Twenty-Second Annual Report from the Office of Administrative Hearings to the Honorable Mike Dunleavy, Governor of the State of Alaska, and the 34th Alaska State Legislature

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I. INTRODUCTION

What do a single mother seeking food stamps to feed her children, an oil company contesting its production tax valuation, a regional consortium of tribal governments challenging the issuance of a water discharge permit, and a doctor disputing a license suspension have in common? Their cases challenging initial agency decisions are heard by the Office of Administrative Hearings (OAH). OAH provides a forum for Alaskans to dispute government decisions quickly, efficiently, and with care and attention to the facts, the law, and their due process rights. The ten administrative law judges (ALJs) and five staff of OAH have provided that service to tens of thousands of Alaskans throughout the Office's multi-decade history. In compliance with its statutory obligation under AS 44.64.020(a)(7), OAH respectfully submits this Twenty-Second Annual Report to the Governor of the State of Alaska and the 34th Alaska State Legislature.[1]

II. THE STORY OF OAH

In 1997 the Alaska State Legislature began consideration of an "independent division of administrative hearings" within the Department of Administration.[2] The introduction of the legislation was driven by a concern that objections to determinations by executive branch agencies regarding civil violations of state law, were being reviewed and adjudicated internally. Having agencies police themselves created at least the appearance of impropriety, with employees assessing determinations reached by their own colleagues. This prompted speculation that aggrieved Alaskans were deprived of their due process rights, especially since agencies were often taking years to resolve appeals. Only after this internal review process concluded could individuals seek redress of agency decisions in the state courts.

The original bill created a centralized panel for hearing administrative appeals based on a model of administrative adjudications existing in at least half of the states at the time. While the bill resolved the initial concern of internal agency policing, new questions arose about granting the panel final decision-making authority, stripping commissioners and boards associated with specific agencies or areas of practice of the ability to reverse the decisions. There were fears that adjudicators of the panel could be tasked with making decisions in subject matter areas in which they lacked specialized expertise. The initial bill failed.

Following the bill's failure, in 1999 members of the Twenty-First Alaska State Legislature proposed another solution. As the Governor seemingly opposed the centralized panel model, an amendment to the Alaska State Constitution was introduced to vest "in an office of administrative hearings" the "power to conduct administrative law hearings and to render final agency decisions."[3] In light of the difficulty of passing legislation in the prior legislature, sponsors of the House Joint Resolution attempted to shift the decision to create the office to the voters by way of a constitutional amendment. If Alaskans elected to adopt the amendment, the legislature and the

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1 For the entirety of OAH's enabling statute, *see* Exhibit A to this Report.

2 HB 232 (Twentieth Alaska State Legislature); See *also* Exhibit B to this report (Unofficial Legislative History of OAH, from 1997 to 2004, compiled by the undersigned).

3 HJR 18 (Twenty-First Alaska State Legislature); *See also* Exhibit B summary.

executive branch would be required to pass the legislation necessary to create an office of administrative hearings. The joint resolution failed to make it to the House floor, however, as there was seemingly consensus that a constitutional amendment was not necessary, as the office could be established by way of a legislative and executive compromise. That failed to occur in both the Twenty-First and Twenty-Second Alaska State Legislature.

Interests finally aligned in 2003 when the Governor introduced a bipartisan-supported bill in the Twenty-Third Legislature.[4] The initial version of Senate Bill 203 created within the Department of Administration an "independent office of administrative hearings under the direction of the chief administrative hearing officer." Unlike earlier versions of the bill, OAH was no longer identified as a division of the Department of Administration, nor was the administrative hearing officer appointed by the Commissioner of Administration. To preserve the independence of the office, the bill envisioned appointment of the chief by the Governor for an initial term of five years, and removal only for good cause.[5]

The bill also provided the office with mandatory jurisdiction over a limited number of adjudicative administrative hearings required under various statutes and regulations. In response to prior concerns raised regarding specialized expertise, specific appeals were exempted from OAH's mandatory jurisdiction, including permitting decisions by the Department of Natural Resources and determinations setting insurance rates by the Department of Commerce, Division of Insurance. The bill also allowed executive agencies and political subdivisions of the state to refer other disputes to OAH for adjudication. Legislators commented that while OAH's mandatory jurisdiction was limited to only 25% of adjudicative appeals, the Office would continue to grow and cover additional subject areas as OAH's reputation and expertise expanded.[6]

Although untested in states that had implemented the centralized panel model, one of the largest compromises that supported Senate Bill 203's passage concerned retention of final decision making authority in the agency that referred to the administrative adjudication to OAH. As such, the proposed legislation created a bifurcated process whereby the hearing officer would issue a proposed decision written on behalf of the agency's final decisionmaker. This proposed decision process resolved a due-process anomaly and was far more fair to aggrieved Alaskans than agencies adjudicating their own decisions. Once the proposed decision was received, the final decisionmaker could then take one of the five actions: (1) adopt the proposed decision as final; (2) return the case to OAH to take additional evidence, make additional findings, or conduct other specific proceedings; (3) accept the facts as adjudicated but revise the proposed enforcement action: (4) reject, modify, or amend a factual finding by identifying the testimony and evidence relied upon; or (5) rejecting, modifying, or amending an interpretation or application of the law governing the dispute by specifying the reasons for the rejection, modification, or amendment. If the final decisionmaker took no such step within thirty days of transmittal, the proposed decision of OAH would become the final decision of the agency.

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4 SB 203 (Twenty-Third Alaska State Legislature); *See also* Exhibit B summary.

5 *Id.*

6 Twenty-Third Alaska State Legislature, House Judiciary Committee Minutes, March 18, 2004, HJUD2004-03-181415.PDF; *See also* Exhibit B summary.

Pertinent to some of the statutory recommendations included later in this report, the final bill as passed by the Legislature and signed by the Governor contained three significant changes.

(1) *From Hearing Officers to Administrative Law Judges*: Based on the recommendations of legislative witnesses from other centralized panels, the final version of Senate Bill 203 referred to OAH's decisionmakers as administrative law judges instead of hearing officers. As before, the hearing officers/ALJs were required to be lawyers. However, the Legislature required that the judges appointed at OAH have been admitted to the Alaska Bar for a minimum of two years.[7]

(2) *The Proposal for Action Process*: Up and until Senate Bill's 203's second to last committee hearing, proposed decisions written by administrative law judges were to be forwarded directly to the final decisionmaker to take any of the actions permitted under AS 44.64.060(e). Without advising the House Judiciary or House Finance Committees during testimony,[8] a Judiciary Committee substitute added a provision that required proposed decisions to be distributed first to the parties. It further permitted them to "file with the agency a proposal for action" that could recommend one or more of the five actions permitted to the final decisionmaker under AS 44.64.060(e).[9]

(3) *Legislative Confirmation of the Chief Administrative Law Judge*: Although not added under the Senate Floor debate, the final passed version of SB 203 required legislative confirmation of the Chief Administrative Law Judge. The sponsor of the amendment in earlier committees expressed concern that without legislative confirmation the political alignment of the Chief Administrative Law Judge with the appointing Governor might impact the neutrality of administrative law judges.[10] In the end, the House Judiciary Committee was advised that the appointed and confirmed chief administrative law judge would be "the best qualified person for the position"[11] and "someone who will operate independently and bring together a highly trained, highly motivated, efficient and fair panel."[12]

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[7] As discussed below, but for seasoned attorneys relocating from out of state, two years active practice in Alaska is woefully inadequate to succeed in a position that may require the mastery of over 140 distinct subject areas. Administrative law judges hired by OAH have had an average of fifteen years of practice before being appointed to the ALJ position. This has led to hiring and retention issues for OAH because the administrative law judge position is classified at a lower rate of pay than most of these judges' professional equivalents at the Department of Law.

[8] Discussions may have occurred off record.

[9] Also discussed below, this unfortunate and undebated language has now led to a situation where the parties have attempted to make arguments to the final decisionmaker or present evidence to the final decisionmaker that were never made or heard by the administrative law judge. This creates due process concerns the Legislature likely never considered because the new language was not identified as an amendment to them. Twenty-Third Alaska State Legislature, House Judiciary Committee Minutes, March 18, 2004, HJUD2004-03-181415.PDF; *See also* Exhibit B summary.

[10] Twenty-Third Alaska State Legislature, Senate State Affairs Committee Minutes, May 6, 2003. SSTA2003-05-061545.PDF.

[11] *Supra* note 6.

[12] *Id.*

The bill passed both legislative branches unanimously, but for excused absences, and was codified into law.[13] OAH's obligations to aggrieved individuals and to executive branch agencies appearing before it are codified as obligations of the chief administrative law judge at AS 44.64.030(b). Specifically:

> In carrying out the responsibilities of the office, the chief administrative law judge shall seek to accomplish the following goals:
>
> (1) provide for the delivery of high-quality adjudication services in a timely, efficient, and cost-effective manner;
> (2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated and protect them from threats, intimidation, and harassment;
> (3) foster open and clearly explained agency decisions and improve public access to the process of administrative adjudication;
> (4) guarantee protection of all parties' due process rights, increase the public parties' perception of fairness in administrative adjudication; and foster acceptance of final administrative decisions by the public and affected parties;
> (5) protect the integrity of the process of administrative adjudication and decisional independence of administrative adjudicators; and
> (6) increase consistency in administrative procedures and decisions.

2025 marks the twenty-first full year of OAH's operations. It also was the first full year of direction under the current chief administrative law judge. This report summarizes OAH's efforts to fulfill these obligations in 2025 and identifies additional recommended changes to OAH's operating statute and funding to better achieve these objectives.

III. ACTIVITIES OF THE OFFICE OF ADMINISTRATIVE HEARINGS

OAH's core function is providing a place where Alaskans with concerns about a government decision can be heard by a neutral decision maker. The ten judges of OAH provide this service through administrative adjudication and alternative dispute resolution.

Ancillary duties include enhancing the quality of administrative adjudication internally and statewide through training and education; monitoring the hearing process; surveying participants; providing the public with access to OAH decisions; reviewing and developing regulations pertaining to administrative hearings; administering the Code of Hearing Officer Conduct; and recruiting members of the Workers Compensation Appeals Commission. A discussion of these primary obligations follows.

[13] 2004 House Journal Report 3857; 2004 Senate Journal Report 3397; 2004 SLA Chapter 163; *See also* Exhibit B summary.

A. Administrative Adjudication Services

1. Overview

OAH's ten judges provide a wide variety of adjudication services for a multitude of different challenges to government decisions. For example, a judge may hold short telephonic hearings for narrow, single-issue disputes that generally implicate one person. An entire hearing, including sworn testimony, evidence, and arguments, can conclude in a single hour. These are called high-volume disputes. Other cases involve complicated legal and factual disputes, requiring multi-day, often in person hearings before the relevant board or commission. Regardless of the length of the hearing or the complexity of the case, however, judges are expected to issue expeditious, timely proposed decisions, often legally mandated to be within 120 days. With limited exceptions primarily involving agreement by both parties, a proposed decision should be issued no more than 120 days after the appeal or hearing request was filed.[14]

As discussed in the prior section, while OAH administrative law judges are the final decisionmakers in some situations, this designation is most often assigned to the relevant board, commission, or a principal agency head, such as a commissioner. Regardless of the approving entity, all decisions may be appealed by an aggrieved private party to the Superior Court for the State of Alaska. Final tax decisions issued by OAH may also be appealed to the Superior Court by either party.

Below is a table of the specific agencies that are mandated to refer appeals to OAH, and the most recent date such a referral was made.

[next page]

[14] There are a handful of case types that are not subject to the statutory 120-day decision deadline. Parties may also ask to extend the deadline, generally to accommodate preparation and presentation of a more complex case. One objective discussed in greater detail below is to reduce the time from initial hearing request filing to proposed decision to no more than 180 days, even when the parties may be requesting additional time, absent good cause for an additional extension.

Table 1: Office of Administrative Hearings: Mandatory Jurisdiction

Offices of the Governor and Lt. Governor
- Human Rights Commission (Gov.) (2025)
- Notaries (Lt. Gov.) (no record)

Department of Administration
- Retirement & Benefits (2025)
- Contract & Procurement (2025)
- Claims for Reimbursement (no record)
- Breach of Security Involving Personal Information (no record)

Department of Commerce, Community, and Economic Development
- Licensing (Corporations, Businesses, and Professions) (2025)
- Banking and Securities (2025)
- Insurance (2025)
- Alcoholic Beverage Control (2025)
- Marijuana Control (2025)
- Land Sales Practices (No record)
- Alaska Corporations Code (no record)
- Alaska Bidco Act (No reccord)
- Electic and Telephone Cooperative Act (no record)
- Limited Liability Companies (no record)
- Partnerships (no record)
- Uniform Land Sales Practice Act (no record)
- Business License (no record)

Department of Education and Early Development
- Teacher Certification (2025)
- Discrimination in public education (no record)
- Education-related faciltiies grants (no record)
- PFD Execution (2025)
- Certificate of Need (2025)

Department of Environmental Conservation
- Environmental Permitting (2025)
- Food Safety (no record)

Department of Family & Community Services
- Facilities Licensing (2025)
- Child Protection/ Child Maltreatment Findings (2025)

Department of Health
- Medicaid Benefits, Audits, & Rates (2025)
- Public Assistance Benefits (2025)
- PFD Execution (2025)
- Hospitals and Nursing Facility Certification (2023)
- Certificate of Need (2025)

Department of Labor & Workforce Development
- Occupational Safety and Health (2025)
- PFD Execution (no record)
- Recreational Devices (No record)

Department of Natural Resources
- Land Sale Contracts (no record)
- Water Rights (no record)
- ALaska Lands Act (no record)

Department of Public Safety
- Violent Crimes Compensation (2025)
- Special Racing Events (No record)

Department of Revenue
- Tax (original jurisdiction) (2025);
- PFD Eligibility (2025)
- Charitable Contribution, & Fine/Forfeiture
- Child Support (2025)
- Charitable Gaming (2022)
- Unclaimed Property (No record)

Department of Transportation & Public Facilities
- Construction Procurement (some) (2025)
- Special Racing events (no record)

University of Alaska
- Suspension and Removal of Regents (no record)
- PFD Execution (2025)

Other
- Executive Branch Ethics Act hearings (no record)
- Mobile Home Warranties (no record)

In addition to these areas of mandatory jurisdiction, agencies may voluntarily refer an individual dispute or a class of disputes to OAH for adjudication and either a final or proposed decision. In 2025, OAH handled voluntary referral matters from a range of agencies including DOT&PF, the Department of Public Safety, the Department of Education, and the University of Alaska. Additionally, as discussed further below, municipalities, school districts, and other governmental entities may also voluntarily refer cases to OAH. Providing adjudicative services is significant to many of these entities that have limited ability, time, or personnel to hear and resolve adjudicative disputes on a timely basis on their own.

2. The OAH Docket

With more than 140 different types of cases across a wide variety of state programs, the scope of OAH's work is as broad as State government itself. OAH must exist for the 51 statutory mandated referrals under AS 04.64.030 whether a matter is referred to OAH or not. Supplementing the docket with discretionary and local government referrals maintains a highly functioning, predictable, and recruitable workforce.

What follows is an overview of some of the types of matters that came before OAH in 2025.

Medicaid and other public benefits. OAH provides "fair hearings" for an array of public benefits programs administered by the Department of Health. In addition to hearings on Medicaid eligibility and eligibility for specific Medicaid programs, OAH ALJs hear Alaskans' administrative appeals of agency decisions in Adult Temporary Assistance, Adult Public Assistance, Child Care Assistance, Heating Assistance, Food Stamps, and other public benefits programs.

As the Governor and the Legislature are aware, the State of Alaska was actively sued for its significant backlog in the processing of Food Stamp and cash assistance benefits programs.[15] Federal law requires, for example, that Food Stamp applications and recertifications be reviewed and decisions on eligibility reached within 30 days of the date of application. Under the initial representation of Alaska Legal Services Corporation or Catholic Social Services or unrepresented and on their own, many applicants, facing months to even years-long delays, filed requests for fair hearings to address that untimely processing. Approximately 2600 of these fair hearing requests were referred to and heard by OAH in 2025. Not counting the remainder of OAH's caseload, this volume alone represented the highest number of annual cases referred to OAH ever.

To handle that excess volume, OAH implemented an initial hearing docket that allowed its administrative law judges to hear up to twelve cases in a given three-hour window of time. OAH ran those hearings two to two and one-half days a week. As of the close of 2025, less than 100 were still open and active. The vast majority ended with voluntary dismissal of the fair hearing request because public benefit applications were eventually processed and approved. OAH will be closing its initial-hearing docket as of February 28, 2026, because the fair hearing requests for late-processing have reduced to a volume OAH can handle under its regular schedule.

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[15] *See, e.g.*, *Andrew et al v. Department of Health, Case No. 3:23-cv-00rr-SLG (U.S. Dist. Ct, Alaska).*

OAH is also ten years into running a fast-track Mediation docket discussed in greater detail below. For cases requiring a full adjudication, OAH conducted hearings and issued decisions in 76 public benefits cases, including 26 Medicaid cases.

Permanent Fund Dividend (PFD) eligibility. OAH hears administrative appeals of PFD applicants whose applications were denied for various reasons. In calendar year 2025, OAH handled 48 PFD-related cases, issuing 25 decisions. Commonly litigated issues included applications filed after the March 31 deadline, absences from the state for more time than statutorily allowed, and ineligibility based on incarceration or other factors during the qualifying year. Another issue that arose this year concerned application of the merchant marine exception to out of state absences, and whether merchant marines contracted to federally owned vessels are eligible for absences if those vessels are engaged in commerce when they perform non-war related functions.

Child support. OAH hears administrative appeals of child support establishment and modification orders issued by the Child Support Services Division. In the majority of cases, parents assert that the monthly support obligation was incorrectly calculated, that requisite income deductions were not applied, or that the support obligation is correct, but poses an undue financial hardship on the obligor's household. OAH heard 34 child support cases in 2025. Of these, seven were able to be resolved through consent agreements between the parties, 13 were resolved through contested decisions, 12 were dismissed by the party or agency, and two were remanded to the Child Support Division for further action.

Child maltreatment. OAH hears administrative appeals of parents and other caregivers who have been the subject of a substantiated finding of "child maltreatment" by the Office of Children's Services (OCS). This confidential administrative finding impacts background checks for certain types of employment. An individual may appeal a substantiating determination by OCS, giving rise to an evidentiary hearing before an OAH administrative law judge. At the hearing, parties are permitted to present relevant testimony, cross-examine witnesses, and submit evidence. For a substantiated finding to stand, OCS must prove by a preponderance of the evidence that the individual committed the alleged child maltreatment. The final decision maker in these cases is the Commissioner of the Department of Family & Community Services (DFCS) or her delegate.

During 2025, OAH had a very active child maltreatment docket, including 91 new appeals filed during the year. One-hundred thirty-four matters closed during the year, including appeals filed from 2018 through 2025.

Most cases resolve by agreement or dismissal of the request to appeal, with only two appeals of OCS child maltreatment findings tried to decision during 2025. One decision reversed the agency's findings, the other dismissed the appeal as untimely.

Municipal appeals. OAH's statute allows it to accept hearing work from municipal and local governmental entities, with those entities then reimbursing OAH for the cost of those services. OAH has heard almost 60 such cases since it began performing this work in 2016. While the majority of these have been planning and zoning appeals, OAH has also heard board of ethics matters, procurement disputes, local tax matters, and municipal employment matters. 1n 2025,

OAH handled four cases for four different municipal entities. The municipalities pay the full cost of the work OAH does for them. For many local governments, this represents an important cost savings in comparison to other options available to them, and it produces better quality, more consistent handling of their appeal dockets. The state benefits because the added case volume creates economies of scale and allows OAH to manage its docket and keeps its judges fully engaged based on the largely unpredictable nature of agency referrals.

Contracts and Procurement. On behalf of the Commissioner of Administration and the Commissioner of Transportation and Public Facilities, OAH handles appeals by disappointed bidders in state procurements and by private parties who have claims relating to their existing contracts with the state. In 2025, OAH handled four such appeals and issued two decisions. While this represents fewer referrals than prior years, the dollar value of disputes was significantly higher. At least one issued decision impacted the award of a multi-million dollar contract and the timely delivery of services to vulnerable Alaskans. Timely resolution of these disputes achieves the Governor's directive that Alaska is open for business but ensures that the award of contracts complies with all guiding law.

Environmental Conservation. By legislative mandate, OAH hears appeals of decisions made by specific divisions of the Department of Environmental Conservation (DEC). These cases often involve facility permits of great public significance and are handled in close cooperation with the DEC Commissioner. Specifically, by request and under AS 44.64.060(c), the Commissioner jointly hears the evidence and argument, after which an OAH ALJ prepares a draft decision according to the direction of the Commissioner. Five of these matters were before OAH in 2025 with final decisions issued in three of them.

Professional licensing/certification and marijuana and alcoholic beverage licensees. OAH conducts administrative hearings for all State professional licensing boards and several professional certification commissions. It also conducts administrative hearings regarding the licensing of alcoholic beverage and marijuana establishments. These cases include appeals of licensure denials or renewals, requests for license reinstatement, disciplinary matters ranging from reprimands to license revocation, and appeals of summary license suspensions.

OAH's active cases in 2025 included 16 licensing cases on behalf of nine different entities, including the State Medical Board, the Alaska Police Standards Council, the Professional Teaching Practices Commission, the Board of Optometry, the Board of Veterinary Examiners, the Board of Massage Therapists, and the Alaska Real Estate Commission. OAH also addressed six alcoholic beverage licensing matters and 37 marijuana licensing matters.

In these cases, the OAH administrative law judge typically conducts an evidentiary hearing and prepares a proposed decision for the Board or Commission to consider. OAH's proposed decisions and resolutions in 2025 addressed a range of issues including misrepresentation and fraud, standard-of-care violations, and good-moral-character requirements.

Other 2025 professional licensing matters involved OAH ALJ's serving as mediators, assisting parties in reaching Board-approved resolutions and avoiding the formal hearing process.

University of Alaska. OAH contracts with the University of Alaska to provide hearing services both in employment disputes and allegations of sex-based discrimination under Title IX. OAH handled nine University cases in 2025, issuing five decisions.

Occupational Safety and Health. OAH also hears administrative appeals of occupational health and safety matters. The Occupational Safety and Health Board hears those matters alongside an ALJ that OAH ensures is specially trained in this subject matter. OAH handled 37 of these cases during 2025; 22 were settled or otherwise dismissed, and one was brought to hearing before the OSH Board.

Tax. OAH is the state's tax court of general jurisdiction, and hears all state tax appeals, including matters relating to corporate income tax, oil and gas production tax, and fisheries taxes. OAH also provides assistance to the State Assessment Review Board (SARB), which hears oil and gas property tax disputes. Many of the tax cases carry high stakes with millions of dollars in dispute and the amount of pre-hearing management and motion practice can be significant. In 2025, OAH handled 14 tax-related cases, issuing decisions in eight of them.

3. Caseload by the Numbers

During 2025, OAH handled 3,864 cases — far in excess of its normal caseload of about 900 cases per year. The vast majority of these cases were public benefits matters, largely due to a surge in appeals arising from challenges to the Department of Health's (DOH's) timely or untimely processing of Food Stamps and other public-benefits applications. Many were carried over from prior years, largely because they involved more complex issues or had been put on hold because of a related case in a different forum or attempts to resolve a case informally. Of the 3,864 cases, 3,582 cases were newly filed in 2025. OAH resolved 3,520 cases over the course of the year, either through a decision, settlement, or voluntary dismissal.

Table 2 shows the number of active cases in different case categories, and that number as a percentage of all open cases that calendar year.

Table 2. OAH Distribution of Active Cases 2025

Subject Matter	Active Cases	% of Total Cases
Medicaid and other Public Benefits	3319	85.9%
Substantiation of Child Abuse and Neglect	232	6.0%
PFD	48	1.2%
Business Licensing and Regulation	46	1.2%
Occupational Health and Safety	37	1.0%
Child Support	34	0.9%
Medicaid Certification and Audits	34	0.9%
Occupational and Professional Licensing	31	0.8%

Child Care Licensing	19	0.5%
Other (VOC, VCC, HRC, etc.)	19	0.5%
Tax	14	0.4%
Retirement and Benefits	9	0.2%
University	9	0.2%
DEC	5	0.1%
Contracts, Procurement, and Claims	4	0.1%
Municipalities	4	0.1%
Total	3864	100%

4. Alternative Dispute Resolution

As in the court system, OAH seeks to promote the use of alternative dispute resolution (ADR) where appropriate. For Medicaid service and coverage cases, OAH has a fast track mediation program that has been staffed by a contract mediator for the past decade. Approximately 97% of these Medicaid cases were diverted to fast track mediation in 2025. More than 77% of those cases were resolved through the mediation program, with either a settlement, voluntary dismissal by the appealing party, or dismissal for failure to participate. Most are resolved within an hour. When parties are not able resolve their dispute, they have an opportunity for a hearing before an OAH judge.

OAH's judges are also trained and experienced in conducting mediations and successfully provided that service in about four dozen cases last year.

Fresh off the successful handling of the surge in Medicaid and Food Stamp eligibility applications in 2025, and again to bring predictability to annual volume of cases, OAH is bringing fast-track mediation fully in-house in fiscal year 2027. Administrative law judges will serve a rotating three-month shift of handling a docket that requires between 2 and 2.5 days of mediation time per week. In conjunction and cooperation with DOH, OAH will continue to monitor whether it is cost-effective for OAH to conduct the fast-track mediations with existing staff or return to a contractor model for delivery of services.

5. Decisions and Other Orders

Of those cases that were not resolved through mediation or voluntary dismissal, a total of 155 full decisions were issued in 2025, in addition to thousands of lesser orders. The number of decisions, however, does not accurately reflect the work done by an OAH ALJ during the year. Often large and complex matters take many hours of research, decision writing on motions work, and time allotted to case planning conferences, even if they ultimately resolve short of a hearing. Similarly, even less nuanced matters can require multiple hearing dates, testimony and discussion.

6. Time Devoted to Hearings and Other Work

As Table 3 demonstrates, some case categories represent a proportionately larger percentage of an ALJ's caseload. This is a reflection of both the complexity of certain types of cases and the likelihood of resolving cases early in the process. For example, the vast majority of public benefit cases were resolved prior to a full evidentiary hearing and decision, and for cases that did go to decision, the decisions generally address few distinct issues and limited amounts of evidence. Thus, while these cases represented 85.9% of OAH's docket this year, they consumed only 36.8% of ALJ billable hours.

Table 3: OAH Case Distribution and ALJ Hours, 2025

Subject Matter	**Active Cases**	**% of Total Cases**	**% of ALJ hours**
Medicaid and other Public Benefits	3319	85.9%	36.8%
Substantiation of Child Abuse and Neglect	232	6.0%	7.9%
PFD	48	1.2%	4.6%
Business Licensing and Regulation	46	1.2%	2.6%
Occupational Health and Safety	37	1.0%	16.1%
Child Support	34	0.9%	3.8%
Medicaid Certification and Audits	34	0.9%	2.2%
Occupational and Professional Licensing	31	0.8%	16.1%
Child Care Licensing	19	0.5%	0.1%
Other (VOC, VCC, HRC, etc.)	19	0.5%	5.0%
Tax	14	0.4%	2.7%
Retirement and Benefits	9	0.2%	1.7%
University	9	0.2%	6.7%
DEC	5	0.1%	4.7%
Contracts, Procurement, and Claims	4	0.1%	1.5%
Municipalities	4	0.1%	2.1%
Total	3864	100%	100%

7. Decision Deadlines

Recounting horror stories of administrative appeals that took up to 10 years to even be appealable to superior court,[16] the legislators who supported the formation of OAH in 2003 and 2004 were committed to creating an office of administrative hearings that could provide "timely, efficient, and cost-effective" review.[17] As such, swift resolution is a key goal in administrative adjudication. Parties have an interest in obtaining a timely final agency decision resolving their dispute. Because this important principle is recognized in both state and federal law, OAH cases are subject to many deadlines.

