague in detail, are not considered compliance by the
23 department with this section.

24 * Sec. 127. AS 39.25.070(3) is repealed.

25 * Sec. 128. The uncodified law of the State of Alaska is amended by adding a new section
26 to read:

27 TRANSITION. (a) Upon the initial appointment of the chief administrative hearing
28 officer under AS 44.21.510(c), added by sec. 2 of this Act, the chief administrative hearing
29 officer and the commissioner of administration, the commissioner of community and
30 economic development, the commissioner of revenue, and the governor's office shall identify
31 hearing officers and support staff to be transferred to the office of administrative hearings. A

1 state employee who is transferred under this section from another agency to the office of
2 administrative hearings shall continue to be compensated at the same range and step of the
3 salary schedule in AS 39.27.011(a) that the employee was receiving before the transfer, and
4 qualifies for salary increases authorized under AS 39.27.011 and 39.27.022.

5 (b) Procedural regulations of an agency that refers an administrative hearing to the
6 office of administrative hearings shall apply to the hearing until regulations adopted under
7 AS 44.21.560(a), added in sec. 2 of this Act, become effective.

**Independent Administrative Hearings
Through A Central Panel**

Informal Legislative Brief

Prepared for
Senator Gene Therriault
Senate President

By David Stancliff
Staff / Administrative Regulation Review Committee

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

I. Overview

Origin of Central Panels

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Genesis of Initial Legislative Action

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

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

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

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

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

IV. Legislative Action

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

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

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

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

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

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

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

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

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

Addressing One of the Main Objections to Independent Hearing Officers

The In-house (agency) Expertise Issue.

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

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

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

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

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

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

V. Options to Consider

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

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

Reform through Central Panel

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

Location

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

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

Qualifications

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

Duties

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

Standards

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

VI. Three Main Focal Points of Interest

1. **Public.**

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

2. **Business.**

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

3. **Government.**

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

VII. Mechanics

To Establish Professional Hearing Offices

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

To Provide Facilitation and Accountability

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

VIII. Various Solutions For Consideration

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

Plan A Just change the rules

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

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

Positive:

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

Negative:

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

Plan B *Create an affordable model with select officers*

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

Positive:

- a) Very few displacements of employees.

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

Negative:

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

Plan C

A Select Central Panel

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

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

Positive:

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

Negative:

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

Plan D

All hearing officers and functions included with all standards in place

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

Positive:

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

Negative:

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

Plan E

Amend the State Constitution

1. Define the issue and put it before voters for approval as an amendment to our state constitution.

2. Constitutional approach would not require dealing with the details until the public approved the reform through the voting process.

3. An example of constitutional language could be, "*Administrative hearing functions shall be separate and independent from all agencies of government.*"

Positive:

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

Negative:

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

Plan F *Request the Administration to undertake the reform*

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

Positive:

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

Negative:

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

VII. Staff Recommendations

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

Cooperation and common goals

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

Build public support through a bi-partisan good government approach

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

Reduce costs and errors through expertise

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

X. Primary National and State Contacts

National

Judge Edwin Felter
Senior Administrative law Judge
Colorado Division of Administrative Hearings
303-764-1417.1 ed.felter@state.co.us

Mr. John Hardwicke
Retired Chief Administrative Law Judge
Maryland Division of Independent Hearings
410-457-4224 jhardwicke@aol.com

Mr. Bob Boerner / National Conference of State Legislators
Denver, Colorado
303-764-1417 bob.boerner@ncsl.org

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

Alaska

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

Dave Stancliff / Administrative Regulation Review Committee (ARRC) Staff
Room 429 State Capitol
907-465-3444 dave_stancliff@legis.state.ak.us

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

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.

<p style="text-align: center;">Table 4: Department of Community and Economic Development, Regulatory Commission of Alaska (RCA)</p>

- ◆ **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 42.05.161). 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.

<p style="text-align: center;">Table 5: Department of Community and Economic Development, Division of Occupational Licensing</p>

- ◆ **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.