The OAH-specific deadlines imposed by AS 44.64.060 apply to most, but not all, OAH cases. The most important of these is the 120-day time limit to take a case from hearing request all the way to issuance of a proposed decision. This time frame is substantially shorter than the amount of time it takes for a matter to be heard and resolved in the trial courts.

In addition to deadlines imposed by the OAH statute, other statutes and regulations establish deadlines that apply to certain types of cases. For instance, cease and desist order cases, summary license suspension actions, some insurance cases, securities matters, some procurement matters, child support appeals, and education-related facility grant cases are subject to shorter deadlines than those imposed by AS 44.64.060. Some case types have shorter or different deadlines for bringing the case to hearing, for issuing the decision, or for both.

Additionally, public benefits cases under the Department of Health are subject to short timelines for the agency to reach its final decision. These final decision deadlines are generally driven by federal program requirements, which set short timeframes from the filing of an appeal to issuance of a final agency decision. In Food Stamps cases, the agency's final decision is due 60 days after the appeal is filed; for Medicaid benefits and most other public assistance benefits cases, the final decision is due 90 days after the hearing request is filed. Within this time frame, the OAH ALJ must hear the case and issue a proposed decision, the parties must be allowed an opportunity to comment, and the final decisionmaker must then decide the case. In these cases, the 120-day state deadline for proposed decisions still applies but is almost always subsumed in the shorter federal deadline unless the latter is extended by special circumstances.

Historically, the key deadline OAH monitored for purposes of this report has been the 120-day deadline from the date of the hearing request to the issuance of a *proposed decision*. Under AS 44.64.060(d), the 120-day deadline to proposed decision can be extended only by agreement of both parties, together with the consent of the Chief ALJ. This extension-on-consent tool is used in the more complex or unusual cases in which 120 days from filing of the hearing request does not allow adequate time for the case to be heard and a proposed decision to be issued.[13]

In 2025, OAH complied with the 120-day deadline for more than 90 percent of the decisions it issued. Many decisions were issued far in advance of applicable deadlines. This is a drop in efficiency from prior years that is largely attributable to the Office handling a surge of already untimely Medicaid and Food Stamp appeals. This statistic is being monitored closely in 2026 with the goal of bringing the

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[16] *See* SB 203 Consideration, Senate Judiciary (Jan. 30, 2024); *See also* Exhibit B summary.

[17] This quoted language is now codified as an obligation of OAH at AS 44.64.060(b)(1).

Office to a 100% compliance rate. Moreover, the administrative law judges have been instructed to push against long delays in referred cases, even when both parties agree to the extension. As such, exceptions to the 120-day timeline are equally monitored. The overall directive is that in those rare extension cases, a hearing shall commence no later than 180 days from the filing of the appeal. A proposed decision will be issued no more than thirty days after that hearing.

8. Court Appeals

As in past years, very few OAH decisions are appealed to the superior court and supreme courts, and the affirmance rate for such appeals is well over ninety percent. Of the decisions issued by OAH in 2025, only 21 or 13% – were appealed to the Superior Court. In addition, two new Alaska Supreme Court appeals were filed which arose out of earlier OAH decisions.

Fifteen Superior Court appeals of OAH decisions were closed in 2025. Of these, four decisions were affirmed, five cases were closed due to consolidation, one case was dismissed without a decision on the merits, and five decisions were remanded in whole or in part. Remand, however, is often delayed should the parties appeal the Superior Court decisions to the Alaska Supreme Court. A total of seven appeals arising out of OAH matters are currently open before the Alaska Supreme Court. Three Supreme Court appeals of OAH matters were closed during 2025. Each of these three Supreme Court decisions affirmed the initial proposed decisions of OAH, as they were adopted by the final agency decisionmakers. [18]

B. Surveying and Monitoring

OAH distributes a survey to all hearing participants at the close of a case, regardless of whether the matter is dismissed or resolved by a final decision. In response to a decline in survey participation, in 2023 OAH provided individuals with the original option to mail in their responses, or the new option of submitting feedback online via surveymonkey.com. Despite this attempt to streamline the process, surveys were submitted in less than 1% of our open 2025 matters. This response rate is consistent with response rates over the past five years.

Those that did respond, however, consistently expressed satisfaction with the process. Regardless of whether they ultimately prevailed, all survey responders described the administrative law judge's preparation, courtesy, impartiality, efficiency, and ability to explain the hearing process as "excellent," OAH's support staff were equally described as courteous and helpful. The vast majority of those who responded to questions about issued decisions stated that they were prompt and clearly explained the issues and the ultimate holding. The single respondent submitting a score of less than excellent, replied that the promptness of one decision was "adequate." These statistics are consistent with survey results over the past five years.

Additional written comments included:

> *I appreciated how the ALJ really tried to make the parties feel comfortable throughout the process. [The ALJ] explained each step*

[18] *Board of Chiro. Exam. v. Shoemaker*, 575 P.3d 80 (Alaska 2025); *Thomason v. Dep't of Health, 563 P.3d 586 (Alaska 2025); Bachner Co. v. Dep't of Admin, Div. of Gen. Svcs*., 2005 WL 409057 (Alaska 2025).

> *in detail, answered questions, and handled the subject matter delicately. [The ALJ] created a positive experience out of a difficult situation.*
>
> *[The ALJ] did a good job balancing the appellants need for additional time to obtain evidence with the need to conclude the hearing process.*

It is certainly difficult to evaluate the public's perception of OAH based on a less than one-percent survey response rate. In the past it was suggested by the Department of Law that OAH partner with the Alaska Commission on Judicial Conduct to see if a third-party operated, more anonymous survey process might increase survey participation. These discussions will at least occur in 2026. In addition, administrative law judges have been encouraged to mention the survey at the close of hearings to attempt to increase the number of responses.

C. Training and Professional Development

The Chief Administrative Law Judge's training mandate requires her to

> make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication, substantive law, alternate dispute resolution, and technical matters for administrative law judges and other administrative adjudicators[.]

It further requires OAH to "annually prepare and submit to the Commissioner of Administration and the Finance Committee of each house of the Legislature a budget for the next fiscal year that shall include and separately identify funding for training and continuing education."[19] Likely following a mandate from the Office of Management Budget and the difficult current state financial situation, the Department of Administration has not advanced the increased budget the Chief Administrative Law Judge has requested to fulfill this mandate. Instead OAH was advised not to exceed prior fiscal year allotments. This has significantly impacted the Chief's ability to implement training programs for the judges. Moreover, the current freeze on out of state travel is preventing the judges from attending the National Judicial College in Reno, Nevada for valuable administrative law training.[20] This is an unfortunate result that impacts *solely* executive branch administrative law judges, not those in the judicial branch.

Faced with these impediments, OAH has sought alternate solutions. Three judges are participating in online classes on evidence challenges in administrative hearings and on mediation. OAH has also developed its own ten-hour in house training program led by more experienced judges to teach newer hires how to handle a case from initial assignment to final decision

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[19] AS 44.64.030(a)(6).

[20] Only after two initial denials, was OAH successful in sending two of its four new administrative law judges to National Judicial College for its 10-day training course on Administrative Law: Fair Hearings. It was unsuccessful in sending an administrative law judge to a five-day class on mediations, even though the judge was willing to pay her own airfare. Prior attempts to add a training once a year for mid-level judges were not approved.

transmittal. OAH also holds monthly meetings on a sequential schedule with representatives from referring agencies to solicit feedback regarding hearing and mediation procedures. ALJs are also offered in-house, bimonthly continuing legal education courses to address more overarching legal issues. Topics have included application of recent supreme court decisions to administrative law proceedings, distinguishing adjudicatory appeals under the Administrative Procedure Act from other types of case, addressing the limited category of cases where constitutional challenges to agency actions may be addressed in a decision, and use of artificial intelligence for judicial research. We are doing our best under current fiscal constraints, but the undersigned Chief will continue to advocate for the more robust training that would permit OAH's administrative law judges to remain at the top of their game.

Just as the Chief is tasked with keeping the administrative law judges trained and informed, she is also mandated to facilitate training for adjudicators in other executive branch agencies. However, there is no record that OAH has offered this training in recent years, nor that any budget was proposed or authorized to provide this instruction. The undersigned looks forward to working with the Governor's Office and the Legislature to redress and fund this failure going forward.

D. Administration of the Code of Hearing Officer Conduct

Any complaint alleging a violation of the Code of Hearing Officer Conduct is statutorily required to be considered by OAH's Chief ALJ, who determines if it rises to a level mandating referral to the Attorney General for investigation.[15] In 2025, the Chief ALJ received no qualifying complaints of a violation of the Code of Hearing Officer Conduct.[21]

The Code of Hearing Officer Conduct became effective by regulation in 2006.[22] It's obligations are largely derived from the five canons of judicial conduct contained in the Alaska Code of Judicial Conduct.[23] The Alaska Supreme Court is currently considering significant changes to the Alaska Code of Judicial Conduct, which informed many of the provisions in the Code of Hearing Officer Conduct.[24] As such, the Chief is actively following the Court's actions. If the Judicial Code is revised, the Chief will assess whether the Code of Hearing Officer Conduct should also be modified. This may require an exemption from the Administrative Order 258, which freezes the promulgation of new regulations.

E. Workers' Compensation Appeals Commission Recruitment

Under AS 23.30.007, the Chief Administrative Law Judge must recruit for vacancies on the Workers' Compensation Appeals Commission (WCAC). The Chief reviews the qualifications of the applicants for commission positions and must forward to the Governor at least two to three names, depending on the vacancy. By statute, only individuals with 18 months or more of service on the workers' compensation board are eligible to be considered for a WCAC vacancy, making

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[21] One complaint was received regarding an adjudicator outside of OAH. However, the complainant did not reply to requests from OAH that their complaint must include a sworn statement, a regulatory requirement for the submission and consideration of complaints against hearing officers. *See* 2 AAC 64.070.

[22] See 2 AAC 64 Article 1 for the Hearing Officer Code of Conduct.

[23] AS 44.64.050(b).

[24] The Chief Administrative Law Judge's comments on the revised code and its potential impact on the Code of Hearing Officer Conduct is included at Exhibit C to this Report.

this a very small recruitment pool.

Nevertheless, in July 2025, the Chief forwarded the names of three possible candidates to fill a WCAC vacancy. The Governor selected one of the proposed candidates. The current Chair of the WCAC and the Chief Administrative Law Judge of OAH are also currently discussing whether greater government efficiencies can be achieved if the staff of the WCAC were rolled into OAH. Any benefit of the same will be brought to the attention of the Governor and the Legislature for their own deliberations in the near future.

F. Publication of Final Decisions

OAH is required to "make final agency decisions reached after administrative hearings available online through an electronic data base."[25] Accordingly OAH maintains a website of published decisions, sorted by OAH case type and subcategories, and searchable by key terms. Because a great many of OAH's decisions are confidential under law, OAH staff must typically redact identifying information from each decision before publishing it.

OAH is significantly behind its obligations to publish these decisions, largely because current administrative staff have consistently lacked the time to complete this task in addition to their regular duties. However, in 2025, the Office successfully hired and trained two college interns who helped reduce the backlog. In 2025, approximately 250 decisions were appropriately redacted and published.

OAH takes seriously its statutory obligation to "make final agency decisions reached after administrative hearings available online through an electronic database."[26] Absent the ability to hire additional staff, the Chief Administrative Law Judge continues to explore other options to eliminate the backlog, including entering into discussions with Thomson Reuters/Westlaw to publish its decisions as is done with as Alaska court decisions.

G. Regulations Review

OAH's Chief Administrative Law Judge has the authority to "adopt regulations … to carry out the duties of the office" as well as to "review and comment on regulations proposed by state agencies to govern procedures in administrative hearings."[27] In particular, the Chief is required to adopt a hearing officer code of conduct, which applies to hearing officers of all agencies, not just to OAH ALJs. As noted above, the Office is monitoring whether the Alaska Supreme Court will be adopting the proposed amendments to the Judicial Code of Conduct. If it does, it will use that code to modify, as applicable, administrative adjudicators' duties and canons of performance.

Presumably due to the regulations freeze issued under Administrative Order 358, there were no regulations proposed by state agencies to govern procedures in administrative hearings. OAH's Chief will continue to monitor other agency regulatory projects on administrative adjudications in the coming year.

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[25] AS 44.64.090(a).
[26] AS 44.64.090.
[27] AS 44.64.020(a)(8) & (11).

IV. RECOMMENDED STATUTORY CHANGES

Finally, the Chief Administrative Law Judge is required to provide an annual report including "recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies."[28]

New to the position and not yet legislatively confirmed, the undersigned did not include recommendations in the OAH's 21st Annual Report. Now, however, with close to eighteen months experience,[29] it is well apparent there are statutory deficiencies in OAH's enabling statute that cripple the long-term future of the Office and due process rights of aggrieved Alaskans. A discussion of the three most significant concerns and recommendations for resolving them follows.[30] If it is the intent of the Governor and Legislature for OAH to continue to operate at its level of excellence into the long-term future, it is recommended that each of these concerns be treated as a priority, even for fiscal year 2027.

A. Amendments to the Length of Practice Required for the Chief Administrative Law Judge and Administrative Law Judges and Related Changes to Pay Schedule for the Line Administrative Law Judges.

As noted in the legislative history of OAH included at Exhibit B of this Report, legislators discussed the new requirement that any adjudicator hired by OAH be a licensed attorney with specific years of practice to be eligible for these positions. As passed, Senate Bill 203 settled on five years of active practice for the chief administrative law judge and two years of active practice for administrative law judges.[31] Both were identified as minimum requirements. For example, legislators opined that the chief administrative law judge be "the best qualified person for the position" who could hit the ground running. Moreover, the chief would also be expected to hire "hit-the-deck running" administrative law judges who brought a "high degree of expertise" to the office.[32] There was thus a distinct disparity between the minimum qualifications and the legislature's expectations for the quality and experience OAH judges would bring to the job.

Unfortunately, the pay set for ALJs reflects the minimum qualifications, not the legislature's high expectations or OAH's reality. OAH has consistently employed highly skilled, seasoned attorneys as administrative law judges, with expertise in one or more areas of the OAH docket. This level of skill and knowledge is critical to providing high quality service to the parties that appear before OAH. The pay for these positions, however, is on par with junior to mid-level

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[28] AS 44.64.020(a)(7).

[29] The undersigned was also not yet positioned to propose these amendments at the time the Governor's Office usually seeks legislative proposals. However, they are offered under the timeline required under AS 44.64.020(a)(7).

[30] As noted above, the Chief Administrative Law Judge and the Chair of the Workers Compensation Appeals Commission are also discussing whether to recommend consolidation of the Appeals Commission's professional staff within OAH for government efficiency reasons. Until those discussions and discussions with leadership of the Departments of Administration and Labor and Workforce Development are concluded, this report does not include this in its recommendations currently. The failure to include does not mean OAH would oppose any consolidation effort this year. All indications are this would be a noteworthy and cost savings move for the State.

[31] AS 44.64.010(a)(3); AS 44.64.040.

[32] *See* Exhibit B summary.

attorneys at the Department of Law. This has resulted in assistant attorneys general appearing before OAH who are consistently higher on the salary schedule than the far more experienced administrative law judge deciding the matter. This pay-rate disparity has had a significant negative impact on OAH's ability to hire and retain qualified administrative law judges. At least two judicial vacancies are expected in 2026 alone due to retirements.[33] As such, there is an immediate concern regarding OAH's ability to successfully recruit and hire administrative law judges of high caliber.

OAH's attempts to request a classification study to objectively assess the skill set required for the administrative law judge position have failed to advance a total of three times, including as recently as two months ago when advanced by the undersigned. Considering each of these failures and the vacancy concerns discussed above, this Report recommends amending AS 44.64.010(b)(3) to increase the minimum period of practice for the chief administrative law judge to 10 years in Alaska or another state jurisdiction. It further recommends amending AS 44.64.040(a) to increase the minimum period of practice for line administrative law judges to five years in Alaska or another state jurisdiction. As it does for the chief administrative law judge, it is further recommended that AS 44.64.040 be further amended to set a Range 25 for Administrative Law Judge 1's and a Range 26 for Administrative Law Judge 2's or Tax Qualified Administrative Law Judge 1's. No change is requested for the Range and Step of the Chief Administrative Law Judge.[34]

B. Clarifying the Proposal for Action Process to Prohibit a Case Party's Transmittal of Proposals for Action to the Final Decisionmaker and to Provide the Final Decisionmaker Sufficient Time to Consider the Proposed Decision and Proposals for Action.

As described in the Story of OAH above, an undiscussed change to AS 44.64.060(e) created a two-step decision process where the ALJ issues a proposed decision, the parties can submit a "proposal for action," and the proposed decision and proposals for action are then forwarded on for consideration by the final decision maker. The proposal for action is limited in scope, allowing the party to request that the final decision maker take one or more of five distinct actions set forth in AS 44.64.060(e). The restrictions on the proposal-for-action process prevent a party, for example, from submitting a brief of the entire case or raising new arguments or submitting new evidence. To the contrary, submitting new evidence or arguments at this late stage, where the other party has no opportunity to respond, creates serious due process issues and undermines the purpose for which OAH was created.

Despite the narrow scope laid out in statute, there are times parties file inappropriate proposals for action. Over the twenty-year history of OAH - and initially at the request of final decisionmakers - parties to contested proceedings filed their proposals for action with OAH, to forward on to the final decisionmaker along with the proposed decision. This allowed the administrative law judge to ensure the parties were not advancing evidence never presented at the

[33] Another highly qualified administrative law judge is actively applying for positions on the judicial bench. His name on at least one occasion was already forwarded by the Alaska Judicial Council (AJC) for gubernatorial appointment. Due to the number of vacancies on the judicial bench, the undersigned expects that the AJC will continue to forward his name. If selected by the Governor for appointment, thirty-three percent of OAH's line administrative law judge positions will be vacant within six to nine months.

[34] In 2024, the Legislature amended AS 44.64.010(d) to remove the step restrictions for the position. The position is codified as a Range 27.

hearing or arguments never made before the administrative law judge. Were either to occur, in advance of transmittal of the decision, OAH could convert the proposals for action into motions for reconsideration to determine if the hearing needed to be reopened or the proposed decision revised. The right to and grounds for a successful motion for reconsideration are codified in OAH's regulations at 2 AAC 64.350. In other situations, OAH protected the integrity of the process by giving notice to the parties and not advancing inappropriate portions of a proposal for action to the final decision maker.

This long-standing practice of interpreting the statute to provide for submission of the proposal for action first to OAH protects against due process violations or other appealable issues. Despite the well-established statutory interpretation and process, in a recent matter, a Department Division did not prevail in a motion for reconsideration. The Division's legal representative, the Department of Law, then submitted an untimely proposal for action directly to the final decisionmaker. Furthermore, the referral was in direct violation of an OAH order explaining that forwarding the untimely proposal for action presented a significant risk of violating the other party's due process rights and creating an appealable issue. Fortunately, OAH was successful in alerting the final decisionmaker, during its deliberative-process communications, of the reversable error caused on appeal, were he to rely on the new material and revise the decision. The Department of Law's untimely proposal for action was disregarded. However, the abandonment of long-time practice, and the Department of Law's recent countenance of this approach,[35] despite being alerted to the impact on a citizen's rights, is of sufficient concern to warrant a statutory change. As such it is recommended that AS 44.64.060(e) be amended to make clear that a party is required to file their proposal for action with the office (OAH) and not the agency.[36]

Should the Governor and Legislature elect to consider statutory changes to the final decision-making process, it is further recommended that AS 44.64.060(e) be amended to extend briefly a final decisionmaker's time to issue a final decision.

Likely not taking into account the time impact of the proposal-for-action process, because it was not discussed in committee, AS 44.64.060(e) provides a final decisionmaker 45 days to reach a final decision. [37] However, the 45-day clock runs from the date the proposed decision is "served on the parties."[38] The proposal for action process can take up to 30 days of that 45-day clock, leaving the final decisionmaker only two weeks to read a complex decision and responsive proposals for action, and to deliberate with the assigned judge. To allow for the final decisionmaker's thoughtful consideration, at the same time the decisionmaker is undertaking other important duties, it is recommended that AS 44.64.060(e) be amended to run the final decisionmaker's time for review from the *decisionmaker's receipt* of the prosed decisions and proposals for action, and not from parties' initial receipt of the proposed decision.

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[35] Beyond requesting the opportunity to speak to boards and commissions in invited public comment, as their rules may permit, no private party to a dispute has taken this action.

[36] Recall as discussed in the Story of OAH above, no legislative committee was alerted on the record to the new language changing the proposed-decision process, even when other amendments in the committee substitute were identified and discussed.

[37] If a Board or Commission is the final decisionmaker, this 45-day deadline extends to the first regularly scheduled meeting 45 days after the proposed decision is served. AS 44.64.060(e).

[38] *Id*.

C. Addressing the Unreliability and Sustainability of Funding for OAH Based on Fluctuating Case Referral Numbers.

One of the many factors the Legislature considered when debating the enactment of SB 203 was how to fund the contemplated centralized panel to adjudicate administrative appeals. While the judges from centralized panels in other states testified that their offices were primarily funded through undesignated general funds, OAH was structured to be only thirty percent funded through the general fund and seventy percent through program receipts. This was the adopted funding model despite the fact that many agencies estimated their fiscal costs to send cases to OAH would be either zero or indeterminate. Others recognized a cost savings from transferring hearing officer positions to OAH, noting uncertainty over whether those transferred positions, which now would require an active practice as a lawyer to fill, would be fully reimbursed through interagency agreements.[39]

OAH funding has changed considerably since that initial 70/30 model. In the current fiscal year 2026, eighty-nine percent of OAH's budget is funded through interagency program receipts and potential program receipts, with only the remaining 11% allocated from the undesignated general fund. Similarly, eighty-nine percent of the Office's costs of operations are allocatable to personnel costs, the vast majority of which are the qualified administrative law judges whose expertise, as noted above, must go beyond the mere two-years of practice minimum requirement of AS 44.64.040. [40] Alarmingly, whether OAH can even break even for eighty-nine percent of its budget depends on whether it receives adequate referrals each week. Whether cases are submitted or not, *in all cases*, OAH must be prepared and staffed to accept mandatory jurisdiction matters, as required under the more than 50 distinct statutes and regulations identified above in Table 1 and at AS 44.64.020(a).

OAH operates and bills like a law firm for services rendered. The Chief Administrative Law Judge in essence acts like a managing partner to ensure adequate amounts of work for the workforce. However, each year, predicting the volumes of cases is nearly impossible. That is, past does not dictate present and vice versa.

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[39] *See* SB 203 Fiscal Notes, including Law (Indeterminate); DOWLD Wage & Hour (0 Fiscal Note); DOWLD OSH (expected impacted of at least $40.0 annually with expected RSA costs); DCED Occupational Licensing ($77.00 negative impact with transferred positions); DCED Insurance (-$123.2 impact with transferred positions) Revenue PFD (-$104.8 impact with transferred positions); Revenue Program & Services) (-$407.0 impact with transferred positions); DEED (indeterminate); DCED Occupational Licensing ($159.5 impact with expected RSA costs); DEC (indeterminate); DEED, ASPC (0 Fiscal Note); Gov HRC (saved resources for no longer outsourcing hearings to contact hearing examiners); DOH, DSS (0 Fiscal Note); DPS, ABC Board ($5.0 K impact with expected RSA costs); Admin Office of Tax Appeals (-227.2 impact with transfer of positions).

[40] *See* OAH authorized Fiscal Year 2026 budget; and the Proposed 2027 budget, included Exhibit D to this Report.

Table 4 shows the fluctuations in annual case referrals for the past six calendar years.

Table 4: Fluctuations in Annual Referrals – 2020 to 2025

	2025	2024	2023	2022	2021	2020
New Referrals	3582	860	802	971	2579	1009

Table 5 shows the fluctuations in referrals for some categories of the cases opened at the Office in the past five calendar years.

Table 5: Fluctuations in New Referrals by Subject Area 2021 - 2025

Subject Matter	**2025**	**2024**	**2023**	**2022**	**2021**
Medicaid and other Public Benefits	3319	477	458	375	403
Substantiation of Child Abuse and Neglect	91	111	107	116	139
PFD	48	42	82	27	19
Occupational Health and Safety	13	19	7	16	5
Child Support	34	35	46	37	49
Medicaid Certification and Audits	7	22	4	10	9
Marijuana and Alcoholic Beverage Control Boards	32	20	8	3	7
Retirement and Benefits	9	3	4	2	7
University	8	8	7	3	2
DEC	3	4	4	8	3
Unemployment (Regular and Pandemic)	0	0	0	232	1745

Municipalities	4	4	7	9	9

In all cases, OAH must have judges with subject matter expertise to handle vacillations in case numbers and types.

Another factor impacting costs was another late-in-the-review change to SB 203 that permits the parties to change the assigned administrative law judge without cause.[41] This exists despite the fact that parties have no ability to change the Commissioner or Board who serves as their final decision maker. Administrative law judges have been challenged under the current Chief's brief tenure: (1) because they correctly ruled against a party in a prior dispute involving a completely different subject area: (2) because they held the parties to the 120-day deadline from hearing request to proposed decision when the respondent insisted on exercising that right; and (3) because of past personal disagreements when the attorney and judge worked in the same organization. Unfortunately, this occurs with state agencies and their counsel despite their statutory obligations under AS 44.64.080. to cooperate with the chief administrative law judge and with other administrative law judges of the office in the matters involving the duties of the office.

As a result, OAH must always have two administrative law judges with subject matter expertise in the various areas of case referrals. There is no way to bill that additional and significant costs to agencies. Moreover, relying on a contract pool of administrative law judges outside of OAH to handle those perceived conflicts creates and fosters significant management and peer review concerns as well. An elective change of judge, that is, one without cause, also creates waste when a second judge must then come up to speed on the case. The referring agency pays for that unnecessary additional ALJ time — time that could have been spent on other cases, slowing down the process for everyone.

In the end, these considerable and unpredictable case fluctuations and related ability to change administrative law judges for undisclosed personal reasons impacts OAH, the parties, and the payors of OAH's services in various ways.

Primarily, given the lack of consistent case numbers, budget planning based on program receipts is almost impossible. It is even more difficult when even minor changes to the billing rates have been rejected in the past two years because of a need to sustain costs statewide. While certainly an important concern, this has a disparate effect on smaller offices, such as OAH, whose annual budget pales in comparison to other units of state government.[42]

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[41] AS 44.64.070(c); SB 203 Consideration, House Finance Committee, April 30, 2004; *see also* Exhibit B summary.

[42] *See* Exhibit D. For fiscal year 2026, OAH has an operating budget, including all capital expenses for equipment, of $3,574.100.00. For fiscal year 2026, the proposed OAH budget is$3,696,100.00. The slight increase is due solely to increased personnel expenses based on deserved merit increases in salary under the operable salary schedules.

Also significant for this fiscal year, and likely fiscal year 2027 as well, is a recent class action lawsuit brought by a public interest law firm, against DOH and OAH and involving DOH's efforts to sanction a health care provider for negligent health care. Without getting into the merits of that dispute, OAH has been required to seek outside counsel to defend it, at the Department of Law's recommendation and with our agreement, to avoid an appearance of conflict of interest.

Additionally, the administrative burden of billing for program receipts can rise exponentially from one year to the next. That additional burden — to essentially move state money around between agencies — keeps OAH from being able to fulfill its other duties and creates additional burden for the referring agencies. The time the undersigned spends attending to these matters on a weekly basis could be better spent reaching out to discretionary agencies and recommending they use OAH's panel of excellent judges to hear their disputes. The time staff spends preparing and following up on bills could be spent fulfilling OAH' poorly-attended-to statutory duty to post decisions to OAH's website. And the time each judge spends tracking their time in six minute increments and inputting notes describing how they spent that time could be better spent on getting cases resolved and decisions written more quickly and efficiently

Finally, and perhaps most significantly, the vacillating case numbers indicate that ten judges and five staff of OAH consistently and effectively rise to the occasion when agencies find themselves with an influx of cases they cannot resolve without our services. For example, when Department of Labor was inundated with pandemic-related unemployment disputes in 2021 and were struggling with a burgeoning backlog, OAH took on the referrals, cleared the backlog and allowed the agency to get back on its feet. Similarly, in this calendar year of reporting for 2025, when backlogs in processing public benefit applications created an onslaught of failure-to-timely-process appeals for DOH, OAH assumed those appeals, and created a process to hear them quickly and efficiently. The process was so effective that the need for these marathon hearing sessions is expected to be phased out within the next month.

At its core, OAH is a small team that nimbly reacts to any challenge, ensuring that aggrieved parties have an opportunity to tell their story, receive an expeditious resolution, and trust in the process of government decision making. That is, we are fulfilling our statutory mandates, but each year operate at the risk of abject financial failure.

The undersigned makes the next statement realizing it is the Governor who proposes, the Legislature who enacts, and the Governor who can still veto final budget initiatives. But a new funding solution is required if the Governor and the Legislature are committed to an effective and long-lasting Office of Administrative Hearings. Wasting time and resources billing agencies by six-minute increments for judicial thinking and decision making cannot be the long-term solution.

Models that might be considered include: (1) a return to at least the thirty-percent general fund funding for OAH when it was originally created;[43] (2) a percentage-of-operations fee to mandatory-jurisdiction executive branch agency whether they send a referral or not; or (3) should the reimbursable service agreement model continue to some degree for referring agencies, OAH

Despite this significant cost, minimal for some, but significant for a small agency like OAH, the undersigned's request for a supplemental budget to cover what may be as high as $250,000 expense has not yet been submitted to the Legislature for its consideration. If these estimates are accurate, OAH will operate in the red for FY 2026, despite its case volume, and small carryforward, already allotted to other office needs, such as replacing a 21-year old copier and even older torn, aged, and broken chairs, from Fiscal Year 2025.

[43] It is worth noting here, that while OAH provides adjudicative services to agencies, more importantly it is providing a due process forum to aggrieved Alaskans. This is no different than the public-serving, legal services offered, and reimbursed through the fund, by the Department of Law Criminal Division, signification sections of the Department of Law Civil Division, the Office for Public Advocacy, and the Public Defender's Agency.

should have the command to set the hourly rate on an annual basis that permits it to meet its annual costs.

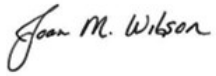
As mentioned before, OAH's requests for minimal increases to those hourly rates to address the case fluctuations above were twice rejected. If, as AS 44.64.010(a) envisioned, this "independent office of administrative hearings" is truly to be run "under the direction of the chief administrative law judge," -- that the Governor duly selected and the Legislature confirmed -- her recommendations should at least not be rejected, specifically where no other solution other than "find a way" is offered.

V. CONCLUSION

By the close of this report, we hope you see what a single mother, an oil company, a regional consortium of tribal governments, and a doctor have in common. In 2025, they each relied on OAH to hear their administrative appeals and render high quality, adjudicative decisions.

OAH and its Chief Administrative Law Judge are committed to the people of Alaska and to these missions. We look forward to a fruitful dialogue that will permit this necessary Office to survive and thrive long into the future.

In summary, the Twenty-Second Annual Report is respectfully submitted on this 31st day of January 2026.



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Joan M. Wilson
Chief Administrative Law Judge

Alaska Statues 44.64 (Office of Administrative Hearings)

§ 44.64.010. Office created

(a) There is created in the Department of Administration an independent office of administrative hearings under the direction of the chief administrative law judge.

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

(c) The chief administrative law judge is appointed to a five-year term of office by the governor and is subject to confirmation by the legislature. An individual may serve not more than three full or partial terms as chief administrative law judge. The governor may remove the chief administrative law judge from office only for good cause. The basis for removal shall be stated in writing. A vacancy in the office of chief administrative law judge shall be filled by the governor, and the individual appointed serves for the remainder of the term to which appointed.

(d) The chief administrative law judge shall receive a monthly salary that is not less than Step A nor more than Step F, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The chief administrative law judge is in the partially exempt service.

§ 44.64.020. Powers and duties of chief administrative law judge

(a) The chief administrative law judge shall
(1) supervise the office;
(2) employ administrative staff, who shall be in the classified service;
(3) employ administrative law judges, who shall be in the partially exempt service;
(4) preside over administrative hearings handled by the office or, based upon the qualifications and expertise of the administrative law judges, assign administrative law judges to preside over hearings, and protect, support, and enhance the decisional independence of the administrative law judges;
(5) establish and implement performance standards, including provision for timeliness, and peer review programs for administrative law judges employed or retained by the office;
(6) make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication, substantive law, alternate dispute resolution, and technical matters for administrative law judges and other administrative adjudicators;
(7) survey administrative hearing participants and use other methods to monitor the quality of administrative hearings held by the office and other state agencies, and submit to the governor and the legislature on January 31 of each year the results of the survey along with a report that includes a description of the activities of the office and recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies;
(8) review and comment on regulations proposed by state agencies to govern procedures in administrative hearings;
(9) enter into contracts as necessary to carry out the functions of the office;
(10) annually prepare and submit to the commissioner of administration a budget for the office for the next fiscal year that shall include and separately identify funding for training and continuing education; a copy of the budget submitted to the commissioner under this paragraph shall also be submitted to the Finance Committee of each house of the legislature;

(11) after consulting with affected agencies, adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and implement this chapter;
(12) receive and review applications from individuals seeking appointments to the Workers' Compensation Appeals Commission and submit the names of individuals to the governor for appointment as provided in AS 23.30.007(d); and
(13) appoint a chair pro tempore for the Workers' Compensation Appeals Commission as provided in AS 23.30.007(m).

(b) In carrying out the responsibilities of the office, the chief administrative law judge shall seek to accomplish the following goals:
(1) provide for the delivery of high quality adjudication services in a timely, efficient, and cost-effective manner;
(2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated and protect them from threats, intimidation, and harassment;
(3) foster open and clearly explained agency decisions and improve public access to the process of administrative adjudication;
(4) guarantee protection of all parties' due process rights, increase the public parties' perception of fairness in administrative adjudication, and foster acceptance of final administrative decisions by the public and affected parties;
(5) protect the integrity of the process of administrative adjudication and decisional independence of administrative adjudicators; and
(6) increase consistency in administrative procedures and decisions.

§ 44.64.030. Jurisdiction of the office
(a) The office shall conduct all adjudicative administrative hearings required under the following statutes or under regulations adopted to implement the statutes:
(1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
(2) AS 05.15 (charitable gaming);
(3) AS 05.20 (recreational devices);
(4) AS 05.90.001 (special racing events);
(5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by AS 06.60.590;
(6) AS 08 (occupational licensing), other than AS 08.08, AS 08.18.125, and AS 08.62.046;
(7) AS 10.06 (Alaska Corporations Code);
(8) AS 10.13 (Alaska BIDCO Act);
(9) AS 10.25.375 (Electric and Telephone Cooperative Act);
(10) AS 10.50.408 (limited liability companies);
(11) AS 14.11.016 (education-related facility grants);
(12) AS 14.18 (discrimination in public education);
(13) AS 14.25.006 (teachers' retirement system);
(14) AS 14.25.175 (waiver of adjustments under teachers' defined benefit plan);
(15) AS 14.40.155 (suspension and removal of regents);
(16) AS 14.48 (postsecondary educational institutions);
(17) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than AS 17.20.060 and 17.20.360;
(18) AS 18.07 (certificate of need program);
(19) AS 18.20 (hospitals and nursing facilities);
(20) AS 21.09, AS 21.22.190, AS 21.27, except under AS 21.27.420(d), AS 21.34, AS 21.36, except under AS 21.36.461, AS 21.69, AS 21.86.200, AS 21.87, and AS 21.96 (insurance);
(21) AS 25.27 (child support services);
(22) AS 32.06 (Uniform Partnership Act);
(23) AS 34.45 (unclaimed property);
(24) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);

(25) AS 36.30 (State Procurement Code), other than AS 36.30.627(a)(2);
(26) AS 38.05.065 (contracts for sale of state land);
(27) AS 39.30.165 (supplemental benefits system);
(28) AS 39.30.335 (teachers' and public employees' health reimbursement arrangement plan);
(29) AS 39.35.006 (public employees' retirement system);
(30) AS 39.35.522 (waiver of adjustments under public employees' defined benefit plan);
(31) AS 39.45.055 (public employees' deferred compensation program);
(32) AS 39.52 (Alaska Executive Branch Ethics Act);
(33) AS 43.23 (permanent fund dividends);
(34) AS 43.70 (Alaska Business License Act);
(35) AS 44.50 (notaries public);
(36) AS 44.77 (claims against the state);
(37) AS 45.30.040 (mobile homes);
(38) AS 45.48.080(c) (breach of security involving personal information);

<Text of subsec. (a)(39) effective until January 1, 2019.>
(39) AS 45.55 (Alaska Securities Act);

<Text of subsec. (a)(39) effective January 1, 2019.>
(39) AS 45.56 (Alaska Securities Act);
(40) AS 45.57 (Takeover Bid Disclosure Act);
(41) AS 46 (water, air, energy, and environmental conservation), other than AS 46.03.820, 46.03.850, AS 46.39, and AS 46.40;
(42) AS 47.05 (assistance programs);
(43) AS 47.07 (medical assistance for needy persons);
(44) AS 47.25 (public assistance);
(45) AS 47.27 (Alaska temporary assistance program);
(46) AS 47.32 (licensing by the Department of Health and Social Services);
(47) AS 47.37.130 (alcohol safety action program);
(48) AS 47.37.140 (treatment facilities);
(49) AS 47.45.050 (longevity bonuses);
(50) AS 47.45.306 (Alaska senior benefits payment program).

<Text of subsec. (a)(51) effective January 1, 2019.>
(51) AS 45.55 (Alaska Native Claims Settlement Act corporations proxy solicitations and initial issuance of stock).

(b) An agency may request the office to conduct an administrative hearing or other proceeding of that agency or to conduct several administrative hearings or other proceedings under statutes not listed in (a) of this section. The office may provide the service after entering into a written agreement with the agency describing the services to be provided and providing for reimbursement by the agency to the office of the costs incurred by the office in providing the services.

(c) To the extent otherwise permitted by law, the agency may delegate to the administrative law judge assigned to conduct the hearing on behalf of the agency the authority to make a final agency decision in the matter. The final decision may be appealed to the superior court by any party.

(d) Nothing in this chapter may be construed to create a right to a hearing or to require a hearing that is not required under other law.

§ 44.64.040. Administrative law judges
(a) An administrative law judge must be admitted to practice law in this state and must have been admitted to practice in this state for at least two years before being employed or retained with the office. The chief administrative law judge shall establish additional qualifications for administrative law judges employed or retained by the office and for those administrative law judges that may

be assigned to particular types of cases. An administrative law judge is in the partially exempt service. Notwithstanding AS 39.25.120(b), full-time administrative law judges employed by the office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and (16).

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

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

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

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

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

(d) The office may enter into a contract with an individual who meets the qualifications established in (a) of this section to serve as an administrative law judge in a particular administrative hearing or in several hearings of the same type. The individual is subject to AS 39.52 (Alaska Executive Branch Ethics Act). Notwithstanding AS 36.30.015(d), the office may contract for or hire an administrative law judge without notifying or securing the approval of the Department of Law.

§ 44.64.050. Hearing officer conduct

(a) An administrative law judge employed full time by the office or a hearing officer employed full time by an agency may not serve in any other judicial or quasi-judicial capacity or engage in the private practice of law.

(b) The chief administrative law judge shall, subject to AS 39.52.920 and by regulation, adopt a code of hearing officer conduct. The code shall apply to the chief administrative law judge, administrative law judges of the office, and hearing officers of each other agency. The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall

(1) uphold the integrity and independence of the office;

(2) avoid impropriety and the appearance of impropriety;

(3) perform the duties of the office impartially and diligently;

(4) conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and

(5) refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

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

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

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

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

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

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

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

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

(c) The agency may, with materials transmitted under (b) of this section, request the chief administrative law judge to permit the individual, board, or commission that will make the final decision to participate with the assigned administrative law judge in the conduct of the administrative hearing. The chief administrative law judge shall determine the degree and manner of participation and may terminate that participation at any time. However, the individual, board, or commission that participates under this subsection may not serve as the administrative law judge or preside during the hearing and may not take action on behalf of the agency in the agency's capacity as a party to the proceedings.

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

(e) A proposed decision in an administrative hearing shall be in a form that may be adopted as the final decision by the agency with authority to make the final decision. The proposed decision is a public record, except as otherwise provided by statute. A copy of the proposed decision shall be served by the office on each party in the case or on the attorneys representing those parties in the hearing.

Unless the office has established a shorter time period or another statute has established a different time period, within 30 days after the proposed decision is served, a party may file with the agency a proposal for action under (1)--(5) of this subsection. The agency with authority to make a final decision in the case retains agency discretion in the final disposition of the case and shall, within 45 days after the date the proposed decision is served or at the next regularly scheduled meeting that occurs at least 45 days after the proposed decision is served, do one or more of the following:

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

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

(3) exercise its discretion by revising the proposed enforcement action, determination of best interests, order, award, remedy, sanction, penalty, or other disposition of the case, and adopt the proposed decision as revised;

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

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

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

§ 44.64.070. Disqualification of administrative law judge

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

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

chief administrative law judge, by the attorney general, whose decision is final.

(c) In addition to disqualification of an administrative law judge under (a) and (b) of this section, each side is entitled to change the assigned administrative law judge once. Two or more parties aligned on the same side of an action shall be treated as one side for purposes of this subsection, but the chief administrative law judge may allow an additional change to a party whose interests are adverse to the interests of another party on the same side. A party wishing to exercise the right to change the administrative law judge shall give notice to the chief administrative law judge within five days after notice is given that the case has been assigned. A party waives the right to a change in the assigned administrative law judge by participating before that administrative law judge in any proceeding or conference involving the case.

§ 44.64.080. Agency cooperation

(a) All agencies shall cooperate with the chief administrative law judge and with other administrative law judges of the office in the matters involving the duties of the office.

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

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

§ 44.64.090. Administrative hearing records

(a) The office shall acquire and organize statistical and other information relating to administrative hearings of the office and of other agencies. The office shall acquire and organize copies of proposed and final agency decisions in administrative hearings and copies of court decisions resulting from those administrative hearings. The information and decisions shall be made available to the public, agencies, and the legislature. The office shall make final agency decisions reached after administrative hearings available online through an electronic data base.
(b) This section does not apply to records that are confidential or privileged.

§ 44.64.095. Federal requirements

Federal requirements applicable to an administrative hearing prevail to the extent they conflict with any provision of AS 44.64.010--44.64.200.

§ 44.64.200. Definitions

In this chapter,
(1) "administrative hearing" means a quasi-judicial hearing before an agency; it does not include an informal conference or review held by an agency before a final decision is issued or a rate-making proceeding or other nonadjudicative public hearing;
(2) "administrative law judge" means a hearing officer who is retained or employed by the office;
(3) "agency" means an agency of the executive branch of state government, including an officer, a division, or another subunit of an agency, a board or commission, a public corporation, and the University of Alaska;
(4) "hearing officer" means an individual who presides over the conduct of an administrative hearing and who is retained or employed by an agency for that purpose;
(5) "office" means the office of administrative hearings established in AS 44.64.010.

TIMELINE FOR DEVELOPMENT OF OAH

Legislature & Bill	Date	Event	Concerns Addressed
20th Legislature (1997 – 1998)			
HB232 – An Act establishing an independent division of administrative hearing	4/4/97	Bill Introduction	Sponsors – Ogan, Kohring, Hodgins, Ryan, Sanders, Dyson, Kott, Mulder, Vezey -- The purpose of this Act is to increase the separation between the adjudicatory functions of executive branch agencies and the agencies' 9 investigatory, prosecutory, and policy-making functions. The legislature intends by this Act 10 to provide for the delivery of high quality adjudication services in a timely, efficient, and cost11 effective manner that will ensure respect for the dignity of the individuals whose cases are 12 being adjudicated and guarantee protection of their due process rights.

HB232	4/28/97	House Judiciary	First Hearing – Intent of the Sponsor REPRESENTATIVE SCOTT OGAN, prime sponsor, discussed the branches of government, suggesting all three powers of government have been delegated to what he calls the fourth branch, the bureaucracy. He stated, "They are the executive - we give them legislative powers by allowing them to write law, which is administrative law or regulation, and they also have judicial powers because they adjudicate that regulation. And I think there's a lack of separation of powers and a lack of impartial, fair hearings REPRESENTATIVE OGAN recounted how he had previously been on the big game commercial services board, where they routinely had administrative hearing findings placed before them, relating to a guide who broke the regulations, for example. He had been disturbed by the fact that they would pass a sometimes-very-serious judgment against an individual, even revoking that person's livelihood by permanently revoking a license, but those members were not allowed to question that person or any witnesses. "We simply read the findings of the hearing officer and either accepted them or rejected them or modified them," he stated. REPRESENTATIVE OGAN said once in the legislature, he decided to look at that. He stated, "And we decided to try to break the administrative adjudicators out of the administration, at least out of the bureaucracy that they work for, and create a separate

			division, under the Department of Administration, and get professional hearing officers that would give a fair and impartial hearing to these cases." REPRESENTATIVE OGAN advised members that several other states have done this. Modeled after legislation in a couple of different states, this is a hybrid that he believes is a good model. He asked Dave Stancliff to address technical aspects.
HB232	4/28/97	House Judiciary	Technical Overview of the Act -- HB 232 modeled after the ABA's Model Centralized Panel Act.
			DOA Placement: While some states have set the structure into the judiciary, most have put it within the administration. MR. STANCLIFF stated, "After consulting with Commissioner Boyer, Representative Ogan decided that this administration was willing to work with the legislature, as they did with you, Mr. Chairman, and that we should put it within the administration because, after all, it does serve an administrative function. So, the independent division was put, in this bill, in the Department of Administration."
			Final Decision Authority -- MR. STANCLIFF said that after considerable consultation with the two out-of-state ALJs and review of written findings in law journals, Representative Ogan decided to place final decision-

	making authority within the administration. He explained, "And the idea there was - if it was very autonomous, perhaps a recommendation-type approach would be best. If it was deep within the administration, then perhaps final decision-making authority would be a good balance there."
	To balance out final decision authority, the chief hearing officer would be appointed by the DOA Commissioner " And also, rather than the governor appoint someone, as they do in other states, by creating it ... at the division level, this gives the commissioner, through the governor, of course, the ability to appoint this person. All three of those negotiable items were included, because to offset that was the final decision authority, over on the right side of that balance."
	Jurisdiction of DAH -- they had suggested that the cleanest and most efficient place to start was those already listed under the Administrative Procedure Act (APA) section of the statute. He indicated although the list could be broadened, that was probably the most logical place to start, in an expansion of the effort begun last year.
	Experience of Other States: MR. STANCLIFF indicated that Mr. Felter's experience has shown that once this new structure is up and running, administrators soon avail themselves of it. Of the 18 states that have adopted the

	central panels or this separation of powers, not one has repealed the law. And in every state, money and time have been saved. Mr. Stancliff said that Judge Felter's division receives a public approval rating of better than 97 percent for judges and 96 percent for staff. He concluded by saying the independent panels sell themselves.
	Chief ALJ Felter (Colorado) Testimony --- there are two reasons why central panels come into existence. Usually, it is because of a scandal or perceived conflict of interest. However, more recently they have come into existence for good government reasons, because everyone believes there is more accountability to the citizens. JUDGE FELTER said a central panel's primary product is fairness. He believes that in Colorado and all other states with central panels, citizens and industry groups perceive them as fair. Other important products are a high degree of professionalism in adjudication, efficiency, and dignified adjudications, to which he believes citizens are entitled. “We're accountable for fairness and efficiency in adjudications only, not in anything else. One of the cornerstones of an effective central panel is that there's decisional independence yet there's accountability to the public." "Why it makes adjudication sense, in terms of perceptions of fairness and actual fairness, is central panel hearing officers or ALJs really are not susceptible to unwritten or in-house policies that only the agency knows. Central panels force

	agencies to adopt good rules because the agencies realize that the primary obligation of the hearing officer or ALJ of the central panel is to the statutes. If a rule conflicts, the ALJ has to go with the statute, knock down the rule." JUDGE FELTER indicated that losing favor at both federal and state levels is the idea that hearing officers are needed in the agencies because of agency expertise. He explained, "There are serious due process problems with this approach, because how does a citizen cross-examine some secret information or knowledge in the mind of the so-called expert hearing officer for the agency?" He said the primary thinking today is that expertise is best presented through experts to a professional judge or professional adjudicator. JUDGE FELTER continued, "The private bar that represents citizens that come before us in regulatory law has been one of our foremost defenders. When agencies have come to appreciate the role we provide for them, and that is being independent adjudicators, it takes the monkey off their backs, where they can focus on rule- making, investigating and prosecuting the cases, without worrying about conflicts and nasty issues being raised on appeal to the courts." As to decisional independence, JUDGE FELTER said the chief and the hearing officers or ALJs need some protections for their "decisional independence." The personnel system offers protections and the model act builds protections in. "It's not a good

	idea to have at-will ALJs," he added. Noting that he himself is a civil servant, he said other chiefs are appointed by the governor for a fixed term, with the advice and consent of the senate. He suggested that ideally, the best model is for the independent central panel and the executive, at least the chief judge, to have the status of a cabinet officer, if possible under the constitution. However, it is not possible under Colorado's constitution, which limits principal departments to 22. He himself is in the Department of General Support Services, which is the most neutral department because it has no adjudication business per se. Funding -- JUDGE FELTER continued, "Funding mechanism: We had the Oregon plan, which is cash-funded. It's not the greatest thing in the world when the central panel has to worry about revenue shortfalls, when that's not really the principal mission. It's falling into disfavor throughout the United States. Only two jurisdictions - I'm kind of sad to say Colorado is one of them - still have the Oregon plan." He indicated Colorado would be going to another system as well, a modified general fund model, `modified' because Colorado has sources of funds other than general funds, such as licensing fees and others. Expertise of judges, ALJ's actually have more expertise, even in esoteric areas, than judicial branch judges have. He said administrative law is a limited area. They have sections for workers' compensation, regulatory law and human services. He

	stated, "The regulatory law section demands a high degree of expertise, which all our judges have; it's just through experience and training, a medical board, for instance, transportation, in water quality. No, there's no delay at all." He added that they also must hire "hit-the-deck-running types." He said the detriments of having an in-house specialist who may be perceived to be too cozy with the agency are outweighed by the benefits of the perception, by both sides, of having a fair and impartial process; the only way to get that is by having a judge who is outside of the agency. Financial costs of adjudication -- REPRESENTATIVE OGAN advised the committee that more than $6 million in adjudication costs had been identified for the state of Alaska, for an estimated 3,500 to 4,000 cases per year. Impartiality -- REPRESENTATIVE OGAN said other states had found that when a case is adjudicated before an independent hearing officer, it tends to be done a little more carefully. He speculated that agencies, in hearing their own regulations in-house and answering to that commissioner, know that the appeal may be before the same hearing officer. Under the proposed system, other states have found that less administrative problems spill over into superior court because the job is being done better and more impartially. Testimony of Cruz construction -- He stated, "He's not a lawyer; neither

			am I. He cited some cases that had no relevance to what went on to the job here." Speaking of the hearing officer, he said, "This guy was just jury and executioner. We did not have an appeal process with anybody else other than him. He made his ruling; we had to appeal back to him." REPRESENTATIVE OGAN responded, he would doubt that an ALJ would threaten someone who contested a case with looking into more cases
	5/2/97	H Jud Second Hearing	Hearing Canceled
	5/6/97	H. Jud Second Hearing	Scheduled but not Heard
	1/26/98	H. Jud Second Hearing	Office of the Attorney General calls the separate division model "intriguing"
			Limit to APA matters -- REPRESENTATIVE OGAN said in the interests of time, with the cooperation of the Knowles Administration, he is willing at this time to stay with this more conservative, incremental, APA-based approach to establishing an office of independent hearings. He expressed hope that the positive results achieved by this new, unbiased, and more efficient office will encourage other agencies to avail themselves of its services without being forced to do so by the legislature; this bill provides that option. REPRESENTATIVE OGAN said it is his desire to work with the Administration to put in place a complete, separate, independent hearing office in Alaska. However, if the Knowles Administration delays action on House Bill 232 with fiscal maneuvering or

	suggesting they will lose expertise by insisting on independent hearings, he said he had told the commissioner and the Governor's office that he will proceed in another direction. Representative Ogan said he doesn't believe the Administration would be well-served by defending the present hearing process throughout the state. "We should get on with the changes through House Bill 232 and turn our attention towards serving the public and not the bureaucracy," he added REPRESENTATIVE OGAN discussed the bureaucracy as a fourth branch of government, saying it has all three of the other functions under one roof. He said with hearing officers, there is a potential for bias. If an administrative hearing officer works in the agency that helps write the regulation, or maybe the policeman who finds the infraction is also the hearing officer that adjudicates it, there is not a separation of powers or lack of bias. REPRESENTATIVE OGAN mentioned a saying of Winston Churchill: When there is a lack of separation between the administration and the judiciary, there is a formula for tyranny. He then advised members that Edward Hein, a federal administrative law judge, was present as an expert witness to answer questions; Judge Hein had provided a sectional analysis of the bill, included in members' packets.
	No changes over the interim. They had had the Division of Legal and Research Services,

	Legislative Affairs Agency, do an exhaustive search on all of the administrative hearing officers throughout state government, and they had looked closely at whether or not they wanted to include everyone. Representative Ogan said they have decided at this time to do it on more of an incremental basis and stick with those officers under the Administrative Procedure Act. If this runs as well as he believes it will, he said, some of those other agencies may want to pony up and have their administrative hearings through the independent panel.
	Finances. REPRESENTATIVE OGAN referred to a memorandum dated April 25, 1997, from Paul Brandt and Patricia Young, legislative analysts for Legislative Research Services, and to a table in the memorandum titled, "Expenditures for Administrative Adjudications, Fiscal Years 1994-1996." Representative Ogan explained that for 1996,they could identify about $6 million on these hearings. He noted that the state of Colorado does four to five times as many hearings, on a $2-to-$3 million budget, with this type of panel.
	Teresa Willams. AGO. Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference from Anchorage. She inquired about a letter she had sent that morning. She explained that the APA sets out hearing procedures for agencies that are named. The bill would create a subset of procedures that would apply in APA proceedings. However, that

	subset subsumes the whole. There are no agencies that are not under the APA which have procedures under the APA. As a result, a number of statutes in the APA are not amended; they retain the authority of the agency, for example, to determine the time and place of hearing, to issue subpoenas, and to handle evidentiary questions, depositions and so forth. They are inconsistent with HB 232, and they would create a conflict if the bill were enacted. They need to deal with the APA as a whole and not create subsets that are inconsistent. MS. WILLIAMS said the bill would apply to certain boards and commissions that only provide an adjudicatory function and have no other function. It would apply to boards and commissions that currently have licensing and discipline functions, such as all the occupational licensing boards, (in disc.) council, and the Alcohol Beverage Control Board, so that a hearing officer, rather than the board, would determine whether a license should be issued, whether a conduct is a misconduct, and what the sanctions should be for that misconduct. MS. WILLIAMS pointed out that HB 232 gives final decision-making authority to the administrative hearing officer in all issues, not just factual issues, and that would include policy issues and legal issues. This would be a broad grant of executive power to a single person, which is problematic. Ms. Williams stated, "The agency itself, because it becomes merely a party to the proceeding, would

	have appeal rights in superior court which -- we had a question of additional litigation. There is a question, of course, about agency expertise; I address that at some length in the memo, and I don't think I need to go through that here." MS. WILLIAMS continued, the chief administrative hearing officer protects and ensures the decisional independence of each hearing officer. And the question there is: Does that preclude the chief hearing officer from promoting consistency in decision making? And does that inhibit the supervisory powers of the chief?" MS. WILLIAMS next discussed the question of placement of administrative hearing officers in the classified service. That is particularly a problem for the Alaska Labor Relations Agency, which was moved, in fact, under the Department of Administration to take away one conflict; then placing those people in a bargaining unit would create a new problem as far as impartiality. She said they also don't know in this bill whether the chief would be in the classified service or the partially exempt service. MS. WILLIAMS concluded by saying those are just a few of the issues they had noted, and she had not had a chance to work on this over

	the interim, nor had her office been asked to do so. She said she would be thrilled to work on it, with the idea that this really has some problems that need to be fixed.
	REPRESENTATIVE OGAN asked Ms. Williams what she likes about the bill. MS. WILLIAMS replied that the idea of having independent hearing officers is a good one. "I don't think that this bill, as written, gets us where we want to be," she added.
	Judge Hein testimony. With NALJ. JUDGE HEIN told members he had noted two points in the memorandum with which he disagrees, both on page 2. The first is in the section titled "Final Decision-Making Authority," at the bottom of the second paragraph. The paragraph talks about the courts' generally deferring to expertise-based decisions that agencies make, including in their administrative decisions. Judge Hein said, "And the attorney general states that this expertise is lost if final decision-making power is placed with an administrative hearing officer. I would disagree with that, and I can address further the issue of expertise later in my testimony, but I'll just note that as a point of disagreement."
	JUDGE HEIN continued, "It seems to me that the primary purpose of administrative adjudications is to have what is hopefully an

	independent decision maker who offers parties who have to deal with executive agencies an opportunity to have their so-called day in court without having to go to a judicial court, with all the time and expense that that involves. And the only way that I think you can fairly assure that is if you have a decision maker in the hearings who does not represent, or appear to represent, the agency's policy and is not under the agency's direct supervision. But specifically, the answer to your question: If there are such agencies, then that becomes a policy question as to whether you want those particular agencies to continue that function and carve them out from the list - you can do it ... by drafting - or whether you wish to fold those agencies and fold it all into the central panel, in which case you'd need some different kinds of amendments."
	Start of the proposed decision model -- REPRESENTATIVE BRIAN PORTER asked whether he was correct that there are some agencies which, under the APA, would have an administrative hearing, the results of which would be advisory to the board, while for others, the administrative hearing decision would be compulsory, only appealable to the superior court. MS. WILLIAMS responded, "Yes, the decisions of the hearing officers are proposed decisions made to the final decision maker. The final decision maker has several options, what to do with that proposed decision. If the person wants to - or the board or commission

	wants to - increase the sanctions, they call for the entire record and review it. They can remand it for further proceedings, or they can accept the decision as written, or they can decrease the penalties; those are the options that are currently under the APA."
	Deliberations with the hearing officer under current model. MS. WILLIAMS clarified that the hearing officer can go to deliberations with the board and can talk about what the record is all about and what the bases were for some of the proposals, for example.
	REPRESENTATIVE PORTER asked whether it would be fair to say this bill wants to take the employment position of the hearing officers out of the agencies and then create a separate agency, but basically not interfere with the process as they have heard it explained. REPRESENTATIVE OGAN agreed it is a fair assessment. He added that the boards cannot take testimony from the witnesses during that process, which is the part that really bothered him. He said while he didn't want to impugn the character of any hearing officer, they work for a commissioner and have somewhat of a potential for a bias.
	REPRESENTATIVE CROFT said if that is true, he'd misunderstood how this works. It seems a positive development to take the hearing officers out of their individual areas and mass them together, to have less perceived institutionalized bias. "But I thought that we

	also, then, made that the final determination, rather than giving the 'perceived bias's board again a final call," he said. "And so, I guess I wanted a clarification on that. Under the new proposal, would the board still have the option of rejecting, taking or modifying ... the decision of the now-perceived-impartial administrative law judge?"
	Final Decision Maker Authority. JUDGE HEIN explained that the bill currently provides two things that are new, with respect to this issue. First, it removes the hearing officers who are currently doing APA-type hearings from the agencies and puts them in a central panel agency, under the Department of Administration. Second, it makes all of their decisions final decisions, for those agencies under the APA. It also provides that other agencies which are currently not under the APA can, by agreement with the central panel, make use of the services of the central panel hearing officers, and they would have a choice as to whether they wanted to allow those decisions to be final decisions or not; that would be part of the agreement they worked out on a case-by-case basis with the central panel.
	Imptnce of ALJ independence despite lost agency expertise -- REPRESENTATIVE JAMES continued, "Just to say, then, that one of the biggest complaints that we hear on these kinds of issues is, 'Well, this administrative officer doesn't have the expertise.' The people in the agencies, the people in the commissions, really

	believe they know these issues and therefore they can make the best decisions. It is my personal opinion that administrative officers are unbiased, and they don't need that expertise; and whatever they need, they will have, because if they had it, they couldn't give an unbiased opinion. So, you know, that's the way I understand it. Correct me if I'm wrong and that's not the way it's working now and the way that is intended to work."
	Imptnce of final decision authority. JUDGE HEIN continued, "I could tell you that, for purposes of making impartial decisions, it can be very difficult for a hearing officer to have the courage to do what he or she thinks is the right thing, when he knows it's going to overturn the agency's view, and may feel that it's futile if it's just going to be reversed again by the commissioner or by the governing board. And so, that's a key provision of this whole concept of having a central panel."
	CHAIRMAN GREEN added that there is at least a "two-step" in most large departments, which can be avoided by doing this. He stated, "And the problem is, you go to the person that made the decision, you appeal to that supervisor, to another, and then finally to the commissioner, and then you appeal to court. And unfortunately, the court reviews the record, and the record has all been by a biased agency. And that's what they're trying to avoid. Two steps out and ... an independent view of it."

	Right of reconsideration -- JUDGE HEIN said he could add two other points. Within the Administrative Procedure Act, there is a procedure for reconsideration of a decision, and the agency would certainly have as much right to seek reconsideration of a decision as would another party. That is part of the point: He believes the bill emphasizes and makes more clear that the agency is itself an interested party in the outcome of the decision and should be treated that way, and that there needs to be an impartial decision maker. Judge Hein noted that the decision maker would be paid by someone and has to be put somewhere in the scheme of government. "But, as much as possible, you want someone who does not from the outset give the appearance - or the reality - of being on the side of the agency necessarily," he concluded.
	Alleged constitutional challenge. REPRESENTATIVE OGAN advised members that something in Ms. Williams' letter had been brought to his attention; he referred to page 2, which states, "This is a broad grant of executive power to a non-constitutional judicial officer." Then he referred to a memorandum by Terri Lauterbach, Legislative Counsel, dated April 26, 1997, which says, "HB 232 does not involve a shift of functions from one branch of government to another ...." Representative Ogan said the separation of powers doctrine isn't violated; they are essentially transferring this authority from one agency within the administration to a central agency within the same administration.

	He said he would argue that it belongs in the judiciary, but he thinks it would be even more problematic to attempt to do that. He concluded, "So, I would say that her argument that it's non- constitutional is not well-founded, with all due respect." MS. WILLIAMS replied that she is not saying it is unconstitutional. Specifying that was a term of art, she explained, "This, as a judicial office, is not created under the state constitution."
	Impartiality. JUDGE HEIN explained, "And so, you want a system whereby the public can come in and have a fair decision, both in appearance and in actuality, without necessarily having to go to court for justice. Many, many parties that come before agency hearing officers are not represented by lawyers, and they're not required to be. ... The system was designed to be simpler than court procedures, and cheaper and faster. But it was also designed to give people a meaningful decision. And if people perceive that it is futile to try to get justice from an agency, and that they are only going through the motions until they can get to court - because the court requires them to do that - you are burdening the public. You are adding another layer of hearing and time and expense before they can get a real, independent hearing. So, there should be a strong emphasis on the quality and the impartiality of the decisions that come from agency hearing officers."

	JUDGE HEIN said this bill provides for a panel of a professional core of hearing officers, trained in the substantive area with which they will deal, in administrative law and procedures, and in ethics. Judge Hein noted that hearing officers will be subject to a judicial code of conduct, which hearing officers in Alaska are not currently subject to. This bill will provide a centralized agency, "so that you will have professional people supervising their own kind of people." There will be lawyers and hearing officers who are experienced in this area, who understand the pressures that hearing officers are under; they will be doing the performance evaluations. JUDGE HEIN told of hearing horror stories at national conferences from other states' hearing officers, who can be evaluated on the percentage of times they uphold or overturn agency decisions. It puts hearing officers in a difficult, if not impossible, position when they have to jeopardize their careers or promotions in order to make what they feel is the right decision. It is also a burnout factor for some who feel that if they buck the agency, their decisions will just be reviewed again and reversed. Judge Hein stated, "And they quickly get the message, 'Either go along or get out.' I don't know to what extent this is common throughout Alaska, but I know that it happens, and I know that it's a general problem with hearing officers around the country."
	CFEC Board member testimony who also attended the NJC.

	MR. ANDERSON urged serious consideration and passage of this legislation. First, it certainly appears to provide a more independent administration of justice, by removing the adjudicatory functions from the agencies who write, promulgate and then enforce regulatory law. And second, it is definitely a step in the right direction to create a smaller, more efficient state government.
	Chief Appointment. MR. ANDERSON urged serious consideration and passage of this legislation. First, it certainly appears to provide a more independent administration of justice, by removing the adjudicatory functions from the agencies who write, promulgate and then enforce regulatory law. And second, it is definitely a step in the right direction to create a smaller, more efficient state government.
	Need for an active practice. R. ANDERSON said his second point of discussion is in reference to the set of requirements to be used to establish or register persons as qualified to serve as administrative law judges under the chief

	officer. He read from page 4, lines 20 through 22, which says that "the requirements must include admission to the practice of law in this state and the practice of law in this state for at least five years preceding employment by the division". Mr. Anderson commented, "If you interpret my discussion as somewhat self- serving, you may be right; at this juncture, I have no concrete plans to apply for this position, but you never know." He then stated his opinion that having such tight restrictions on the basic qualifications limits the scope of potential applicants capable of conducting impartial, fair hearings that result in sound justice and clear and concise decisions capable of withstanding the scrutiny of an appellate court. MR. ANDERSON explained that he is not "law-trained" but has the experience and talent to adjudicate administrative law cases. Simply being an attorney accepted by the bar does not automatically create meaningful judicial qualities in a person, nor does being a bad attorney - not being able to hack private practice - offer a

	good qualifier, either. There are states that don't rely on the restriction of this qualification.
	Formality. MR. ANDERSON said there is no standard for a formal administrative hearing, but it should have substantially the same formality, dignity and order as a judicial proceeding; the traditional formal administrative hearing resembles a trial before a judge sitting without a jury. The goal is the development of a fair, accurate and concise record. The hearing should move as rapidly as possible, consistent with the fundamentals of fairness, impartiality and thoroughness.
	Alaska State Chamber of Commerce. This bill does a lot to aid the public's perception of the fairness of the administrative process, but it should also go farther than the perception. Ms. LaBolle stated, "You can imagine that business has a great interest in this, because it is a problem that if an agency makes the rules and decides ... your case, you don't perhaps feel

	that you've been able to get the full measure of justice. And then the point that you have to go through the process, even if you don't think it's fair, before you can even go to court, and then the court will rely so much on the record of the administrative hearing, it is fraught with unpleasant experience for business, too often. We are completely in support of this legislation, and we have confidence that the subcommittee will be able to work out the fine-tuning of the legislation so that it is, in fact, fitting within the requirements of the law."
	DCED Division Director. S. REARDON said, "It's the legislature that created the licensing boards to make initial licensing decisions and make disciplinary decisions. And so, of course, if the legislature decides that they don't want to have that role, you might want to think about whether they still are playing a meaningful role - because what would be ... left to them was writing the regulations in the first place - or whether you want to create another kind of role for them in the

	process .... Perhaps the hearing officer would be deciding the findings of fact and law, and the boards would get to decide what punishment was appropriate, given that. I'm just throwing things out, kind of off the top of my head, in a little risky procedure here, but they might be able to decide whether a doctor should lose a license if he did the following things, and if the law did read the following way. Or perhaps boards could assist in deciding which cases to pursue, more like a grand jury before they went to the hearing."
	Proposed Decision Idea. REPRESENTATIVE ROKEBERG asked Representative Ogan whether he thinks his bill would be damaged if these hearing officers were set up independently but could still work within the structure of the APA. He cited an example of a complaint issued to a board or agency that would be turned over to the hearing officer, who would be independent under this bill. The hearing officer would do the findings of fact and send that back to the commission or board, as it is done now under the APA.

			REPRESENTATIVE OGAN responded, "I guess, on first blush, what you were saying, if I understand it correctly, it would almost be duplicative, because we would keep in place the existing process and then add another layer on top of it. And I'm not sure we would gain the efficiency and impartiality." He suggested the subcommittee may wish to pursue that issue.
			Subcommittee. CHAIRMAN GREEN assigned HB 232 to a subcommittee consisting of Representatives James, Berkowitz and Bunde, with Representative Bunde as chairman. He encouraged participation by Representative Ogan or his designee; Terri Lauterbach, the drafter; and Catherine Reardon, who had brought up several points that he believed the subcommittee should review.
Conclusion of 20th Legislature			(HB 232 was held over.) -- No Action.
21st Legislature (1999 – 2000)			
Legislature & Bill	Date	Event	Concerns Addressed
HJR 18	2/24/99	Proposing Constitutional Amendment to Create Office of Administrative Hearings	In light of failure of SB232 negotiations advancing with the Knowles Administration Representative Ogan proposes a ballot initiative to create an independent office of administrative hearings within DOA.

			Text provides BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:Section 1. Article III, Constitution of the State of Alaska, is amended by adding a new section to read: Section 28. Office of Administrative Hearings.(a) The power to conduct administrative law hearings and to render final agency decisions is vested in an office of administrative hearings. The jurisdiction of the office shall be prescribed by law. (b) The chief administrative law judge is the head of the office of administrative hearings. The chief administrative law judge shall be appointed by the governor, subject to confirmation by a majority of he members of the legislature in the joint session. The chief administrative law judge serves a term of five years and may be reappointed and reconfirmed to serve more than one term. Sec. 2.The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.
HJR 18	3/4/99	Committee Hearing State Affairs	First Committee Hearing. Representative Ogan explains intent to bring due process and separation of powers back to state government, which lacks separation between the executive and judiciary branches. The legislature has delegated authority to the executive branch to write laws by regulation and also to adjudicate that law.

			REPRESENTATIVE OGAN remarked that people are supposed to be able to go before a fair and independent tribunal when they break the laws. For example, if a person creates a violation, the investigative officer will cite them. Oftentimes, that investigator is involved in writing that regulation. Then it's brought before someone with quasi-judicial authority that answers to the commissioner. Representative Ogan said, "This approach would separate all that power out of the bureaucracy, it would keep it within the executive branch, but it would set up independent hearing officers." A few years ago oil royalty disputes were reviewed in that manner and worked very well. "It was also applauded by the Administration, he added. REPRESENTATIVE OGAN cited his personal experience on the "Big Game Commercial Services Board," where he had the quasi-judicial authority to pass judgment on folks who violated the regulations. A hearing officer would present his or her case. The board members were not allowed to ask questions, have conversations with the accused, or testify on that person's behalf before the board. The board simply looked at the recommendations of the hearing officer and voted them up or down, which Representative Ogan indicated he was uncomfortable with because judgment was passed without the

			person facing his or her accusers and being able to answer questions. The accused person's license was revoked, which created financial ramifications.
			A robust discussion followed in which all representatives for state agencies testified against the formation of an independent office with final decision authority, This included the Deputy Commissioner for DOR, a hearing officer for DOA, ACPSE Director, the Division of Workers Compensation, DNR Division of Oil and Gas, DNR Division of Mining and Water Management, AGO, Division of Fair Business Practices. All believed they could fairly perform the adjudicative role in addition to the regulation promulgation and enforcement roles. Many addressed the importance of agency expertise and were concerned about a one-size-fits-all approach that a separate agency with final decision authority would create. An example of an agency believing they can still protect the public: MS. VOGT said she recognizes that folks can perceive that the agency's control over its own hearing in some way hurts them. However, in her view, it lends strength to the program. The public is the department's top priority, and she believes the department can serve them better by holding hearings in-house. An uncertainty regarding cost impact: MR. HEMENWAY cautioned that some states have experienced, particularly in a short run, an increase in costs

	when changing over to this system. It must be done carefully. He cited for example, when South Dakota passed its central panel legislation, the cost- per-case basis doubled, and the state was forced to repeal the legislation.
	Regarding model legislation: REPRESENTATIVE OGAN asked Mr. Hemenway if he is aware that there is an administrative law judge association that has model legislation. MR. HEMENWAY remarked the American Bar Association has a model act, which is supported by the national association. DNR Division of Oil and Gas -- KENNETH BOYD, Director, Division of Oil and Gas, Department of Natural Resources, testified via teleconference from Anchorage. He said that Title 38 says what the commissioner and directors shall do in which they make a lot of decisions that impact what will happen in the future. MR. BOYD said, "My concern with the bill is this really strips any decision-making ability out of Title 38 and puts [it] in the hands of the hearing officer. ... However, most of our decisions don't involve hearing officers. It's me, or the commissioner, or us jointly making decisions on things like resales - best-interest findings. A best-interest finding is a complex document that is a whole series of decisions bound into a file decision that is determined to be in the best interest of the state. And it certainly does have a flavor of the person who is working on it, and to say that flavor persists into the future is a true statement, and maybe it should."

	AGO position. MS. WILLIAMS explained that the executive branch is unique in that it has all three branches of government within it; the quasi-legislative function of writing regulations, the enforcement ability and the quasi-judicial aspects have been historically noted. The U.S. Supreme Court decision stated that it assumed agencies will look at the public interest, keeping that in mind as their foremost concern, and will apply their expertise in resolving factual disputes and disputes about applications of law. REPRESENTATIVE OGAN asked if the constitutional amendment breaks up the lack of separation of powers.
	Ed Heins, NMFS Hearing Officer testified again, with information he provided in support of SB 232. MR. HEIN stated that 24 states currently have central administrative law judge panels and that three models are used to organize those panels. Many agencies still have their own hearing officers, but others have a central agency that makes recommendations or makes final decisions; the agencies still have the review power to finalize those decisions. The third model is more like an administrative court in which the central hearing office appeals agency as an intermediary between the agency and the judicial branch.

			Purpose of a centralized panel. focus is on improving impartiality of decision-making, the professionalism or the core of judges for hearing officers, and the efficiency of having full-time people doing this job rather than a maze of different, sometimes part-time, hearing officers throughout the executive branch. MR. HEIN stated that the focus is on having a more professional group of hearing officers that establish uniform rules so that all agencies adjudications are governed by the same rules, so that the attorneys treat them in the same fashion regardless of the agency. He said that there may be exceptions because of the nature of some hearings. MR. HEIN indicated that of the half of the states which have adopted this policy, none of them have abandoned this concept. He said the state could have fewer court cases because there would be a well-established administrative record to take to court. MR. HEIN said that the state could also build in alternative dispute resolution procedures which could be used where appropriate across the board and there are a number of benefits to it.
HJR 18(Am)	3/16/99	House State Affairs Second Hearing	CS FOR HOUSE JOINT RESOLUTION NO. 18(STA) 01 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:* Section 1. Article III, Constitution of the State of Alaska, is amended by adding a new section to read:

			06 Section 28. Office of Administrative Hearings.(a) The power to conduct administrative law hearings and to render final agency decisions is vested in an office of administrative hearings. The jurisdiction of the office shall be prescribed by law. (b) The chief administrative law judge is the head of the office of administrative hearings. The chief administrative law judge shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The chief administrative law judge serves a term of five years and may be reappointed and reconfirmed to serve more than one term. Sec. 2.Article XV, Constitution of the State of Alaska, is amended by adding a new section to read: Section 3. Application of Amendment Relating to Administrative Hearings. The 2000 amendment relating to administrative hearings made in Section 28 of Article III applies only to administrative hearings begun on or after January 1, 05 2002. Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.
			Representative Ogan testified in favor of the Committee Substitute. The Department of Law, CommercialFair Business Section Attorney continued to oppose it. REPRESENTATIVE OGAN mentioned that the Administration repeatedly said that the administrative hearing law judges would thwart the ability of the Administration to set policy. He said that the

	policy is set by regulation and that administrative law judges will interpret that legislation very much like the Alaska Supreme Court interprets Alaska statutes. REPRESENTATIVE OGAN referred to the comment that HJR 18 also creates the fourth branch of government. He indicated that the fourth branch of government is the bureaucracy . Representative Ogan further stated that, "There's no separation of powers, the due process is cloudy at best, and I feel very strongly that this approach would at least create some fairness in due process to that fourth branch of government that the legislature has created through statute.
	Representative Kertulla objection. HJR 18 is creating another huge bureaucracy that has no sidebars on it. She further stated, "I don't think that the resolution says that you've got the administrative law judges deciding regulations and I think if you did you'd have another separation of powers issue. ... You're going to cost more money, you're going to create another bureaucracy."
	Representative Ogan reply. REPRESENTATIVE COGHILL referred to experiences with families that went through horrific circumstances when the agencies were the authority over them. Quite often the people in the "hot-seat" have felt that they are outside the loop and had no recourse and became frustrated with the whole process. Representative Coghill stated

	that, "But their life was in the hands of these people who were almost in a closed loop even though they were supposed to be independent of each other. And it's so frustrating when it's your child who might be taken away based on a misunderstanding of the charge and you can't break that loop. And I think this would hold an accountability to the agency and kind of separate that loop a little bit." REPRESENTATIVE OGAN mentioned that Dave Stancliff, Legislative Assistant to Representative Ogan, spoke with Ms. Cook (Director, Legal and Research Division, Legislative Affairs Agency), Ed Hein (former legal drafter and now administrative a law judge for the federal government) and Ed Felder (Colorado's chief administrative law judge who is a nationally recognized expert on central panels), and all agreed that the wording of this act [HJR 18] does not prohibit exemptions for certain agencies. The intent is to allow the legislature to have some latitude when the statutes are drafted on who is in and who is out because there are some inherent conflicts with the judicial council. He said he could recognize that that could be a separation of powers and it would be appropriate if they weren't included. REPRESENTATIVE OGAN further stated that all the parties agreed that HJR 18 doesn't create a fourth branch of government and that it preempts the executives' ability to carry out policy because the Administration has the ability to write policy in the regulation. He said they also do not agree that the language interferes with the judicial branch,

			especially if we have the latitude to exclude the judicial council.
			CS for HJR18 reported out of committee. REPRESENTATIVE KERTTULA objected. Upon a roll call vote, Representatives Coghill, Whitaker, James and Ogan voted in support of moving HJR 18. Representatives Smalley and Kerttula voted against it. Therefore, CSHJR 18(STA) passed by a vote of 4-2.
HJR18(Am)	3/24/99	House Judiciary	Opposition by all testifying in agencies to HJR 18. DNR, Division of Mining, Deputy Commissioner DOR, Division of Occupational Licensing, Division of Insurance, Law (with a new discussion of impropriety of referring to individuals as judges, 'CHIEF ADMINISTRATIVE LAW JUDGE'" is a new concept for Alaska, as Alaska has always used hearing officers, with the understanding that this term is meant to refer to a hearing that is much less formal than an administrative law judge. Administrative law judges are more likely to use hearing chambers and wear robes, and they are referred to as "judge" and "your honor." Alaska administrative proceedings are intended to be less threatening to the participants. In addition, this language contains no provision for removal of an administrative law judge for cause which would certainly be an issue in cases of misconduct or gross incompetence), Workers Compensation.

	Law continues in its opposition, but for a new reason. REPRESENTATIVE OGAN said that it was his understanding of the law that a record of legislative intent could be built, indicating that the legislature can decide who is in and out of this provision. MS. WILLIAMS explained Alaska finds that legislative intent is hard to determine and cannot be determined by the statement of a person, because the entire legislature votes on a bill. She pointed out that there is nothing concrete that says what legislative intent is, especially in this case, when a constitutional amendment would need to be voted on by the people. She suggested that it would be preferable if the language were changed to expressly state what is intended, rather than having a side-record in which you attempt to explain what it means.
	Representative Ogan final remark before bill is held over. REPRESENTATIVE OGAN said, "That is exactly the point of this bill." He emphasized that the boards would become regulatory rather than adjudicatory. He quoted Winston Churchill as stating "when you have a lack of separation of powers between the judiciary and executive, you have a tyranny." While he was not implying that the boards are tyrannical, he did liken the present situation to "the fox watching the henhouse."

HJR 18 (Am)	3.29.99	Second Judiciary Hearing	TERESA WILLIAMS, Assistant Attorney General, Fair Business Practices Section, Civil Division. She replied the citation is 938 P. 2d 1091.
			Ed Hein again testifies in favor of the amendment. Hein stated that HJR 18 is not a new idea. One-half of the states have a central panel of administrative law judges and hearing officers. This type of proposal, in various forms, has been before the legislature. He cited last year and about 14 to 15 years ago. But, this resolution is new in that it would establish a central panel by constitutional amendment rather than by statute. Alaska would be the first state to do so. There are at least three good reasons for placing this office in the constitution. He cited the following. First, centralizing the function of administrative adjudication is an important change in the structure of the executive branch, and is a subject of constitutional dimension; Second, a constitutional amendment would give the public a direct voice on this issue, and it would not be subject to the Governor's veto; and Third, approval by voters would provide a clear public mandate and deadline for both the legislature and the Administration to take action.
			R. HEIN stated that previous efforts to create a central panel have been sidetracked by fights over the administrative details. That is to say that they aren't important. But, this resolution focuses the debate on the main question: Is a central office of administrative hearings a good idea for Alaska? Will it improve

			the fairness, efficiency and cost-effectiveness of administrative hearings in Alaska? Many witnesses from individual agencies have come before the legislature expressing fears and concerns of how a centralized administrative hearings office would affect their agencies when much of that testimony is premature. The shape of the proposed central panel would not be determined until the legislature considers implementing legislation. The purposes of the legislation are to centralize the administrative adjudicative function of the executive branch in a single agency; to create a core of professional, independent hearing officers who would provide the public with both the reality and appearance of impartial, fair administrative hearings; to eliminate costly and inefficient duplication of hearing officers and support staff positions in the executive branch; and to provide a uniform adjudication process and set of rules for all who have to participate in administrative hearings. This legislation is not intended to limit the legislature's power to create new quasi-judicial agencies in addition to the proposed office of administrative hearings, nor is it intended to prevent the legislature from continuing the adjudication function of selected existing boards and commissions, if the legislature so chooses. It is not intended to impinge on the adjudicatory functions of the judicial or legislative branch, or to create a fourth branch of government. It is not intended to disrupt the ability of the governor and heads of agencies to carry out public policy. The

			head of the office of administrative hearings would be appointed by the governor, and the office would be within the executive branch. A central hearings office would actually relieve executive agencies and heads from some political pressures to decide cases a certain way.
			Responding to the “judge” concern. MR. HEIN stated another objection raised was that the title administrative law judge and chief administrative law judge are too formal, and, Alaska has purposely not adopted the administrative law judge style of hearing officer because it would be too formal. That hearing officers would wear robes, and would be referred to as "Judge" and "Your Honor". He has never found that a title makes any difference, and how an individual hearing officer acts is up to that officer. In addition, there are some positions in the state that have the title administrative law judge. One was created for revenue hearings.
			Fear of retribution. Therefore, on behalf of all the state hearing officers who do not feel free to speak out publicly, either in support or opposition, he knows of specific examples where hearing officers have been told pointedly that they are not to be objective and impartial because they work for an agency. There have been instances in which executive branch supervisors have told hearing officers how individual cases are to be decided. According to

			horror stories from hearing officers from many different states, it is not uncommon to hear that hearing officers within an agency are subject to pressures from their supervisors to decide cases a certain way. This reflects a disregard for the basic principles of due processes, fair hearings and impartial hearing officers. As a hearing officer himself, it is exceptionally important that hearing officers are not placed in a position of jeopardizing their career or job in order to do what they think is right in a given case. The public also has a right to expect that a hearing officer is going to render a fair decision, otherwise the parties, public and attorneys come to the agencies as a matter of going through the motions and do not expect real justice. This legislation can go a long way towards remedying those types of problems. He is not saying that Alaska's administrative process is particularly worse than other states, but rather that this is an inherent problem common in most states. The result of a central office would be to have more impartial, professional, and better trained decision makers, as well as better decisions that would ultimately benefit the public.
			On Constitutional Am. CHAIRMAN KOTT asked Mr. Hein why the other 49 states, of which one-half have this type of process, have not gone to a constitutional amendment. MR. HEIN replied he really doesn't know why it hasn't been done in other states. This is the first time that he is aware of this type

			of approach. There hasn't been any objection to it as far as he can tell; there just isn't any literature on it. He has talked to a few people who are the heads of central panels in other states and they think it is a wonderful idea. "Maybe they just didn't think of it before, I don't know." He feels that this is the right approach. It doesn't sully the constitution or is inconsistent with other types of provisions in the constitution. "I will admit, however, that by placing this agency within the constitution, by creating it by constitutional amendment, you are making a commitment to the agency. You're saying, 'we're not going to be able to turnaround in a couple of years and pass a bill to abolish it.' You have control over funding, obviously, and you'll have control over the--the legislation that sets up the details and the structure of it, and you'll have continuing oversight over the agency." It is an important change in the way the state does business and putting it in the constitution is a way to make it permanent and to give the public a direct voice.
			Why a constitutional am? PRESENTATIVE CROFT said he has substantial worries that it would limit the legislature's power. If the legislature has the complete power to create a central power, he asked Mr. Hein wouldn't that cause unintended problems? MR. HEIN replied there are only problems if the legislature actually does something. The legislature has never acted on this

			issue. The bill that came before the legislature last year died in subcommittee. The bill introduced years ago never saw the light of day because there wasn't the will on the part of the Administration or perhaps the legislature at the time to take action. Objections to a 200-page bill were very easy to find, and it was very easy to stop. "And, without some public mandate to do it, and some time limit to get it done, as this would do if it passes, I don't think the legislature will approve any legislation on a central panel. Now, show me I'm wrong." This legislation asks the legislature to make a commitment to not only create an agency and accept the basic concept, but to put it before the public to make the final. It gives the legislature marching orders and direction. In essence, by approving the resolution, the legislature is agreeing to put itself under discipline; and, frankly, that is a big part of this.
			Ongoing objection, primarily from D. members of Committee to need for constitutional am.
			Would OAH become a 4th branch of government? MR. HEIN replied when he was in school the fourth branch of government was the press. The administrative branch is sometimes referred to as the fourth branch of government. It was not originally part of the U.S. Constitution, and it is not spelled out very well in the state constitution. There is quite a lot of latitude for the legislature to create an administrative branch by establishing as many boards and commissions as it so chooses. The

			resolution is not talking about a separate branch of government; it is talking about the legislature asserting its power to tell the executive branch that it would like this function centralized within the executive branch. It doesn't take it outside of the executive branch. A governor's appointee heads the office of administrative hearings. In addition, the legislature is not required to put everything in this central agency. It wouldn't make sense to do that ultimately. It really challenges the executive and legislative branches to decide what is their paradigm for administrative hearings. Are administrative hearing officers simply instruments of executive agency policies? Are they there as just one more staff member to further that particular agency's stated and unstated, written and unwritten policies? Or, are they there as a middleman between the public and government who don't have a pride of authorship in the regulations or an investment in them? The public wants that. It would be refreshing for the public to go before a hearing officer and know that this person is not having informal, ex parte conversations on a regular basis with people in the agency. He noted that the executive branch is a microcosm of the three branches. It was designed that way and has been that way for every state and the federal government for a long time now, at least since the New Deal. There are quasi-legislative and quasi-judicial functions within the administrative branch. The question is, can the decision makers become overwhelmed with pressures from their own agencies to interfere with the outcome of

			a particular case? He has heard executive branch supervisors and people express concern about the quality of hearing officers in other agencies. They are concerned that the independent hearing officers would not decide a case the way that they would want to. If there is concern about the quality and competency of a hearing officer, the implementing legislation can specify the standards, review the office's budget and oversight - the traditional functions that the legislature performs with respect to the executive branch. MR. HEIN continued. He thinks that it is obvious, when creating a central panel, that the agencies will have to live with the possibility that they could lose. That's just the way it is, but it is still within the executive branch. He doesn't see it as a separate branch.
			Beginning discussions of not final agency decision for boards and commissions. REPRESENTATIVE ROKEBERG stated he is concerned with the language, "final agency decisions" and suggested adding the language, "...or recommendations to boards and commissions...". "It would change the focus here from a final agency decision by the administrative law which would relate--that'd be okay because it'd have to do with the agency, but then the recommendations to the boards and commissions could be recommendations to leave the final power up to

			the duly constituted boards and commissions which are in the constitution and are established by law. That would seem to be consistent with the ability to prescribe by law or by--have the legislature pick and choose. Because the way this is drafted now, I don't think they could pick and choose, in my opinion. Or, if they can, this ain't gonna pass because the public's not going to like it." There is already poison in the water hole by alienating the boards and commissions which need to be dealt with from a political sense. He also thinks that there is merit to allow them to at least have a role. Right now, they use hearing officers to make comments and decisions, but the board or commission actually makes disciplinary decisions based on recommendations from the hearing officers. One of the reasons that he likes the bill is because the attorneys from the Department of Law don't get around to taking up some of the matters before agencies because they are a low priority. This bill addresses a huge need. Nevertheless, there needs to be some more legal words in the resolution to give the legislature discretion to prescribe more laws.
			Continued (D.) objection. REPRESENTATIVE KERTTULA commented that this piece of legislation leads to so many unintended consequences. It's one of the broadest, more unthinking pieces of legislation that she has seen this session. She has worked with many, many administrative agencies and hearing officers, and her experiences have been vastly different than the fears expressed by Mr. Hein and others. She

			thinks that at the kernel of the issue is a grain of truth - the fear of unfairness. That kernel of truth deserves some looking at and flushing out. Many agencies don't use the APA (Administrative Procedure Act), for example, which might be an avenue to use to clean up some of this concern. But, to take this type of broad-brush approach, when the legislature couldn't enact a bill with specifics last year, is unbelievable. . Rep. Ogan concluding remarks. it seems that a lot of the discussion is about who would have the last say. He submits that a central panel, without a vested interest in covering up something, would be the best one to make the final decisions. Although the boards would lose their quasi-judicial authority, they could certainly have hearings and make recommendations to the administrative law judge. It is more appropriate than the other way around, otherwise there is another layer of bureaucracy and more hoops for the public to jump through. If this bill dies, in his opinion, the Administration will not come to the table. He introduced the bill this year because two years ago he tried and the Administration ran interference every step of the way. I honestly believe that with every fabric of my being, cause I've put a lot of blood, sweat and tears into working on this two years ago, and just had hurdle after hurdle put up. It wasn't a linear process; it was a circular process. We'd all--we'd jump through these hurdles then they'd put up some more. And, so, this forces this issue to be resolved. And--and--I think, if there's

			problem with some of the language--you'd like to have a little bit more legislative authority, I think that can be adjusted."
			Rokeberg final concern. Said he supports the legislation, but has concerns about how it would work practically. Right now, there are administrative hearings in the boards and commissions, and there are administrative hearing officers within the departments that adjudicate grievances. The commissioners then make the final determination on the punishment. For example, the APUC (Alaska Public Utilities Commission) has a hearing officer, but the full commission makes the final decision. He is trying to make sure that there is flexibility, and that the legislature can by statute give guidance.
			Final Action. CHAIRMAN KOTT assigned the bill to a subcommittee consisting of Representative Murkowski as chair, Representatives Green and Kerttula. The intent is not to bury the bill, but to deal with some of the issues discussed today. He cited working on the nexus between the first two sentences in Section 1(a), the issue of removing a judge for cause, and tying a date to mandate the legislature to act.
HJR 18(Am)New.VersionI under discussion.	4/28/99	House Judiciary	Following attempt at amending resolution approach, the resolution dies in committee, absent votes to report it out. Hope that a statutory change in the future will still be possible now that the Administration is more engaged. Discussion below.

	HJR 18 - CONST. AM: ADMINISTRATIVE HEARINGS REPRESENTATIVE MURKOWSKI said the subcommittee met and made some changes to the resolution. She indicated that Subsection C was added on page 1, beginning on line 14, and reads as follows: The legislature may exempt any agency of the State from (a) of this section by law. REPRESENTATIVE MURKOWSKI further stated that this was added to address the concerns that were in the initial resolution where it appeared that the legislature, in fact, did not have the authority to decide who may or may not be in or out with regards to the full centralized office of administrative hearings. She said there had been some discussion over language that would have specifically exempted boards and commissions. She feels, as do those on the subcommittee, that this legislation is far from perfect, and that it needs review during the interim. REPRESENTATIVE ROKEBERG stated that he is satisfied with the stipulation, regarding an agency and the ability to include or exclude, to include the boards and the commissions. He believes this will help the success of this resolution. REPRESENTATIVE CROFT asked, "What change does this make in our power to do anything in this area?"

	REPRESENTATIVE JAMES stated that she was happy to see the inclusion of Subsection C because she feels, without it, the issue is dead. She said, "I think this is probably one of the best things that we could do. It couldn't have been done by statute, but we couldn't So, I think ... in the regulation process, where the regulations are written by the agency, they are enforced by the agency, and, if you want to appeal any of those actions, you appeal to the same agency. That is not democracy. So, I think this is a really good plan to have innocent, third-party decision-makers in the appeal process." REPRESENTATIVE ROKEBERG stated that he would also prefer to have this done by statute. He said, "But that would require that the administration would cooperate (in disc.)." REPRESENTATIVE CROFT said no and stated, "We have a veto-proof majority. We can do it anytime we want." REPRESENTATIVE ROKEBERG indicated that it is his preference that he administration and legislature work jointly on this. He thinks it is an excellent model for reducing costs and providing better service to the people of Alaska. He made a motion to adopt the proposed committee substitute [Version I, Cook, 4/27/99]. There being no objection, it was so ordered. REPRESENTATIVE ROKEBERG made a motion to move Version I, with

	individual recommendations and zero fiscal notes, out of the committee. CHAIRMAN KOTT objected, noting that they did not have the votes. He asked Representative Rokeberg to withdraw his motion. . CHAIRMAN KOTT asked Representative Murkowski to comment on her concerns regarding the resolution. REPRESENTATIVE MURKOWSKI stated that it is her understanding that the attempt the sponsor made, in terms of getting the resolution through statutorily, was rather tortuous, and ended up with a product that was not feasible. She noted that there was some concern expressed that it cannot be done statutorily because there was some opposition from those within the department and the administration. Her indication is that the administration recognize the benefits and merits of pursuing this and are willing to work with the sponsor and subcommittee to make it happen. REPRESENTATIVE JAMES stated that she appreciates what Representative Murkowski said. She believes that if the administration cooperated, there is no reason that this could not be done by statute. She indicated that she is encouraged by the tone reported from the administration by Representative Murkowski.

	She thinks that maybe having a constitutional amendment has made them look a little harder, or maybe they have been persuaded in some other way. CHAIRMAN KOTT noted that from his discussion with the administration it was suggested that they were more than willing to sit down and craft some legislation that would attempt to satisfy the intent of the resolution. He is concerned about "entrenching our Constitution." He stated that a statute would have to be passed to make this work, and he does not think putting the cart before the horse is the way to go. It is his intent to hold the resolution in the committee and work on the resolution during the interim. He commented that it is not the intent to let the resolution sit in committee without subsequent legislation going forward. REPRESENTATIVE JAMES stated that she would be willing to offer her expertise on this issue. CHAIRMAN KOTT indicated that he does not want anyone in the administration to think that the resolution is "D.O.A" [dead on arrival] to this committee. He stated that he would like to have one shot to work on the resolution in order to give it a legitimate chance to pass. REPRESENTATIVE CROFT said, "I was here when the statutory version

	by the same sponsor as this resolution came before us. And, I mean, it was this committee, in its prior form, saw enough problems with it that we didn't think it should go forward. It has serious flaws that the sponsor never rectified, never corrected. I mean, the administration just pointed out the problems that were in the bill, and that's their job. . CHAIRMAN KOTT added that he also applauds Representative Ogan's attempt. He believes it is a great concept that needs to be furthered. REPRESENTATIVE JAMES agrees that this is the way to go. She feels without cooperation and help from the administration, that changes cannot be made. She would also like to fit dispute resolution into the process in order to have it as the first opportunity, and, if that does not resolve anything, then have it go on to a hearing officer. She stated that her goal is to create a better relationship between the agencies and the public, and what the public does. CHAIRMAN KOTT stated that it would be taken I asked the sponsor then and I'll ask him again this, 'What questions hasn't the administration, ... or whoever, answered on behalf?' Last year when I asked him that, it was, 'None, but we just don't think they like it.' Of course they didn't like it. We didn't like it. It didn't work, but that's not their fault. I guess he wanted them to rewrite the bill,

			... They didn't do that, but they did say, I mean, clearly on the record, where the problems areas were, and what to do with it. ... I will ask again, 'What questions haven't been answered?' I think they have been, and I think it's just, it's a very difficult, time-consuming area to do right, and it has not been done right to date." REPRESENTATIVE JAMES stated that the best way to provide a working piece of legislation is for "us to sit on the committee, and have the administration out there, and we have this interchange." She indicated that this did not happen last year, and that this year the administration was not interested in having anything move forward. She feels that if there is a change of heart now, she is excited. CHAIRMAN KOTT indicated that the bill would be held over for further consideration. This was the last hearing for HJR 18. No bill was filed over the interim to establish a centralized panel.
End of 21st Legislature			
22nd Legislature (2001 – 2002)			
No bill or resolution is filed, including by Representative Ogan			
End of 22nd Legislature			
23rd Legislature (2003 – 2004)			
Legislature & Bill	Date	Event	Concerns Addressed
SB203A	4/29/03	Introduction of SB203 (Senate Rules by Request) Scott Ogan is now also a Senator; Frank Murkowski is now Governor Read the First Time	Bill is entitled "An act related to certain administrative hearings: and establishing the office of administrative hearings, and relating to that office."

		Referred to State Affairs, Judiciary, and Finance Committees	The original bill is 51 pages long. The uncodified statement of legislative intent states "the purpose of this Act is to increase the separation between the adjudicatory functions of executive branch agencies and the agencies' s investigatory, prosecutory, and policy-making functions." The bill creates an "independent office of administrative hearings" within DOA led by a chief administrative hearing officer who must be an Alaska licensed attorney. The chief is Governor appointed and does not require legislative confirmation but good cause termination is permitted. The current statutory obligations of the chief are codified in the bill. The office is given mandatory jurisdiction, largely over matters subject to the APA. Discretionary referrals are also permitted. Much of the current statute is included in the bill, including establishing a hearing officer code of conduct, and regulations for administrative adjudications that trump other agency regulations unless an operable statute provides otherwise. The bill codifies proposed decision but not the PFA process (not added until second to last hearing without any discussion), permits 90 days between hearing request and proposed decision, and limits a final decision maker's options. There is no proposal for action procedure. Relating statutes of mandatory jurisdiction cases are also amended.
SB203B	5/6/03	First State Affairs Hearing	DAVE STANCLIFF, staff to Senator Gene Therriault, stated the current administration would like to separate the individuals or agencies that adjudicate regulations and those that promulgate regulations. In Alaska there are a number or types of hearing officers (adjudicators) and hearing examiners and SB 203 deals with adjudicators that make the decisions when someone contests administrative law. Other

			states have found that by providing protection, separation and autonomy for their adjudicators, the work quality and decisional processes improve significantly. The sponsor has worked extensively with the administration to develop a system of centralized hearing officers that is cost effective and minimally disruptive for existing employees. SB 203 establishes that system within the Department of Administration. RCA, workers compensation and tariff functions were excluded due to the need for high expertise or long-term institutional knowledge. Included was the option for commissioners to assign final decision-making authorities to an adjudicator. However, the new rules that will likely be based on the judicial code of conduct apply to all hearing officers in the state, even those that don't fall within the central panel. Adjudicator decisions would be final unless the commissioner determines that some other action should be taken. In such instances, the commissioner would be required to take action within 30 days and substantiate the facts in the public record. For the first time the hearing record refers to the Alaska Association of Administrative Law Judges and Hearing Officers examined the bill and had seven recommendations. He noted the recommendations were listed in a blank committee substitute (CS). CHAIR GARY STEVENS asked for a motion to adopt the CS as the working document. The seven recommended changes primarily are clarifications of related statutes, including the APA.
			Key to the Administration. Cost Effectiveness. MR. STANCLIFF emphasized that part of the reason for selecting the proposed model was because it is cost effective. The bill includes a liberal transition phrase to allow the

	administration to proceed deliberately and not incur heavy costs. That would be accomplished by having existing agency hearing officers and their support staff transfer to the central location. He opined the increased efficiencies would overcome associated startup costs.
	Unlike prior years, public comment in support of the legislation included the Alaska State Chamber of Commerce and representatives from impacted State Departments and Divisions. Testifying in favor of SB 203, Division of Occupational Licensing (prior Director opposed the bill), Andrew Hemenway with DOA (who drafted the legislation), Kevin Jardell, Deputy Commissioner, DOA
	Points raised in favor of the bill and why the change of heart. Hemenway explained that they removed selected functions such as RCA, the worker compensation board and fisheries commission from consideration because they have existing hearing officer panels and therefore more flexibility in handling caseloads. Beyond that, they looked at the range of decisions that hearing officers make to determine whether or not the decisions were policy oriented or fact oriented. The latter seemed to be more appropriate to include in the central panel system and the policy oriented decisions were initially left out.
	Final Decision authority no longer in place, unless delegated. Now. the hearing officer would issue the proposed decision, it would go to the agency for adoption and enforcement would be up to the agency. The hearing officers have no role in the investigation or enforcement.
	Regarding the hearing officers. MR. HEMENWAY said the bill would formalize the current practice that hearing officers are attorneys with two years

	practice for APA matters. With hearing officers in a central panel, an in-house training process could be created that might not be financially feasible in a single agency
	Kevin Jardell reports the govt has had success with the independent hearing officer for tax appeals that works largely with oil and gas tax issues. Industry believes they are treated more fairly at hearings even though the win loss record has not changed. He said they look forward to the same success with the proposed centralized panel
	MR. JARDELL replied they want the system to be expansive enough to ensure that it has a chance to work, but small enough to be manageable. They hope to continue to bring in agencies to increase efficiencies and not bring in agencies that are working well on their own.
	As to speed of resolution. MR. JARDELL said the timeline was 180 days at one time, but the attorney general (now supporting the legislation) suggested making it just 90 days. Some hearings are certainly more complicated in nature and take more time to develop the record. The concept in the bill is to address a majority of the cases, give the public a quick turnaround and if an agency needs a greater amount of time then do it through regulation and justify the need.
	MR. STANCLIFF noted that evidence from other states indicates that when the adjudication bar is high, more care is taken in the promulgation and enforcement of regulations
	Why within DOA? SENATOR GUESS commented she found it interesting that the Department of Administration was willing to assume the function and asked why the Department of Law wasn't selected. MR. STANCLIFF said they deferred to the national organization that created the model.

	MR. HEMENWAY pointed out the Department of Administration already has some legal functions and certain labor relations. The Department of Law is primarily a prosecutorial function of government and placing adjudication there might create the appearance of conflict. MR. STANCLIFF stated they were trying to keep the function in a neutral place
	To whom does the Chief report. SENATOR GUESS asked to whom the chief would report. MR. STANCLIFF replied the Legislature would review the budget of the new entity and the attorney general would review any complaints made against the chief administrative hearing officer. That's it.
	SENATOR GUESS asked if there was a reason that the chief hearing officer wouldn't be approved by the Legislature. MR. STANCLIFF replied that although they opted for legislative approval initially, Tamara Cook advised it is a gray area and the Attorney General's Office determined it might stand a weak constitutional test. To avoid controversy, they removed the confirmation process
	Who has control of hearing officers to guarantee that neutrality. SENATOR GUESS expressed the following concerns with regard to future administrations: • The governor would have control over the chief, not the Legislature • Partially exempt employees serve at the pleasure of the governor MR. STANCLIFF replied they welcome creative suggestions and as the bill moves through the committee process, they are open to exploring different ideas. MR. HEMENWAY said the chief hearing officer is appointed for a fixed term, which gives some insulation from the political process while providing some accountability. Although hearing

	officers are exempt, they are entitled to the same protections any other state employee would have. If they are to be discharged, there must be a hearing and it must be for cause. The main impact of the exempt status is at hiring
	As to the Chief. MR. STANCLIFF replied the chief would determine areas of expertise, the workloads, and cross training needs. One of the major efforts of the job would be to determine how to efficiently work through the caseload. He admitted the key to success is to hire the right person for the job the first time around
	On final decision authority. SENATOR GUESS expressed concern about setting up a separate agency to conduct hearings and make rulings because there are many ways the agency could say they didn't agree with the decision. MR. STANCLIFF said that is addressed on page 8. They decided on the decisional process whereby the decision of the hearing officer stands if action isn't taken within 30 days. Page 8, line 24 might provide comfort in that it eliminates the temptation to make an arbitrary reversal of a hearing officers' decision. MR. HEMENWAY said that from the administration's policy point of view, it's very important that the final decision authority be retained with the final decision maker. The key is that the final decision maker is the person who is accountable to the executive branch and ultimately to the people. SENATOR GUESS asked if that means she doesn't have to worry about page 8, line 21 that says the agency may return the case to the hearing officer, take additional evidence or make additional findings. MR. STANCLIFF replied that this is largely the same language that is in existing law under the Administrative Procedures Act

			Requests for reconsideration. SENATOR GUESS asked if there is an appeal by either party before going to the court system. MR. STANCLIFF said that under most statutes there is the opportunity to request reconsideration.
			Distinction between Agency Decisions and Commissioner Decisions. SENATOR GUESS noted that agency is a term used throughout the bill while commissioner is the term used throughout the testimony. She asked whether they were synonymous. MR. STANCLIFF replied the buck with the agency ultimately stops at the commissioner's desk. SENATOR GUESS pointed out there is a difference between what happens within an agency and what happens at a commissioner level. MR. HEMENWAY said the hearing function is an agency function. The final decision maker is usually, but not always, the commissioner. The terminology that is used is to avoid identifying any individual because it could be any person within the agency who currently has the final decision making authority.
			Final Committee action. CHAIR GARY STEVENS announced he wanted to move the bill to the Judiciary Committee for consideration. SENATOR COWDERY made a motion to move CSSB 203(STA) and attached fiscal notes from committee with individual recommendations. There being no objection, it was so ordered. Legislative Session ends. Taken up again in 2004.
SB203B (SSTA CS)	1/30/04	Senate Judiciary First Hearing	SENATOR GENE THERRIAULT, sponsor, told members that the Senate Judiciary Committee held a few hearings on this subject last year. SB 203 is a complex piece of legislation. He has continued to discuss with the Murkowski Administration how to fashion and implement the legislation. He said his goal is to refresh members' memories on the legislation and to

			prepare members to consider another committee substitute (CS) in the next week. SENATOR THERRIAULT explained that the concept of a panel of administrative law judges has been in the legislative process for a number of years. Senator Ogan worked on this issue for a number of years. The purpose of SB 203 is to separate the administrative adjudication process from the agencies that promulgate and enforce regulations. Currently, an agency writes regulations and that agency's in-house staff acts as the enforcer, judge and jury over the enforcement of the regulations. Quite often constituents have contacted legislators complaining that they are not getting a legitimate opportunity to question the fairness of regulations from the agency that wrote those regulations. SENATOR THERRIAULT pointed out the concept of SB 203 is to form a centralized panel of hearing officers within the Department of Administration (DOA) to provide an arm's length between the agency and the person acting as judge and jury. The federal government and a number of states use this approach with good results. He said it is not his intent to create a centralized pool and lose expertise. However, the staff with adjudicatory functions in some agencies have extra time. His thought is to have two or three hearing officers specialize in certain issues and be assigned to a department. They would also be cross trained so that if they have extra time they could help out with the caseload in another agency. He believes that will enable the state to better utilize the staff it has and increase confidence among Alaskans that they are getting a fair shake. In addition, it should lead to better regulations because

			agencies will know that the regulations they write will be adjudicated by a truly independent person who is not pressured to back the department. SENATOR THERRIAULT told members that a blank committee substitute was brought before the committee last year but, rather than propose one more [at this time], he is attempting to incorporate input from the departments into one document. He noted that the testimony the committee will hear today will provide members with an overview and will not address any particular version
			Sen. Ogan testifies. SENATOR OGAN told members that several years ago, he and staff worked to move a hearing officer out of what he recalled to be the Department of Revenue (DOR) because of the industry's SENATE JUD COMMITTEE -12- January 30, 2004 perception [of an unfair system]. He said the change worked well.
			Sen. Therriault and his staff continue to work with the Administration that identified 25 questions they are still working through. I want to state for the record that we have worked with people both inside and outside the process. We've worked with hearing officers, we've worked with other ALJs and, on February 3rd ... there is an expert panel assembled by the state Association of Administrative Law Judges who are going to discuss this piece of legislation. There's quite a bit of interest in it, it's sort of a new model. And they're going to be available on-line in the Terry Miller building from noon to 2. It's not a legislatively convened meeting but we're going to be able to listen to what they have to say about, first of all, how their states implemented and constructed their model, how it compares to

	ours, and hopefully they'll warn us on some of the things to avoid and some of the things to try to do. So I want to make members and staff to members aware of that meeting. They also heard from Alaska Regional Hospital, which has gone through years of protracted administrative agency adjudications and will tell its horror story.
	MR. DAN HOUGHTON, Chief Financial Officer at Alaska Regional Hospital testifies on Medicaid rate appeal first filed in 1993 that did not reach a first decision until 2000 and then final Commissioner review in 2001 (Commissioner reversed hearing officer decision). Succeeded in appeal in Superior Court, remanded to commissioner who remanded to hearing officer, still waiting for oral argument, scheduled for March 2004. MR. HOUGHTON said he has calculated about $2 million to $2.5 million in interest. He repeated his support of the legislation, as the hospital board believes it will aid the process that the Alaska Regional Hospital and other facilities have experienced. He maintained that a centralized hearing officer panel will provide efficiency found in a group. The larger body will allow the proceedings to continue regardless of personal issues that may arise with individual hearing officers. Argument of industry, Best shot for impartial review through the hearing officer. Look, if we're going to have this expertise argument constantly before us that the agencies put up, and we're going to have commissioners who have perhaps ex parte contact making our decisions, and we're going to have courts upholding those decisions based on the rule of necessity, the only avenue for our citizenry and the people who represent them to have a fair and impartial hearing, is through a

	more impartial adjudicator. That, as much as anything, has driven the reform in other states
	Regarding ARH story. MR. STANCLIFF said he is not intimately familiar with the Alaska Regional Hospital case so he does not know if that case is tinged with that problem. He asked members to consider that those problems are being factored into the discussion to change to independent adjudicators and create time limits on the process for seeking additional relief.
	Another example. SENATOR OGAN asked Mr. Stancliff to recount for committee members the meeting between a hearing officer and a constituent when Senator Ogan employed him, MR. STANCLIFF told members when a constituent first came to then Representative Ogan's office, as staff he would explain that if an issue is in some form of adjudication or under legal proceedings, it is not always best or proper for Senator Ogan to get involved . In this case, the constituent asked Mr. Stancliff to attend a meeting with agency staff to verify whether the horror stories he described are true. MR. STANCLIFF said he attended the meeting and the constituent asked questions that he thought Mr. Stancliff should hear the answers to. At one point, an agency representative warned him to be careful or the agency would be looking into other matters. He was speechless. That demonstrated to him the agency's level of impunity. The constituent's goal was to get out of the regulation process and get to court. That did ultimately happen but it took years. The agency called the constituent's bonding agent and caused him to lose his bond. The constituent spent millions to get through the administrative process to get to court to get a decision

			Regarding Commissioner's overturning hearing officer decisions. MR. STANCLIFF told committee members they may want to consider whether the way the courts give deference based on the record and expertise versus the commissioner's ability to summarily overturn a decision should be changed. He pointed out that some commissioners have petitioned to continue to have that authority. SB 203 splits the difference down the middle: the commissioners would still have the ability to overturn, but the decision must be based on the record, factual and evidential, not simply on opinion. He suggested the committee might want to look at changing the deference if that language is removed. SENATOR THERRIAULT said as a result of conversations with the Department of Law, he believes the CS will say the commissioner still has the power to overrule, but only on a certain basis, and the commissioner will have to produce a written finding. The Department of Law supports that approach because when the commissioner overturns a hearing officer and no written finding exists, the Department of Law has to support the commissioner's action in court with no paper trail.
			Regarding expected CS; CHAIR SEEKINS announced that the committee would hold SB 203 and await the new CS. SENATOR THERRIAULT informed members that Mr. Stancliff would spend time with individual members as soon as the new CS is prepared. He pointed out that the bill is complex and dry but makes big changes and that he has been working with the administration on the successful implementation of this bill

SB203C(SJud CS)	2/9/04	Second Judiciary Hearing	SENATOR GENE THERRIAULT, sponsor of SB 203, told members that the committee substitute (CS) [version B] addresses the many concerns of the state agencies. The purpose of SB 203 is to implement a new system for adjudications and hearing officers to make them consistent across statutes as much as possible. He noted this bill is not a perfect fit to all areas of state government. However, knowing that people resist change, the bill has been scaled back so that it now establishes a pilot project. He said the common goal, in working with the Murkowski Administration, is to achieve a seamless transition.
			SENATOR THERRIAULT said those existing administrative hearing jurisdictions that do not fit well at this time were removed from version B. Those jurisdictions may, over time, be brought into the new system by future legislative action. He explained that the main source of tension involved whether the existing rules and regulations would apply under the central panel reform, or whether new regulations yet to be developed by the chief hearing officer will control the process. He said to address the concerns about agency expertise, version B allows agency representatives to participate at hearings under conditions set by the chief hearing officer. To address the concern about maintaining agency power over policy, version B keeps the central panel decisions as non-binding within certain timelines and conditions. In areas of conflict with federal law, version B authorizes the administration to follow federal guidelines where required. In addition, at the request of the administration, the definition of a hearing officer was removed and replaced with a more broad description of a quasi-judicial hearing function

	SENATOR THERRIAULT told members that the length of the bill has decreased from about 50 to 39 pages. He asked that Mr. Stancliff explain the details. MR. DAVE STANCLIFF, staff to the Administrative Regulation Review Committee (ARRC) and to Senator Therriault, said the good news is that the fundamental applications and structure in version B are unchanged. The major changes made in the CS were requested by the administration and several concerned commissioners who like the existing process or are in the process of making reforms to their hearing processes and want the opportunity to implement them. Therefore, 12 of the jurisdictions listed in the Senate State Affairs CS were removed from version B. In addition, the Department of Environmental Conservation's (DEC) emergency authority and emergency statutes that are time sensitive and deal with environmental hazards were exempted and the general DEC hearing functions will not fall under the central panel for a grace period of two years. After two years, if DEC's in-house reforms are working well, it could make a case to the legislature for a permanent exemption. MR. STANCLIFF said the Department of Natural Resources' (DNR) concerns were addressed by removing DNR from the bill. Version B is a highly polished model; one that will not be too costly to implement. It has a very liberal transition period, requested by the administration. The tension that Senator Therriault referred to, between the Administrative Procedures Act (APA) and the model, is not new. That tension exists simply because not every agency conducts its hearings in the same way and not every agency conducts its hearings under the APA. Those tensions are

	inherent in any process that is not consistent from top to bottom. He said the premise of this legislation was to build a model that over time would provide top to bottom consistency, but not to force the consistency in a way that would be too costly or would "train wreck" legitimate, ongoing hearing functions, MR. STANCLIFF pointed out that a panel of five experts from different states that assembled on February 3 was impressed with the provision in the bill that will make the hearing officer an administrative employee who will be appointed by the administration. That hearing officer will write regulations and expedite the necessary hearing process transformations. The five experts were a bit reluctant to give high accolades for the fact that final decision-making authority was not given to the central panel. The experts did note that even though the panel will not have final decision-making authority, the legislation requires the commissioner to meet a fairly high bar to reverse a decision. The reversal must be in writing so that if the case advances to court, a written record will be available. He pointed out the experts from the five states were very impressed with the fact that the model in version B is a culmination of all the best features of about 25 models adopted by other states
	Hemenway testifies. He and Stancliff identify the changes. • page 5, line 31 and page 6, line 1 - language states that this act does not create a right to a hearing that otherwise does not exist in law • page 6, lines 7-9 – language states that full-time hearing officers will be subject to AS 39.25.150 personnel rules - these

	positions will be partially exempt with the same protections under the personnel rules listed in paragraphs (7), (15) and (16 • page 6, lines 29-30, language says a person who enters into a contract to work as a hearing officer with the central panel will be subject to the same rules of ethics as a state hearing officer • Page 7, lines 24-27 - Sec. 44.21.555 contains a reimbursement agreement • Page 7, beginning on line 8 - Sec. 44.21.560 was rewritten to clarify how a resolution would occur when there is a conflict between regulations and existing statute and regulations adopted by the chief hearing office • Page 8, lines 13-14, address the confidentiality rule when case information and materials are shifted to the central panel • page 8, lines 16-21, allow, if an agency makes a case for expertise, the chief hearing officer to determine what level of participation is necessary • Page 9, lines 22-23, subsection (f) provides a 30 day time period for the commissioner to overturn a decision, and says if no action is taken, the decision becomes final • Page 10, lines 14-15, addresses any legitimate ongoing action within an agency and prevents the central panel

	from arbitrarily holding in abeyance what otherwise would be good public policy • Page 10, lines 24-25, say when federal requirements exist, they prevail • Page 10, line 28, contains a shorter definition of administrative hearing officer at the suggestion of the attorney general • Page 29, lines 7-12, reinstates the requirement that the attorney general approve contract service • Page 34 contains the provision that puts DEC back in after its two-year grace period - line 18 contains an exception for the DEC functions that are extremely time sensitive and are rarely used • Page 39, line 29, Section 71, contains the DEC 2-year exemption
	MR. HEMENWAY noted the start-up date is July of 2005, when the chief hearing officer could be hired. MR. STANCLIFF pointed out that version B addresses 85 to 90 percent of the administration's concerns. Addressing any of the remaining concerns would have diluted the reform to the point where it would not work as efficiently as needed. He said he hopes the committee supports this balanced approach
	SENATOR THERRIAULT said resistance is a natural reaction to any system change. He noted that DEC resisted fee changes several years ago but favored the changes after they were in effect for a year. He said he will continue to be sensitive to

	agency concerns but, hopefully, they will find that most of their concerns have been dealt with. He asked members to consider passing the CS from committee today so that the Finance Committee can address the fiscal aspects of the bill
	MR. STANCLIFF told members that the five-state expert panel said if the state wants to build a new model that garners respect, and participant qualifications are raised, it is important to change the title of hearing officer to administrative law judge. He suggested that would be an easy conceptual amendment to make. CHAIR SEEKINS asked the sponsor for his opinion of the suggestion. SENATOR THERRIAULT said he believes it has merit because it would highlight that this panel will have uniform standards and a heightened level of professionalism.
	MR. DAVID INGRAM told members he recently retired as a hearing officer for 24 years with the State of Alaska. He also taught administrative law and other legal courses at the University of Alaska Southeast for the last 20 years and has been on the executive committee of the administrative law section of the Alaska Bar Association for 19 years. He thanked Senator Therriault, Mr. Stancliff and Mr. Hemenway and all those involved in SB 203; he is fully supportive of its general thrust. He said anything that will help improve the level of professionalism in administrative adjudications in Alaska is a great idea. He has advocated for the creation of a central panel for many years and looks forward to the day when all hearing officers are removed from agency supervision and control. He believes the idea of a pilot project is a good idea.

	MR. INGRAM supported changing the title of hearing officer to administrative law judge. He attended the meeting of the five experts from other states and said that several of them noted a discernible change in the level of professionalism when the titles were changed in their states. He said that although it may seem like window dressing, it would mean a lot to the hearing officers to be referred to as administrative law judges. In addition, many titles are now used throughout the state agencies. MR. INGRAM offered the following suggestions, which he believes are very important. First, make all full-time hearing officers employed by the state subject to the Alaska Code of Judicial Conduct. The Supreme Court did a lot of work drafting and adopting that code for the "black robed" judges in the state. He said it does not contain anything unique to judges and would apply in equal force to administrative law judges. Adopting that code would eliminate the need to draft a new code, provide a code of conduct at the inception of the panel, and provide an instantaneous body of interpretive decisions to guide the hearing officers in interpreting the code. His second suggestion is to prohibit the practice of law by all full-time hearing officers employed by the state. He believes that as long as hearing officers are allowed to "moonlight," the state will not have a professional corps of administrative adjudicators. That activity has serious potential to conflict with one's performance of duties. He repeated that is already prohibited in the Alaska Code of Judicial Conduct. SENATOR OGAN asked if any conflicts surrounding private practice work are regulated

	so that an attorney would recuse himself. He said that the Alaska Bar Association holds attorneys to high standards regarding conflicts. MR. INGRAM said that is true but does not mean attorneys always declare conflicts. The other difficulty is that the extra work distracts them from their state duties. CHAIR SEEKINS asked Mr. Ingram if he is suggesting that fulltime hearing officers be prohibited from moonlighting as a lawyer but the prohibition would not apply to contract hearing officers. MR. INGRAM said that is correct. SENATOR OGAN expressed concern that only the attorneys who can't make a living on their own would apply. MR. INGRAM said there are many applicants for any vacant hearing officer position. His third suggestion was that all full-time hearing officers be prohibited from acting as an advisor or judge to another sovereign, such as another state, federal government or Native group MR. INGRAM said that he believes that all hearing officers would love to be more independent and be part of a central panel
	SENATOR OGAN said when he introduced similar legislation 6 years ago, a number of hearing officers privately gave him the "thumbs up" for a central panel. He then said the term "administrative law judge" is interesting because most people believe the legislature writes law. However, the administration writes regulations, which have the same force of law, and then enforce them and deal with adjudications. Therefore, what is supposed to be balanced by three branches is under one. He expressed concern that hearing officers are pressured to rule with a little bit of a bias toward the commissioner they work for.

	MR. INGRAM said was never told how to decide a case. He suspects he was given certain cases because he was likely to lean in a particular way. He believes the main danger is that hearing officers become friends with their co-workers and it is difficult to criticize the performance of people one works with and respects. He acknowledged that a good hearing officer can step back.
	SENATOR THERRIAULT said he clearly understands the reasons for Mr. Ingram's first suggestion, to change the titles of the hearing officers to administrative law judges. He asked if the central panel adopted the Alaska Code of Judicial Conduct, Mr. Ingram's other two suggestions, regarding outside employment, would be addressed. MR. INGRAM said it would take care of his suggestion to prohibit moonlighting. However, he believes the committee should consider amending the bill to specifically state that administrative law judges should not act as an advisor or judge to another sovereign because some people would argue that is not the practice of law. SENATOR THERRIAULT said if the legislature wants the efficiency of a central pool, it would not want administrative law judges with conflicts within the pool, other than life experiences, such as being related to someone involved in a case.
	Re change in name: SENATOR THERRIAULT moved a conceptual amendment [Amendment 1] to change the term "hearing officer" to "administrative law judge" throughout the bill. CHAIR SEEKINS announced that without objection, the motion carried.
	SENATOR THERRIAULT said he would prefer to get more information on adopting the Alaska Code of Judicial Conduct before taking action on that suggestion. He noted the next committee of

			referral is the Finance Committee and, if adopting that code will avoid having to write an entirely new code, he would consider that as a way of handling the fiscal impact.
			SENATOR THERRIAULT made a second conceptual amendment [Amendment 2] to preclude the administrative law judges from acting as an advisor or a judge to any other sovereign. SENATOR OGAN objected and asked what is meant by an advisor to another sovereign. He questioned whether that would include consulting. SENATOR THERRIAULT said the amendment is conceptual so the drafters will have to define that term. CHAIR SEEKINS said he believes the intent is to address situations in which the work is done for remuneration because the law could not prohibit someone from giving free advice to another. SENATOR OGAN said he wanted to provide the drafter with some discussion. He removed his objection; therefore Amendment 2 was adopted.
			SENATOR OGAN moved CSSB 203(JUD), Version B as amended, with its attached fiscal notes from committee and asked for unanimous consent.
			Note as to current practice comparison. This version increased the time for decision from 90 days to 120 days. It now requires service of proposed decisions on the parties, but does not permit the parties to file proposals for action.
SB203C(Jud CS)	2/23/04	First Senate Finance Committee Hearing	The Committee heard testimony from the sponsor, Department of Administration, and took public industry. The bill was held in Committee
			Co-Chair Wilken stated that this bill, which is sponsored by the Senate Rules Committee by Request, would create an independent office of hearing officers, directed by a chief administrative law judge, within the Department of

	Administration. Therefore, he continued, the administrative hearing officer would be removed from the affected State agency that writes, promulgates, and enforces regulations. He noted that 25 other states have created similar offices. DAVE STANCLIFF, Staff to Senator Gene Therriault and Aide, Administrative Regulation Review Committee, opined that "it is infrequent" that issues are presented that are good for constituents, good for the Government, good for the Legislature, and good for judicial practice. He stated that this bill is "considered a good government bill and has garnered bipartisan support throughout the country and so far here in the Alaska State Legislature." He noted that, to date, there has been no opposition to the measure. He declared that the premise of the bill is that "the people who challenge the laws and rules of government deserve to have fair, impartial, and efficient and professionally conducted hearings when they do make those challenges." He shared that these challenges could originate from major corporations or from individuals. Mr. Stancliff pointed out that the idea "is to rebalance the powers of our three branches of government" as presently, he noted, the Administrative Branch "has legislative ability in its power to write rules that become law." Furthermore, he attested, it has in its power, an ability "that is normally reserved for the Judicial Branch of government in that it has a form of captive judges within the State administration" who are called hearing officers. He specified that

	currently the State's hearing officer functions are scattered throughout the State and are comprised of people who have a variety of backgrounds, some with legal training and some with none. In addition, he noted that some hearing officers work full-time. time, some part time, and that a variety of pay ranges are offered, But, he explained, what makes this system "worthy of reform" is the fact that "they work for the agency that signs their paycheck; gather at the water cooler; and play golf on the weekends." He stated that, "it has been discovered throughout the country" that it is disconcerting to those challenging "a regulation or a rule of law and discover that the person who is going to sit in judgment of their appeal actually works for the agency they are challenging."
	Mr. Stancliff stated that, in addition to being supported by Senate President, Senator Gene Therriault, this legislation is supported by Governor Frank Murkowski and Mike Miller, the Commissioner of the Department of Administration. Continuing, he asserted that in order "to work for Alaska," this legislation must minimize disruptions as the change occurs
	Mr. Stancliff specified that the major change resulting from the legislation would be the creation of a central model, independent hearing office, in which the hearing officers would be re-titled Administrative Law Judges. The Administrative Law Judges would report, he continued, to a Chief Administrative Law Judge (Chief ALJ) who would establish standards of conduct, similar to the State's judicial system code of conduct. He stated that the Chief ALJ's standard of conduct would have as its "primary goals," good due process, high levels of adjudication, and an efficient system.

	Mr. Stancliff specified "that once the upfront transition costs are in place" and the model becomes operational, government agencies could avail themselves to it. Furthermore, he commented that rather than hearing officers working part time, the system would have full time hearing officers, and instead of having hearing officers specializing in one field, the hearing officers would be cross trained. These changes, he opined, would allow the hearing office to become a very efficient unit of State government. He stated that the fiscal savings would be better defined once the fiscal notes are developed.
	Mr. Stancliff stated that one of the "residual" effects of this reform would be "that when you have high levels of adjudication," the people who conceive, write and enforce the regulations "start doing their job differently because they no longer have in-house hearing officers inclined to protect what they write and what they enforce." He stated therefore, that businesses that have been tied up in the regulatory process for up to ten years or more could actually get through the administrative process quicker, get a resolution, "and decide whether they want to take their case to court or not." Additionally, he stated that the entire system, both inside and outside the model, would start "to behave differently," because a new level of expertise would be required.
	Mr. Stancliff explained that the new process would create a new model that would absorb the hearing officers currently existing within agencies, would serve to curb expense, would keep the model flexible so that it could continue to work with other Administrative Procedure Act (APA) hearing functions in the State; and, "and most importantly," would provide the Chief ALJ with the

	ability to have Statewide oversight whenever there is a complaint filed or a problem arises outside the model. He informed that the Chief ALJ would report to the Legislature on an annual basis and discuss issues that must be addressed. Furthermore, he noted that the Legislature would be able to include individuals in the hearing process if so desired.
	Mr. Stancliff pointed out that some states have established models that "have "worked well to an extent, but has been problematic" in that the rulings are not allowed to be challenged. The model proposed in this legislation, he continued, would allow State commissioners to overturn a decision based upon sound rather than "arbitrary reasons." He expanded that the Commissioner would be required to review the record and evidence "and put the reasons for overturning the ruling into writing."
	Mr. Stancliff declared that constituents have found the current administrative hearing model "very difficult to exhaust" in that "it is almost impossible to get beyond the administrative system in the State of Alaska if the administrative system does not wish you to get beyond it." He contended therefore that, "it is very difficult to get your case before the courts." Continuing, he noted that "what is even more damaging to small entrepreneurs and business people is that the first time they confer with an attorney or anyone who is familiar with the State system, the advise is that "unless you have about five years of time and a lot of money to invest," you may want to consider whether to challenge the ruling or regulation. He stated that this situation, combined with the desire to rebalance power, has been the driving force for this legislation. He stated "that a bundle of horror stories" could have

	been presented relating to previous administrative actions
	Mr. Stancliff contended that the model being presented in this bill is a model that is being reviewed by numerous other states, as it is a hybrid of many models. He requested that further changes to this legislation be made either in the form of amendments or a new committee substitute. He noted that some of the accompanying fiscal notes "aren't exactly correct yet," as some of the departments have developed fiscal notes based on incorrect "assumptions" about what this legislation would or would not do. Therefore, he requested SFC-03 (9) 02/23/04 that the fiscal notes be reviewed during future hearings on the bill
	Mr. Stancliff explained that the Department of Law had requested each department affected by this legislation to determine how this bill would affect current procedures and to identify any area that might be problematic. One issue that was raised, he noted, involved jurisdictional conflicts between those hearings operating under APA law and those operating separate from the APA requirement. Therefore, he continued, "the Judiciary Committee addressed those mechanical changes that would make this new model and the authority within it more user friendly for this Administration to put into affect." Other concerns addressed in the Judiciary Committee version of the bill, he continued, was how to provide the Chief ALJ with the ability to allow an agency who needs a high level of expertise "to come in and sit at the hearings," as well as how "to allow agencies who are not swept into the model" to use the model if they so choose.

	He pointed out that a component that is garnering support on the national level is the fact that the State has allowed its commissioners to voice their support of using the Central model, and he continued, the commissioners voiced support for allowing the Central model ruling be final rather than requiring the commissioners to weigh in on the decision. Furthermore, he noted, even though the Central Model's Chief ALJ might have jurisdiction over an agency, a well-functioning, existing hearing office could be allowed, after review, to continue what its been doing
	As to funding and the annual report. Mr. Stancliff responded that one of the determining factors would be the length of time that the Administration "holds on to the issue before it." He informed the Committee that neither the hearing expenses nor the affect of the hearings on the public sector are tracked. He stated that not only is the State unable to ascertain how many contract hearing officers are being used, it is also unable to ascertain the length of time required for them to conduct their business. He stated that this information is being sought, and if it were determined to be an accurate reflection, the information would be supplied to the Committee. He pointed out that SFC-03 (10) 02/23/04 one thing that could save the State money is that the Legislature would be provided an annual review of the model, which could include a public survey. He noted that because the Central Model is funded separately from other agencies, the Legislature would be able to get a good idea of what is being provided by the funding.
	Senator Bunde asked whether there are any State divisions that would be exempt from this bill. Mr. Stancliff responded yes. He shared that the original jurisdiction list was quite extensive and

	was projected to incur more expensive startup costs than could be supported. Therefore, he continued, the list has been pared down on three separate occasions. He explained that as currently proposed, approximately 15 percent of hearing officers would be included in the new model. However, he stated, all hearing officers would "be affected by the general reforms that occur in the bill.
	Mr. Stancliff responded that the plan that is being proposed would involve "the building of a small model, put into it the jurisdictions that you could afford to put in, give the model the ability to render a decision that's final if the Commissioner does not act within 30 days, and if it is going to be overturned," mandate that it be based on good reasons. Continuing, he noted that the Chief ALJ must be provided the ability to come "to the Legislature and the Administration and the attorney general and say here's what's broken, here's what needs to be fixed, here's how the APA needs to be amended to resolve some of the problems that are occurring with hearing officers." So, he concluded, that the plan being proposed is a "hybrid" consisting of many plans, without the final authority, and encompassing in a select number of people as authorized by the Administration.
	Authority of Chief to govern all hearing officer conduct and hearing Procedure. . Senator B. Stevens understood that while the bill would affect all State agencies, not all of them would be under the jurisdiction of the new Central Panel hearing procedure. However, he questioned whether the bill's language in Section 3, Subsection Sec. 44.21.550. Code of hearing officer conduct. located on page eight, lines 6-10 indicates otherwise as it appears to state that "the Chief

	Administrative Law Judge has maximum control over all other hearing officers, even though they are not under the jurisdiction of the agency." This language reads as follows. ...The code shall apply to the chief administrative law judge, administrative law judges of the office, and hearing officers of each other agency. Mr. Stancliff stated that, "this has been the most difficult point to resolve." He pondered how much authority should be given to the Chief ALJ as were that person "given too much, the agencies get very nervous." He noted that language to the affect of "to the maximum extent possible, without conflicting with applicable statutes" has been included in the bill to raise the comfort level of agencies and to "sufficiently" assure the agencies that were they doing their jobs well, that they could continue to do them without the Chief ALJ saying "hey, its my domain, I'm taking over now, step aside.
	Hemenway replies. As to hearing procedures, Chief ALJ's regulations would supersede regulations of the hearings within the jurisdiction of the agencies that the Chief ALJ might adopt to govern. Continuing, he clarified that the Chief ALJ's regulations would not affect any agency's on-going proceedings or hearing functions that are not included in the Central Panel. However, he noted that an agency that is not included in the Central Panel could voluntarily elect to send a case to the Central Panel, and that, as part of their request, the agency or the Chief ALJ could specify that for cases being referred, that agency's regulations would be used. Mr. Stancliff added that the Chief ALJ would be able "to receive input from people outside the process who might be having problems with people outside the process and make recommendations to the Administration and to the Legislature as to how to

	resolve those problems." He asserted that the Chief ALJ would be "empowered with a great deal of authority" within the Central Panel model. Furthermore, he continued, the Central Panel's model' would create a new atmosphere of how hearings are conducted and held outside of the model. He stated that this point of balance proved the most difficult to resolve within the Administration
	Senator B. Stevens asked for confirmation that the Chief ALJ's procedures would supersede administrative hearing regulations that an agency might currently have in place. Mr. Stancliff responded that this would be true for those agencies that are included in the model. He reiterated that those agencies not jurisdictionally included in the model would not be subject to the Chief ALJ's new procedures and regulations. He stated that this was the compromise. Senator B. Stevens understood therefore that the agencies not specifically included in the Central Panel would not be subject to the Chief ALJ's regulations and procedures. Mr. Hemenway stated that the list of agencies included in Sec. 3, subsection Sec. 44.21.530. Jurisdiction of the office, located on page four and five of the bill, would be subject to the jurisdiction of the Central Panel and the regulations and procedures as determined by the Chief ALJ. Senator B. Stevens asked for confirmation that the agencies not listed in that section would not be required to report to the Central Panel. Mr. Hemenway concurred. Co-Chair Wilken noted that Sec. 2, subsection (c), on page 2, line 21 specifies that the Chief ALJ could not serve in that capacity for more than three five-year terms.
	Free from political influence. Mr. Stancliff commented that upon review of several other

			states' models, it was determined that "institutionalizing the judges within the Administrative system" might not serve the best interests of the model. Therefore, he shared, that this term timeframe was a compromise "between two schools of thought," in that some states specified eight-year terms and others "forever." Mr. Stancliff pointed out that "this new model is pretty much insulated from Legislative" and Administrative influence, and he noted that this new model is supported by people within the hearing officer community as well as those who have retired from the system, as it is felt that people cannot perform their job well when under duress or threat. Therefore, he continued, once a code is developed, and the hearing officers are protected and treated "like true judicialists," then high levels of adjudication would follow. Mr. Stancliff responded that those agencies not desiring to be "sweep into the model by the Legislation must do a better job outside the Model." In addition, he noted, agencies might come to the realization that the model "is working very well" and choose to be included in it.
			Dan Houghton testifies again, telling the ARH story to the Finance Committee.
SB 203D(Sfin CS) initially considered	2/26/04	Second Senate Finance Committee Meeting	This was the second hearing for this bill in the Senate Finance Committee. Co-Chair Wilken communicated that this legislation would create an independent office of hearing officers under the administration of a chief administrative law judge (ALJ), within the Department of Administration. The bill's sponsor would be providing further information in regards to the office's structure. An explanation pertaining to the

			fiscal note would be forthcoming. Co-Chair Wilken asked whether there was any objection to the adoption of the Version 23-LS0903\Z committee substitute as the working document. There being no objection, Version "Z" was ADOPTED
			DAVE STANCLIFF, Staff, Administrative Regulation Review Committee, Office of Senate President Gene Therriault, the bill's sponsor, explained the this committee substitute has been developed to address technical issues and to "clean up" various components of the bill as identified by the Legislative Legal Division and the Administration. He referenced a handout provided by the Regulation Review committee titled, "Changes Included in SB 203(FIN)" [copy on file] that specifies the eight changes made in the committee substitute.
			The first substantive change is located in Section 66, line 30, page 31 of the bill and reads as follows; (d) A public employee who is in a permanent full-time position as a hearing officer or administrative law judge may not accept employment as a hearing officer or enter into a contract to act as a hearing officer, administrative law judge, or judicial officer for the federal government, another state, a municipality, or a Native tribe -- Senator Olson continued to voice discomfort with the inclusion of municipality employees in the list. Mr. Hemenway stated that the purpose of this language is to avoid any conflict of interest that might arise regarding decision-making on behalf of one sovereign entity verses another's policies or interests. Senator Olson questioned how a hearing officer, whose role is one of neutrality, could have a conflict of interest. Mr. Hemenway expressed that the intent would be to avoid any "inherent" conflict of

	interest. There might be a perception that a hearing officer who works on behalf of the State might tend to rule in its favor in a situation involving the State and a municipality, for example
	Mr. Stancliff commented that the second change is located in Section 65 on page 31 of the bill. While the bill provides protection to the ALJ from inappropriate contact or influence from agencies or Legislative agencies, it did not provide that protection to hearing officers. This is addressed in Section 65
	Mr. Stancliff stated that recently enacted legislation incorporated new processes at the request of Associated General Contractors (AGC) in regard to dispute resolution. In order to allow that process to develop, those processes has been eliminated from the jurisdiction of the legislation
	Mr. Stancliff continued that the Administration has requested that hearing officers be provided the same type of code as judicial officers have in that a person could request a different hearing officer preside over the hearing. This language is included in Section 3, Subsection 44.21.570(c) on page ten, beginning on line eleven
	Mr. Stancliff stated that the definition of an administrative hearing is expanded in language in Section 3, Subsection 44.21.599 (1) on page 11. This section reads as follows. (1) "administrative hearing" means a quasi-judicial hearing before an agency, but does not include an informal conference or review held by an agency before a final decision is issued.
	Mr. Stancliff stated that Number Six on the Regulation Review Committee list would address some conflicts the legislation incurred with agency's "cease and desist" authority. This

	language is located in Section 8, on page 13, beginning on line 16. Mr. Hemenway explained that this language would primarily address the bill's conflict with the Department of Community and Economic Development's crease and desist orders for regulated professions. Mr. Stancliff stated that a technical change incorporated in this committee substitute is that the clarification of the duties and responsibilities of ALJs and hearing officers is clearly defined in the bill
	Senator Bunde mentioned that separate legislation relating to worker's compensation would incorporate a panel of ALJs. Therefore he asked how these two pieces of legislation would interact. Mr. Stancliff replied that this is an unknown, as the integration SFC-04 (20) 02/26/04 stage of the procedure has not been conducted. However, this should be addressed as the processes advance. Senator Bunde stated that the bill in question is SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM
	Outside Employment Discussion. Senator Hoffman asked whether the possible conflict of interest issue that might arise by a hearing officer being employed in a second job is addressed in this committee substitute. Mr. Stancliff responded that substantial discussion has occurred in this regard, specifically whether hearing officers should be allowed to practice law outside of their public employee position. This bill is restrictive in regards to possible conflicts. Mr. Hemenway noted that language in Section 3, Subsection 44.21.540(c) on page six, lines 24 through 27 addresses the concern regarding a second job. However, while this bill contains language in this regard, it does not expressly prohibit work in a second job outside of their employment with the State. (c) An administrative

	law judge employed by the office must devote full time to the duties of the office unless appointed to a position that is less than full-time. An administrative law judge employed by the office may not perform duties inconsistent with the duties and responsibilities of an administrative law judge. Mr. Hemenway understood the intent of this language to be that a person employed as an ALJ should "not also hold a second job within the Administration," such as being a Deputy Commissioner, for example. Senator Hoffman stated that rather than being concerned about an individual's ability to hold a second job, his primary concern was their ability to privately practice law. Mr. Stancliff responded that while this concern was addressed, the decision was made not to include it. However, the Chief Administrative Law Judge would be developing a judicial canon similar to that currently in place for the State Judicial Branch. New regulations governing ALJS would also be developed that might address this issue. It is not, however, required, in Statute. Senator Hoffman asked whether the independent practice of law would present a conflict of interest for hearing officers. Mr. Hemenway shared that this issue is a primary concern. The Judicial Canon does prohibit judges from practicing law. The essential question is whether this should also apply to administrative hearing officers. This is worth considering. Responding to Senator Hoffman's question, Mr. Hemenway declared that there is certainly the potential for conflicts of interest in this area. The question is whether it should be addressed through regulation or Statute. Senator Hoffman declared that if there is the potential for conflict of interest, it should be included. Mr. Stancliff stated that the State currently contracts with a

	number of hearing officers and this process would be continuing. Therefore, consideration must be given to this situation
	Mr. Stancliff stated that the final change in the bill pertains to Section 46(b) on page 26 of the bill and regards the amount of time that hearing officers might spent in regard to insurance rate setting. Currently, the Director of the Division of Insurance currently spends more that 1,000 hours in this regard. Were the rate setting responsibility to shift over to the ALJs, it would significantly increase the fiscal note. There are some Division of Insurance duties however, that could be transferred to the Central Panel without much impact. Mr. Hemenway voiced that rate setting responsibilities should not be conducted by the Central Panel. Mr. Stancliff concurred and stated that were those responsibilities to become the responsibility of the Central Hearing Panel, the fiscal note would be cost prohibitive and the bill would falter.
	University Request. Co-Chair Wilken asked regarding the validity of the University of Alaska's two-page brief [copy on file] requesting an exclusion from the jurisdiction of the bill. Mr. Stancliff commented that the brief might have some validity. The determination regarding the University is under review. However, he voiced, "that no State hearing officer should be exempt from the protections and higher standards" being developed in the bill. The University has a high quality process and meets those SFC-04 (22) 02/26/04 standards. Co-Chair Wilken asked how the University's request would be addressed. Mr. Stancliff replied that an amendment would be developed to address their exemption.
	Final action. Co-Chair Green moved to adopt the Version 23-LS0903\Z committee substitute as the

			working document. There being no objection, the Version "Z" committee substitute was formally ADOPTED as the working document. Co-Chair Wilken stated that the fiscal note discussion would occur during the next hearing on the bill. Senator Hoffman asked whether there is a shortage of hearing officer applicants in the State. Mr. Hemenway responded that in his perception, as positions open, there are a number of good applicants. Co-Chair Wilken noted that the bill would be HELD in Committee
SB203E(CS for SB203(fin)	3/3/04	Third Senate Finance Committee Meeting	This version continues to not contain a PFA process. Proposed Decisions are sent to the final decisionmaker for the five permitted actions.
			Senate Finance's 3rd Hearing of the Bill. Co-Chair Wilken stated that this legislation would create an independent administrative hearing office within the Department of Administration, which would be supervised by a Chief Administrative Law Judge. Testimony would address Committee questions pertaining to whether the University of Alaska would be included in this legislation as well addressing the cost of producing and adopting of regulations. Members' packets also contain a letter in support of this legislation from the National Federation of Independent Businesses (NFIB) dated March 1, 2004 [copy on file]. In addition, discussion would be presented regarding the bill's fiscal notes
			University exclusion. DAVE STANCLIFF, Regulatory Review Committee, Office of the Senate President Senator Gene Therriault, Judiciary Committee noted that, as reflected in the memorandum [copy on file] dated February 27, 2004 to Senate President, Senator Gene Therriault, from Tam Cook, Director, Division of Legal and Research Services, there is no Constitutional conflict in regards to applying the

	standards imposed by this legislation to both State and University of Alaska hearing officers. However, by desire and by an exemption provided in the State's procurement code, the University of Alaska is exempt from the jurisdiction of the proposed central panel. He also noted that certain State entities' jurisdictional issues are continuing negotiations with the bill's sponsor and the Governor Frank Murkowski Administration. The recommendation in regard to these negotiations is that they be further addressed by the House of Representatives Judiciary Committee, as the bill progresses.
	ANDY HEMENWAY, Hearing Officer, Procurement & Longevity Bonus, Department of Administration, communicated that efforts are being undertaken by the sponsor to address jurisdictional issues that have been presented by the Division of Insurance and the Department of Revenue
	Conflicts of Interest. Mr. Stancliff also noted, in response to Senator Hoffman's concern regarding a possible conflict of interest that might arise were a full-time hearing officer to also practice law as a private citizen, that a law book titled "Judicial Canon" [copy not provided] would be distributed that would properly define how these types of issues should be addressed. He noted that this book is the national model in regards to the conduct of administrative hearing officers, and, as specified in the legislation, this is the law reference that must be adopted by the Chief Administrative Law Judge. He acknowledged that the sponsor "is very much aware" of this concern.
	Status of Opposition. Senator Dyson asked for an overview of "the criticisms or any opposition" to the bill. Mr. Stancliff responded that there has been broad based support and input from

	members of every committee that has conducted a hearing on this bill. There is no sense of partisanship. A conflict arises regarding how to incorporate the mechanics of this new model and its jurisdiction with the existing process and the transition to the new model. This transition process is the concern that has made some employees and divisions "nervous." At this point, the tensions have been 98-percent alleviated
	Initial Fiscal Notes. ERIC SWANSON, Administrative Services Director, Department of Administration, summarized the Department's fiscal notes regarding the incorporation of the new centralized office of administrative hearings into the Department: ten positions would be transferred to the Department and $500,000 would be required to establish the new office during the first year with some of the funding being transferred from other agencies as interagency funding. However, he noted that some agencies funding sources are not transferable. $50,000 of new general fund funding would be required the first year to fund the new Chief Administrative Law Judge (CALJ) position. He noted that, other than the CALJ, the majority of the hearing officer positions would not be transferred to the office until on or after January first 2005. Co-Chair Wilken asked regarding the net total expected expenses. Mr. Swanson responded that the net total increase would be $52,000 in the first year. In addition, the Division of Insurance would experience an increase in receipt supported service expenses. Therefore the net total increase would amount to approximately $80,000 the first year. There would be a reduction in expenses as other funding sources transfer over in January 2005. Co-Chair Green moved to report the committee substitute

			from Committee with individual recommendations and accompanying fiscal notes
			There being no objection, CS SB 203 (FIN) was REPORTED from Committee with $500,600 fiscal note #6, dated March 2, 2004, from the Department of Administration; negative $113,600 fiscal note #7, dated March 2, 2004, from the Department of Administration; zero fiscal note #8, dated February 27, 2004, from the Department of Labor and Workforce Development; negative $5,000 fiscal note #9, dated February 27, 2004, from the Department of Public Safety; zero fiscal note #10, dated February 25, 2004, from the Department of Health and Social Services; negative $22,500 fiscal note #11, dated February 27, 2004, from the Office of the Governor; indeterminate fiscal note #12, dated February 27, 2004, from the Department of Community and Economic Development; zero fiscal note #13, dated March 1, 2004, from the Department of Education and Early Development; zero fiscal note #14, dated February 24, 2004, from the Department of Environmental Conservation; $38,300 fiscal note #15, dated March 1, 2004, 7from the Department of Community and Economic Development; zero fiscal note #16, dated February 27, 2004, from the Department of Community and Economic Development; indeterminate fiscal note #17, dated February 12, 2004, from the Department of Law; indeterminate fiscal note #18, dated March 1, from the Department of Education and Early Development; negative $203,600 fiscal note #19, dated March 2, 2004, from the Department of Revenue; and negative $52,400 fiscal note #20, dated March 2, 2004 from the Department of Revenue

-- CS FOR SENATE BILL NO. 203(FIN)(Version E.A	3/3/04	Rules to Calendar	
CS FOR SENATE BILL NO. 203(FIN)(Version E.A	3/3/04	Read a second time.	SENATE BILL NO. 203 "An Act relating to certain administrative hearings; and establishing the office of administrative hearings and relating to that office" was read the second time. Senator Wilken, Cochair, moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 2378. Senator Elton objected, then withdrew his objection. There being no further objections, CS FOR SENATE BILL NO. 203(FIN) "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date" was adopted
Amendment 1	3/3/04	Senator Guess Amendment to require legislative confirmation of Chief ALJ	Senator Guess offered Amendment No. 1 : The first sentence of Sec. 44.21.510(c), added in bill sec. 2, is amended to read: "The chief administrative law judge is appointed to a five-year term of office by the governor and is subject to confirmation by the legislature." Senator Guess moved for the adoption of Amendment No. 1. Senator Cowdery objected, then withdrew his objection. There being no further objections, Amendment No. 1 was adopted

CS FOR SENATE BILL NO. 203(FIN)(Version E.A As Amended (Amendment 1)	3/3/04	Third Reading -Same Day - Senator Stevens moves to advances bill on the same day as second reading– Fails	Senator Ben Stevens moved and asked unanimous consent that the bill be considered engrossed, advanced to third reading and placed on final passage. Senator Elton objected. The question being: "Shall the bill be advanced to third reading?" The roll was taken with the following result: CSSB 203(FIN) am Advance from Second to Third Reading? **YEAS: 12 NAYS: 6 EXCUSED: 2 ABSENT: 0** Yeas: Bunde, Cowdery, Dyson, Green, Ogan, Seekins, Stedman, Stevens B, Stevens G, Therriault, Wagoner, Wilken Nays: Elton, French, Guess, Hoffman, Lincoln, Olson Excused: Davis, Ellis and so, the bill failed to advance to third reading. CS FOR SENATE BILL NO. 203(FIN) am will be on the March 4 calendar.
CS FOR SENATE BILL NO. 203(FIN)(Version E.A As Amended (Amendment 1)	3/4/04	Third Reading	CS FOR SENATE BILL NO. 203(FIN) am was read the third time. In accordance with Mason's Manual 583(2), President Therriault relinquished the chair to Senator Ben Stevens, President pro tempore, in order to participate in debate.

			President Therriault and Senator Ben Stevens resumed their original places.
CS FOR SENATE BILL NO. 203(FIN)(Version E.A As Amended (Amendment 1)	3/4/04	Final Vote	Third Reading - Final Passage Effective Dates **YEAS: 17 NAYS: 0 EXCUSED: 2 ABSENT: 1** Yeas: Cowdery, Dyson, Elton, French, Green, Guess, Hoffman, Lincoln, Ogan, Olson, Seekins, Stedman, Stevens B, Stevens G, Therriault, Wagoner, Wilken Excused: Davis, Ellis Absent: Bunde and so, CS FOR SENATE BILL NO. 203(FIN) am passed the Senate. Senator Ben Stevens moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clauses. Without objection, it was so ordered and the bill was referred to the Secretary for engrossment.
CS FOR SENATE BILL NO. 203(FIN)(Version E.A As Amended (Amendment 1)	3/4/04	Transmitted to House	CS FOR SENATE BILL NO. 203(FIN) am "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating

			to that office; and providing for an effective date" was engrossed, signed by the President and Secretary and transmitted to the House for consideration.
CS FOR SENATE BILL NO. 203(FIN)(Version E.A As Amended (Amendment 1)	3/8/04	Read the First Time, Referred to House Jud and Fin	CS FOR SENATE BILL NO. 203(FIN) am by the Senate Finance Committee, entitled: "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." was read the first time and referred to the Judiciary and Finance Committees.
CS FOR SENATE BILL NO. 203(FIN)(Version E.A As Amended (Amendment 1)	3/18/04	First House Judiciary Committee Hearing	CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 203(FIN) am, "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." [Members' packets include a proposed House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04.
			Testimony of David Ingram, former CFEC Hearing Officer and Chair of Admin Law Section . think ... central panels is just ... an idea who's time has definitely come; in fact, I think it's way overdue. ... A majority of the states have some sort of central panel ... - 29 states, something like that. ... I think this is a major step forward in the improvement of administrative law in the state. ... I think a central

			panel is essential for basically three main reasons. (1) The appearance of fairness is so much improved if you have a central panel (2) Another problem with the current system is that "ALJ's" - administrative law judges - and hearing officers are just human, and they work with these people. If you are employed by and under the supervision and control of the agencies, they become family; you're celebrating one another's birthdays, you're going to parties together, and it's just not HOUSE JUD COMMITTEE -10- March 18, 2004 good. ... No matter how much you fight it, your relationships with those people are bound to affect your decisions. And this is sort of where the rubber meets the road - at the agency; ... this is the hearing where facts are going to be found, and from that point on, sure, you can appeal it to the courts, but you're talking about legal error once you get on appeal. Your one shot at that fact finding is down there at the agency level, and it should be as fair and unbiased and unprejudiced. (3) Finally, ALJs and hearing officers should be removed from any threats of retribution, whether explicit or implicit. And as long as they are under the control and supervision of the agencies, I assure [you that] they are loath to expose misdeeds, corrupt practices, and the like that are going on in the agency, because they fear bad performance reports, denial of pay increases, demotions, [and other things]; you hear hearing officers and ALJs at various levels talk about some ... picayune things ... [like] parking spaces and ... bathroom privileges and what office you get and the like, but ... what it really comes down to is pay, and there's always that threat as long as they're under the thumb of the agencies
			Non-mandatory agencies. MR. INGRAM said he believes that all ALJs and hearing officers for

			every agency ought to be swept into a central panel at some point, although what the bill currently proposes is a good first step. He offered his understanding that the agencies currently listed in the bill are those that are willing to go along with this kind of change and not fight it. REPRESENTATIVE GRUENBERG noted that this idea is not new; prior legislators have offered similar legislation in the past. CHAIR McGUIRE concurred
			Amount of experience. Two years exceptionally low and perhaps not applicable if not trial experience. REPRESENTATIVE GARA asked whether ALJs are required to have a particular legal background. MR. INGRAM said yes, ALJ's must be members of the [Alaska] Bar and have two years of experience. REPRESENTATIVE GARA asked Mr. Ingram whether he felt that two years of experience is enough. MR. INGRAM opined that more is better, but remarked that whenever there is a job opening for an ALJ, there are plenty of candidates with plenty of experience. He mentioned that the agency he'd worked for had a rule that a person also had to have either two years of judging experience or two years of representing people in trials or before administrative agencies. In response to a question, he offered his understanding that the bill only requires two years' membership in the Alaska Bar Association. said that two years of experience could mean completely different things: two years in a law library is not the same as two years in court. REPRESENTATIVE GARA said that two years of experience could mean completely different things: two years in a law library is not the same as two years in court. MR. INGRAM acknowledged that that requirement could be strengthened, and suggested that the

			two years consist of either judging experience or representing individuals before courts or administrative agencies. REPRESENTATIVE GARA pointed out, however, that when lawyers work for a law firm, they are considered to be representing someone in court though they may never have to show up in court. He asked how the latter part of Mr. Ingram's suggestion would be defined. MR. INGRAM posited that the question of whether the experience is adequate would be determined by the chief ALJ, who will be doing the hiring. REPRESENTATIVE GARA suggested that perhaps it would be more practical to require five years of experience, since many attorneys are still "pretty fresh" with only two years of bar membership. MR. INGRAM opined that five years of experience would be better, adding, "The more experience the better." He surmised that making more experience a requirement wouldn't seriously limit the number of applicants.
			On exempt status of ALJ. REPRESENTATIVE GARA opined that leaving ALJs exempt, which lets the governor terminate them if he/she is dissatisfied with them, negates the bill's attempt at taking them out from under the pressure put upon them by the agencies. He asked Mr. Ingram whether he thought it would be a good idea to make ALJs nonexempt. MR. INGRAM said he did think that would be a good idea, and further suggested that it might also be a good idea to require that an ALJ or hearing officer can only be removed for cause, similar to the requirement for commissioners appointed to "quasi-judicial" agencies.
			Edward Heins testimony. the denial of fishing licenses and privileges. ... I've been involved with this issue and with both this bill and the previous bill for [the] past four years. I think this bill is a much-improved version of what was offered a few

			years ago. (1) Independence and professionalism of hearing officers. -- I work within an agency ... but my office is a separate office within the agency; I'm in a separate building, ... which ... reinforces the idea that we're independent. Our record is that we've reversed the agency [in] about an average of 25 percent of the cases, ... but I think we're the exception, and I can't speak for a lot of Alaska agencies. ... I can tell you that there are certainly other federal agencies that have significant problems with regard to their independence
			(2) Professionalism and Training. I think the fact that you would have a centralized office and a new code of ethics specifically for the hearing officers that the chief ALJ would produce and which would be applicable even under this bill to hearing officers outside the central panel, I think would be a good move toward professionalization of the statewide hearing officer core. [There are] also opportunities for cost effectiveness in centralized training for the hearing officers, and of course the qualifications would be more standardized
			(3) Efficiency. there's always this argument between the expertise that a particular hearing officer [or] a set of hearing officers has within an agency versus giving a hearing officer a variety of cases. As I understand it in this bill, it's set up ... so that it could be the case that the hearing officers who will end up being ALJs under this centralized panel are already doing the work that they would be doing in the centralized panel to a great degree [though not entirely] .... And so essentially you're taking whatever expertise there might be and not eliminating it but putting it into the central [panel]. And to the extent that other expertise is needed, the [panel] itself will have an

			opportunity under this bill, I believe, to provide expertise as witnesses or as part of the case
			(4) Public Confidence. I think is a matter of perception as much as reality. And ... I'm told ... that many people come into agencies with ..., if not the expectation, at least the suspicion that a hearing officer who works for the agency is already biased in favor of the agency. And many attorneys that I've talked to in Alaska have said that ... they go through the hearing through the agency because they're required to exhaust their administrative remedies, but they feel that the real hearing comes when they get to court. I think a lot of people, depending on the case of course, ... even if they lose HOUSE JUD COMMITTEE -17- March 18, 2004 their appeal [or] lose their administrative claim, if they feel that they've had a fair hearing and that ... their evidence and their case has been adequately considered, I think it lessens the likelihood that they're going to want to take it to court and proceed further. I can't give you any guarantees about that, but that's my perception.
			Questions as to amount of experience. I think you have to have a balance in that ... you want to have it open to all qualified people, and you don't want to arbitrarily say you have to have ten years' experience or five years' experience in these particular things. ... But on the other hand I would agree that someone fresh out of law school might not be the best type of person to hire. It depends. I think that on the whole, having practical experience in court or with administrative agencies is a real plus. On the other hand ..., the role of a hearing officer is different than the role of an advocate, and I think that there are a lot of lawyers who make great advocates but would not make good hearing officers because they have a

			different temperament. So ... I think it's important that you hire someone who's able to make a decision and who's able to write well and ... is sensitive to the public, not ... only getting due process and a fair hearing in fact, but also having the appearance of doing so, both to the general public and to the people who come before you. As I say, ... even if a person loses and you have to deny their claim, I think you at least want to make sure that they know that they've gotten a fair hearing and that you've honestly considered all the evidence and that you've given them their day in court. So not everybody is suited to do that sort of work, and I think you're going to attract people who want to play that role rather than an advocate.
			So I don't think you necessarily have to have a lot of advocacy in order to be a good hearing officer; I think you have to have those sensitivities. So in terms of setting up requirements, I think there should be a basic threshold, and I think this bill does that. I think it's very important to have legal training and, if necessary, to be a licensed attorney. ... I think this [bill] sets a nice balance in that with the two years' [experience] and then for the chief [ALJ] five years. But on the other hand, the chief ALJ is going to chose from those who apply, ... and the HOUSE JUD COMMITTEE -19- March 18, 2004 market may fluctuate ... [and so] it depends on how you pay these people and what kind of reputation the panel develops as to how attractive it will be to people. MR. HEIN indicated that it would be a good idea for a person with only two years' experience to have at least some trial experience or administrative hearing experience. He noted, however, that extensive training is available for people who hold positions similar to his

			Stancliffe testimony.
			On mandatory vs. discretionary referrals. Basically, we set out to build the best model we could build, to do the least disruption to the existing system, as this transition away from captive judges in agencies becomes a centralized, highly-trained, highly-motivated, report-to-the-public, funded separately group. To do that, we needed to be sensitive to the fact that the ALJs that would be stationed there needed to have the expertise that was going to be coming to them. And so we kind of matched the hearing officers with the expertise, and then we looked at the areas that ... require highly trained technical expertise, such as Representative Gara has mentioned, and we decided to exclude those: workers' [compensation], RCA, rate hearings, those types of things. We also looked at some of the boards and commissions that the legislature has seen fit to empower as adjudicatory bodies; some of these commissions are specifically set up and designed in boards to deliberate and to provide adjudication, so they weren't a neat fit. What you have left, from a list of about a little over 50, is now a list pared down by about 25 percent that matches what the office will be able to do with the expertise that will be coming into the office, with the resources that will be available for the office. And other states' experiences have been, once you show that this works, and once the model works and the agencies start getting comfortable with it - we gave the agencies options to use the hearing officers, as they see fit, out of the model - this all becomes a very orderly, meaningful transition. That's how we got to the list that we got to. CHAIR McGUIRE surmised, then, that future legislators might promote inclusion of other agencies

	Hemenway testimony. ANDREW HEMENWAY, Hearing Officer: Procurement & Longevity Bonus, Hearings and Appeals, Office of the Commissioner, Department of Administration (DOA), said, "What we did is try to create a list that was the universe of hearings and then we sorted through that list, and I don't recall seeing something like that on any list ...." REPRESENTATIVE GRUENBERG expressed an interest in adding [notary publics] to the list.
	REPRESENTATIVE HOLM indicated that he is comfortable with the legislation, though he is concerned with whether there will be appropriate oversight [of the central panel]
	Addressing employment status of ALJs. REPRESENTATIVE GARA indicated that he'd like to address "the nonexempt issue" via a conceptual amendment." e. The compromise that we reached was that the protections that are in this bill now are not the full protections - which we've been told we shouldn't do, from models in other states. However, they are the protections that are modeled after [the Division of Elections] employees, where they can't simply be removed, that there's a hearing process that they have; they have a process to protect them from indiscriminate behavior from a supervisor, but you don't rise to the level of a full "PX" (ph) position. So that was a compromise that the administration was willing to make, that the people within, that are working now as hearing officers, are willing to accept, that come into the panel. And that's how we got where we're at. Andy has specifics on that "custom PX" that we've created here. It's on page 6 of the draft [HCS] at the top. Lines 6-8 [state] that even though they are partially HOUSE JUD COMMITTEE -22- March 18, 2004 exempt, notwithstanding that most partially

	exempt don't have to go through the personnel rules to be disciplined, these positions are subject to the personnel rules adopted under the personnel Act. And [in] those specific provisions - [AS 39.25.150(7) and (15)-(16)] - [paragraph] (7) is the one that deals with the probationary period, so you get a one-year probationary period during which time your performance is assessed and [if] it's not satisfactory, you could be dismissed; after that, [paragraphs] (15) and (16) kick in - those are the disciplinary and dismissal provisions of the personnel rules - and they apply to these hearing officers. And one of the rules ... states that you can only be dismissed for just cause .... REPRESENTATIVE GARA surmised, then, that [dismissal for] just cause applies after the one-year probationary period. MR. HEMENWAY concurred, adding that they'd wanted to provide flexibility on the "hiring side" while providing protections on the "discharge side.
	Exclusion of Rate Setting. REPRESENTATIVE GARA turned attention to proposed AS 44.64.030(a)(19), which starts at the bottom of page 4 and ends at the top of page 5. He asked whether the statutes proposed in this language pertain to rate-setting issues. MR. STANCLIFF indicated that they do not, and noted that the definition section of the bill specifies that hearings conducted by the central panel won't include rate-setting hearings.
	REPRESENTATIVE GARA commended Mr. Stancliff for his work on this difficult issue. "The bill sounds good, strong, needed, and done right," he added. REPRESENTATIVE GRUENBERG indicated that he intended to offer Mr. Ingram's suggested language as an amendment. MR. STANCLIFF said he is comfortable with having that language added to the intent section of the bill

	Potentially adding legislative ethics to purview. CHAIR McGUIRE inquired about the possibility of adding, to the list on pages 4-5, statutes pertaining to the legislative ethics HOUSE JUD COMMITTEE -23- March 18, 2004 Act. She suggested that it might be best if hearings pertaining to such issues were conducted by the central panel. MR. STANCLIFF indicated that that issue had not heretofore been discussed, offered to give it consideration, but warned that some legislators might have discomfort with allowing employees of the executive branch to adjudicate issues pertaining to the legislative branch. CHAIR McGUIRE remarked that she likes the model being proposed by SB 203 and is simply thinking in terms of perhaps in the future applying it to other areas, such as legislative ethics hearings, as well. REPRESENTATIVE GARA indicated that he would have concerns about having hearings pertaining to legislative ethics conducted by executive branch employees; it would be too easy for partisan politics to hold sway in such a situation. Although the current system regarding legislative ethics may not be perfect and might perhaps be looked at in the future with the goal of making it better, at least right now both parties are represented in equal number, he added
	Why isn't Chief ALJ appointed through the Alaska Judicial Council process. REPRESENTATIVE GRUENBERG, noting that the chief ALJ is to be appointed by the governor and confirmed by the legislature, asked why the bill does not propose to use the method currently used by the Alaska Judicial Council (AJC) regarding the appointment of judges, wherein the AJC nominates persons and then the governor chooses from those nominees. MR. STANCLIFF indicated that the bill was based on models used in other states, with

	the premise being that because the chief ALJ would perform duties as part of the executive branch, it would be more appropriate for the appointment process to start with the governor. REPRESENTATIVE GRUENBERG clarified that he is more concerned about the issue of subjecting the chief ALJ to confirmation by the legislature, since that process can be very political in nature. MR. STANCLIFF relayed that although the attorney general recommended not using the legislative confirmation process, an amendment adding that process was offered on the Senate floor by Senator Guess and was adopted unanimously.
	On removal of Chief ALJ. REPRESENTATIVE GRUENBERG said he still has concerns about that issue. He then turned attention to page 2, line 25, which stipulates that the governor can remove the chief ALJ from office only for just cause and after a hearing conducted by the attorney general. He said he has concern about the latter aspect of that stipulation because such a hearing could end up being political in nature. He asked why such a hearing couldn't be conducted by the Commission on Judicial Conduct (CJC). MR. STANCLIFF offered that the intent was that any given administration should have some influence on the process, and that the level of that influence is up to the legislature to decide. The object, he noted, is to get the best qualified person for the position, someone who will operate independently and bring together a highly trained, highly motivated, efficient and fair panel. In response to a question, he relayed that it is only the chief ALJ that is subject to legislative confirmation and a hearing conducted by the attorney general

House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04, Closest Version online is Version O			REPRESENTATIVE ANDERSON moved to adopt the proposed House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04, as the work draft. There being no objection, Version J was before the committee.
		Note the PFA process is added, However, there is absolutely no discussion of why it came to be.	A copy of the proposed decision shall be served by the office on each party in the case or on the attorneys representing those parties in the hearing. **Unless the office has established a shorter time period or another statute has established a different time period, within 30 days after the proposed decision is served, a party may file with the agency a proposal for action under (1) - (5) of this subsection**. The agency with authority to make a final decision in the case retains agency discretion in the final disposition of the case and shall, within 45 days after the date the proposed decision is 20 served or at the next regularly scheduled meeting that occurs at least 45 days after the 21 proposed decision is served, do one or more of the following
			Notaries Public. REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, "to add to the list, disciplinary proceedings involving notaries public." There being no objection, Conceptual Amendment 1 was adopted.
			Threats from intimidation. REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to replace the language in paragraph (2) of Section 1 with Mr. Ingram's suggested language, which reads [original punctuation provided]: (2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated [;] HOUSE JUD COMMITTEE -25- March 18, 2004 and protect them from threats, intimidation, and harassment; CHAIR

	McGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.
	Removal of Chief ALJ. Subjecting Chief ALJ to CJC review. REPRESENTATIVE GRUENBERG turned attention back to page 2, lines [22 and 25], which pertain to the appointment and removal of the chief ALJ, and again mentioned the possibility of having the CJC involved in the process. MR. HEMENWAY relayed that he'd spoken with the executive director of the CJC, Marla Greenstein, about possibly having the CJC become involved in the process, but Ms. Greenstein had expressed concerns about constitutional issues. REPRESENTATIVE GRUENBERG said he is still concerned about the appointment and removal processes as currently proposed. MR. STANCLIFF offered that including legislative confirmation in the appointment process does add some balance to that process. He relayed that the sponsor is still open to suggestions for improving the bill. REPRESENTATIVE GARA opined that involving the CJC in the appointment process would create a constitutional problem. He then offered his belief that including the attorney general in the removal process is a bad idea and could become something of a farce, and suggested that simply allowing the governor to remove the chief ALJ for good cause is sufficient. REPRESENTATIVE GARA made a motion to adopt Amendment 3, on page 2, line 25, to remove, "and after a hearing conducted by the attorney general. CHAIR McGUIRE objected for the purpose of discussion. REPRESENTATIVE GRUENBERG said he supports Amendment 3. REPRESENTATIVE SAMUELS said he agrees that having the attorney general involved in the removal process could create difficulties. CHAIR McGUIRE, after removing her

	objection, asked whether there were any further objections. There being none, Amendment 3 was adopted.
	Prohibiting ALJ performance evaluations from looking at percentage of rulings against agencies. There's some excellent models, through both Maryland and Colorado, that get to that very point. They want to survey for public acceptance and public approval; they do not want to start rating them according to how they rule this way or the other. And I can get a copy of that for Representative Gruenberg. We're going to provide all those materials. And I might add for the committee's comfort here that both Ed Felter (ph), who is ... [an] internationally respected central panel expert, and John Hardwood (ph) will have availed themselves to work setting up the new panel with the new chief ALJ, and these type of resources and these cautions that you raise will be a part of what we want to avoid. We've stayed away from the micromanaging because there's no end to it.
	Nonexempt status of ALJs. REPRESENTATIVE GRUENBERG asked whether the bill contains a provision to make all ALJs and hearing officers, not just those on the central panel, nonexempt and, if not, should there be such a provision in the bill. The central panel protections are in place; we don't extend the rules and the central panel protections outside the central panel at this time. The hearing officers that are operating and ... will continue to operate in their jobs outside the central panel, in most cases, are full "PX" employees and will remain that way until they come into the jurisdiction and become ALJs. And that's the way [the bill] is written right now.

			REPRESENTATIVE GRUENBERG asked about the possibility of including a provision that requires the other agencies that use HOUSE JUD COMMITTEE -27- March 18, 2004 ALJs and hearing officers to make a report to the legislature - perhaps in six months, for example, or by the end of the next legislative session - regarding whether they believe their hearing officers and ALJs ought to be nonexempt. He opined that the policy should be to free hearing officers and ALJs from political considerations; the burden should be on an agency to [prove] that someone should be politically appointed. MR. STANCLIFF replied: That has been thought of and taken care of under the duties and responsibilities of the chief [ALJ]; they are to gather ... exactly that type of information from not only their own house but also ... [from other agencies] and to bring to you, the legislative policy makers, their recommendations, and I'm sure this is going to be one of them. ...
			REPRESENTATIVE GRUENBERG asked about centralized training and qualifications for ALJs and hearing officers that are not on the central panel. MR. STANCLIFF said that the bill requires [the central panel] to provide cross training, resource materials, and to work with all ALJs and hearing officers, whether part of the central panel or not, to help them "come up to speed."
House CS for CS for SB 203(Jud)	3/18/04	Reported Out of Committee – Note this version creates the PFA process but does not describe why it was added. In discussions with Andy Hemenway the provision may not have been discussed but was negotiated with Law. Likely use of the term that parties may transmits	REPRESENTATIVE ANDERSON moved to report the proposed House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 203(JUD) was reported from the House Judiciary

		PFA's to agency was in error, particularly if parties are using the PFAs to present new arguments or evidence never addressed in the administrative record or before the ALJ.	Standing Committee. The committee took an at-ease from 3:45 p.m. to 4:10 p.m
	3/19/25	State Affairs. Rep. Gruenberg mentions inclusion of notary public disputes in SB 203	REPRESENTATIVE GRUENBERG noted SB 203, regarding "the administrative law judge," was reported out of the House Judiciary Standing Committee on March 18, 2004. He stated that Ms. Kreitzer had said she would like to have the procedure for the disciplining of the notary public be, essentially, subsumed under [SB 203], so that the judge would be the central panel of administrative law judges. He suggested that if [SB 203] passes, then "we can ultimately remove part of these." Number 1017 MS. KREITZER confirmed that it has been advised by [Legislative Legal and Research Services] and the Department of Law that it is premature to offer those amendments that deal with "that issue.."
	3/22/25	House Journal Report	The Judiciary Committee has considered: CS FOR SENATE BILL NO. 203(FIN) am "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." and recommends it be replaced with: HOUSE CS FOR CS FOR SENATE BILL NO. 203(JUD) (same title) The report was signed by Representative McGuire, Chair, with the following individual recommendations:

			Do pass (5): Anderson, Samuels, Gara, Gruenberg, McGuire The following fiscal note(s) apply to HCS CSSB 203(JUD): 6. Fiscal, Dept. of Administration 7. Fiscal, Dept. of Administration 8. Zero, Dept. of Labor & Workforce Development 9. Fiscal, Dept. of Public Safety . Zero, Dept. of Health & Social Services . Fiscal, Office of the Governor . Indeterminate, Dept. of Community & Economic Development . Zero, Dept. of Education & Early Development . Indeterminate, Dept. of Environmental Conservation . Fiscal, Dept. of Community & Economic Development . Indeterminate, Dept. of Law . Indeterminate, Dept. of Education & Early Development . Fiscal, Dept. of Revenue . Fiscal, Dept. of Revenue . Zero, Dept. of Community & Economic Development CSSB 203(FIN) am was referred to the Finance Committee
House CS for CS for SB 203(Jud)	4/30/04	House Finance Committee Hearing	CS FOR SENATE BILL NO. 203(FIN) am An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings

			and relating to that office; and providing for an effective date. Co-Chair Harris MOVED to ADOPT Work Draft #23-LS0903 Version M, Cook, dated 4/7/04, as the version of legislation before the Committee. There being NO OBJECTION, it was so ordered.
			Stancliff testimony. Explained that the bill dates back five years and developed from an effort to consolidate and improve the public administrative hearing process. The bill contains two concepts: that the public deserves timely, efficient, and fair due-process oriented hearings when contesting a state agency; and that there are inefficiencies within state government. In other words, many types of hearing officers are scattered throughout the state and have many functions. The past two years of cooperative bipartisan effort that included the Administration has culminated in a well thought-out new system of hearings
			Mr. Stancliff explained that the crux of the bill is found in the first eight pages. The central panel office will house the hearing officers. By using the current hearing officers and the existing functions, a more efficient government would be created with less fiscal impact
			Mr. Stancliff stated that the second aspect of the bill relates to reforms that occur outside the central panel office. Hearing officers would be subject to new standards and reforms, and the central panel office would report to the House [and Senate] Finance Committees in the future. Their budget would be a separate component under the Department of Administration. He noted that twenty-seven other states and some municipalities have formed central panels in order to save money and serve the public better by creating efficiencies.

	Amendment 1. Tax Appeals inclusion. Mr. Stancliff pointed out that the Office of Tax Appeals has final jurisdiction, and it is already operating to deal with House Finance Committee 12 04/30/04 8:43 AM oil tax issues. In this proposed committee substitute, the Administration would move the Office of Tax Appeals [Hearings and Appeals, Department of Administration] to the central panel for greater efficiency. He noted that the oil and gas industry was reluctant to change their office, which was specifically dedicated to their issues. However, he had worked with AOGA (Alaska Oil and Gas Association) to reach accord with the final three amendments in the packet. He asked the Committee to move the amendments.
	Cost of Tax Appeals Inclusion and Fiscal Note for Office. Co-Chair Harris referred to one of the [16] fiscal notes and asked if a new position would be created. Mr. Stancliff responded that it would. Co-Chair Harris asked if Fiscal Note #6 is still applicable. ERIC SWANSON, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF ADMINISTRATION, affirmed that Fiscal Note #6 would set up the funding structure and positions in the new office of administrative hearings. Co-Chair Harris discussed that it increases to $900 thousand in FY 06 and funding sources would include the Permanent Fund Dividend fund, the General Fund, child support enforcement, and interagency receipts. He asked about the 9 new full-time positions. Mr. Swanson clarified that these are transfers of positions that currently exist in other agencies. The funding increase occurs in the second year with the office coming together after January 1, 2005. There is some earlier funding for the Administrative Law Judge position that would oversee the office. Co-

	Chair Harris asked if the General Fund budget increased by $260 thousand in FY 06, would it decrease elsewhere. Mr. Swanson affirmed, and explained that most is General Fund transfers from other agencies. The increase of $50 thousand in General Funds in the first year would pay the first six months' salary for the Administrative Law Judge. There might also be start-up costs related to the new office, he said. Co-Chair Harris commented that all the other fiscal note decrements zero out Fiscal Note #6, except for the $50 thousand. He asked if the new office would use existing personnel. Mr. Swanson said that the Administrative Law Judge is a vacant position within the Office of Tax Appeals. He was unsure if that position would be moved into the new office, or deleted and a new position created. In any case, the net effect would be no new positions. Representative Joule asked if the current salary would carry over if the current position were transferred. Mr. Swanson replied that there would be no reclassifications. Any vacancy would also be hired at the existing level or classification.
	Representative Stoltze commented on high profile tax issues. Mr. Stancliff responded that there would be "cross-training" and improved efficiency with the new panel structure. Representative Stoltze asked if the Alaska judicial process would remain in place. Mr. Stancliff said that it would not, and pointed out that that process was subject to constitutional questions with appointments in one branch of government serving in another. The chief would be selected by the Governor and confirmed by the Legislature, and the chief would hire the central panel. The three amendments are qualifications that the industry requested for the handling of tax issues

	by the Administrative Law Judge. Representative Stoltze thought that it was a major shift to have the Legislature confirm the position because it was a judicial position. Mr. Stancliff agreed that it is a departure, but he emphasized that the tax work on oil issues would retain the current standards and statutes, and the position would have final decision-making authority. He said that with all those adjustments, the need for the judicial counsel appointment had become less important.
	Adoption of Am. 1. Representative Co-Chair Williams MOVED to ADOPT Amendment #1. Co-Chair Harris OBJECTED for purposes of discussion. Amendment #1 reads: Page 31, lines 6-10 Delete all existing language and replace with: *Sec 67. AS43.05.420 is amended to read b) A person conducting a proceeding authorized under AS 43.05.405-AS43.05.499 shall have at least four years of professional experience as a tax attorney, or be a certified public accountant practicing in the area of tax, or a tax administrator. This amendment is being offered to insure that the high quality of standards of expertise developed in the original tax appeals office remain in place as the Central Panel absorbs and executes those adjudicatory functions. Mr. Stancliff explained that the amendment was negotiated between the bill sponsors, the Administration and AOGA. It deals specifically with the expertise that would be required by the person taking up the tax appeal issues. He read the language. Co-Chair Harris WITHDREW his OBJECTION. Amendment #1 was adopted
	Am. 2. Canons to Include in Code of Conduct. Add a new section that reads as follows and re-number all other sections accordingly: Code of conduct The following fundamental canons of

	conduct shall be included in the code adopted by the Chief Administrative Law Judge: An administrative law judge or hearing officer shall in the carrying out of their official duties: 1) uphold the integrity and independence of the office. 2) avoid impropriety and the appearance of impropriety. 3) shall perform the duties of the office impartially and diligently. 4) shall conduct unofficial activities so as to minimize the risk of conflict with the obligations of the office. 5) shall refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment. Mr. Stancliff explained that Amendment #2 is part of the adjustments important to uphold the integrity of all the administrative judges. The code of conduct is modeled after existing judicial canon, and the industry is comfortable with the language. Co-Chair Harris WITHDREW his OBJECTION. Amendment #2 was adopted. Co-Chair Williams MOVED to ADOPT Amendment #3. Co-Chair Harris OBJECTED.
	Am. 3. Amendment #3 reads: Page 30, line 29, After the word "section" remove the period and add: "however AS44.64.070 does apply to such hearings. Mr. Stancliff explained that the amendment provides for preemption ability. If a person felt that a conflict existed and wanted a new hearing officer, one would be appointed. The oil industry requested this amendment and asked that the provision of refusal apply to their tax appeals officer. It is an important technical change.
	Representative Croft observed that the amendment is not only technical but also substantive. Industry representatives in an oil tax appeal could now replace a judge they didn't like. Mr. Stancliff agreed that it is substantive regarding

	that change, but technical in terms of conforming to the existing provisions in the central panel. During negotiations on the legislation, Amendment #3 helped the oil industry accept not having judicial counsel involved in the appointments
	Automatic recusal questions. Representative Croft commented on the level of expertise required in Amendment #1. He questioned if, by granting the power to preempt a judge or hearing office, it would create a limited pool of administrative law judges fitting the qualifications to hear tax appeals. Mr. Stancliff replied that a situation of a very small pool could arise. However, the bill would not prevent the Administration from arranging for a contract-hearing officer with those credentials, and that was felt to be enough of a safety valve. Representative Croft asked if workers' compensation is excluded from the bill's provisions. Mr. Stancliff affirmed. Representative Croft noted that the proposal to combine hearing officers makes a lot of sense. He thought that tax and workers compensation are two specialized areas, and asked if there are other major exclusions from the bill. Mr. Stancliff affirmed, and said that there were discussions of the areas where expertise is more critical. Ratemaking cases are not included under this jurisdiction
	Representative Foster MOVED to report HCS CSSB 203(FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered. HCS CSSB 203(FIN) was REPORTED out of Committee with a "do pass" recommendation and sixteen fiscal impact notes

CS for SB 203(Fin)	5/1/04	Finance CS is reported out of committee	The Finance Committee has considered: CS FOR SENATE BILL NO. 203(FIN) am "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." and recommends it be replaced with: HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) (same title) The report was signed by Representatives Harris and Williams, Co-chairs, with the following individual recommendations: Do pass (7): Meyer, Hawker, Croft, Moses, Fate, Foster, Williams No recommendation (4): Stoltze, Joule, Chenault, Harris The following fiscal note(s) apply to HCS CSSB 203(FIN): 6. Fiscal, Dept. of Administration 7. Fiscal, Dept. of Administration 9. Fiscal, Dept. of Public Safety . Zero, Dept. of Health & Social Services . Fiscal, Office of the Governor . Indeterminate, Dept. of Community & Economic Development . Zero, Dept. of Education & Early Development . Indeterminate, Dept. of Environmental Conservation

			. Fiscal, Dept. of Community & Economic Development . Indeterminate, Dept. of Education & Early Development . Fiscal, Dept. of Revenue . Fiscal, Dept. of Revenue . Zero, Dept. of Community & Economic Development . Zero, Dept. of Labor & Workforce Development . Zero, Dept. of Labor & Workforce Development . Indeterminate, Dept. of Law SB 203 was referred to the Rules Committee for placement on the calendar.
CS for SB 203(Fin)	5/4/25	Rules Consideration	Advanced to floor.
CS for SB 203(Fin)	5/4/5	Second Reading	The following was read the second time: CS FOR SENATE BILL NO. 203(FIN) am "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date."
House CS for CS for SB203 (FIN)	5/4/04	Adoption of Committee Substitute	Representative Coghill moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill: HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) (same title) There being no objection, it was so ordered.

House CS for CS for SB203 (FIN)		Failure in Advance to 3rd reading. Calendar for 5.5.	Representative Coghill moved and asked unanimous consent that HCS CSSB 203(FIN) be considered engrossed, advanced to third reading, and placed on final passage. Objection was heard. HCS CSSB 203(FIN) will advance to third reading on tomorrow's calendar.
House CS for CS for SB203 (FIN)	5/5/04	Advance to Third and Final Vote	The following, which was advanced to third reading from the May 4, 04, calendar (page 3794), was read the third time: HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." The question being: "Shall HCS CSSB 203(FIN) pass the House?" The roll was taken with the following result: HCS CSSB 203(FIN) Third Reading Final Passage **YEAS: 37 NAYS: 0 EXCUSED: 1 ABSENT: 2** **2004-05-05 House Journal Page 3858**

			Yeas: Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Fate, Foster, Gara, Gatto, Gruenberg, Guttenberg, Harris, Hawker, Heinze, Holm, Joule, Kapsner, Kerttula, Kohring, Kott, Lynn, Masek, McGuire, Meyer, Morgan, Moses, Ogg, Samuels, Seaton, Stepovich, Stoltze, Weyhrauch, Wilson, Wolf Excused: Kookesh Absent: Rokeberg, Williams And so, HCS CSSB 203(FIN) passed the House. Representative Coghill moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.
House CS for CS for SB203 (FIN)	5/5/04	Transmittal to Senate	HCS CSSB 203(FIN) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.
House CS for CS for SB203 (FIN)	5/5/04	Message to Senate relayed	Message dated May 5 was read, stating the House passed and returned for consideration CS FOR SENATE BILL NO. 203(FIN) am "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative

			hearings and relating to that office; and providing for an effective date" with the following amendment: HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) President Therriault stated the message will be held on the Secretary's Desk.
House CS for CS for SB203 (FIN)	5/6/04	Senate Concurrence Vote	**SB 203** Senator Ben Stevens moved and asked unanimous consent that the concur message on HOUSE CS FOR CS FOR SENATE BILL NO. 3(FIN) "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date" which had been held on the Secretary's desk (page 65) be taken up at this time. Without objection, it was so ordered. Senator Ben Stevens moved that the Senate concur in the House amendment. The question being: "Shall the Senate concur in the House amendment?" The roll was taken with the following result: HCS CSSB 203(FIN) Shall the Senate Concur in the House

			Amendment to CSSB 203(FIN) am? - Effective Dates **YEAS: 20 NAYS: 0 EXCUSED: 0 ABSENT: 0** Yeas: Bunde, Cowdery, Davis, Dyson, Ellis, Elton, French, Green, Guess, Hoffman, Lincoln, Ogan, Olson, Seekins, Stedman, Stevens B, Stevens G, Therriault, Wagoner, Wilken. and so, the Senate concurred in the House amendment, thus adopting HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." Senator Ben Stevens moved and asked unanimous consent that the vote on concurrence be considered the vote on the effective date clauses. Without objection, it was so ordered. The Secretary was requested to notify the House. The bill was referred to the Secretary for enrollment
	7/19/2004 (recorded in Senate Journal 9/07/04)	Transmittal to Governor	HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative

			hearings and relating to that office; and providing for an effective date" was enrolled, signed by the President and Secretary, Speaker and Chief Clerk and the engrossed and enrolled copies transmitted to the Office of the Governor at 10:33 a.m., July 19, 2004
	7/29/04 (recorded in Senate Journal 9/7/04)	Signed into law	Message dated July 25 and received July 29, stating the Governor signed the following bill and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing: HOUSE CS FOR CS FOR SENATE BILL NO. 203(FIN) "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." Chapter 163, SLA 2004 Effective Date: See Chapter

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Administration

OFFICE OF ADMINISTRATIVE HEARINGS

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Transmitted via Email
(RuleComments@akcourts.gov)

January 23, 2026

Judicial Code Public Comments
c/o Court Rules Attorney
Alaska Court System
820 West 4th Avenue
Anchorage, AK 99501

Re: Public Comments: Revised Judicial Code of Conduct

To Whom It May Concern:

Thank you for the opportunity to provide public comments on the proposed amendments to the Alaska Code of Judicial Conduct. As Chief Administrative Law Judge for the Office of Administrative Hearings (OAH), I am statutorily obligated under AS 44.64.050(b) to adopt a Code of Hearing Officer Conduct that applies to the administrative law judges at OAH and to hearing officers in any agency of the executive branch of state government. The Code of Hearing Officer Conduct implements the five canons in the current Rules of Judicial Conduct, but as applicable to executive branch adjudicators. These include: (1) upholding the integrity and independence of the office; (2) avoiding impropriety and the appearance of impropriety; (3) performing the duties of the office impartially and diligently; (4) conducting unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and (5) refraining from inappropriate activity in ways that minimize the risk of conflict with the obligations of the office.

The Code of Hearing Officer Conduct is codified at 2 AAC Chapter 64, Article 1. In addition to adopting the fundamental judicial canons codified in the current judicial code, it utilizes the Alaska Code of Judicial Conduct as guidance for determining the scope of these obligations to executive branch adjudicators. As such, we are very much tied to the obligations applicable to the judicial branch and have followed the work on this project with attention to our ethical obligations as neutral decisionmakers that parties can count upon for the efficient and fair delivery of adjudicative services.

I write in support of the vast majority of the revisions to the Code as they might one day be applicable to administrative law judges and hearing officers in the executive branch. The changes are comprehensive and implement the American Bar Association Model Code of

Judicial Conduct, with special attention to how the Code should be modified as particular to Alaska. If approved by the Alaska Supreme Court, I will certainly use the updated Code when proposing amendments to the Hearing Officer Code of Conduct.

I do suggest, however, that the Court consider if the Code unintentionally operates as a political tool when restricting the permissive extra judicial activities of judges at proposed Rule 3.6(A). This Rule would prohibit judges from knowingly holding membership in any organization that "practices invidious discrimination on the basis of race, sex, gender, gender identity, religion, national origin, ethnicity, or sexual orientation, or on the basis of any other classification protected by federal, state, or local law where the judge lives or regularly serves." My question is who defines what is an organization that practices "invidious discrimination?" The best example of concern might be participation in an organization that supports participation in women's sports being determined by biological sex versus gender identity. Might that be considered by some to be an organization that discriminates against gender or gender identity? Similarly, could this not be potentially used against a judge who is in an organization that supports gender identity over biological sex? The current political environment does not support a civil disagreement of the minds. As such, I urge caution or attention to how these rules might be used for political fodder to censure judges versus apply enforceable standards for legitimate reasons.

Thank you for this opportunity to comment. I appreciate all your hard work and will follow the Supreme Court's actions on the proposed Code with special interest and attention.

Respectfully submitted,

Joan M. Wilson

Joan M. Wilson
Chief Administrative Law Judge

cc: Paula Vrana, Commissioner, Department of Administration
David Donley, Deputy Commissioner, Department of Administration

Component Detail (1077)

DRAFT

Department of Administration

Component: Office of Administrative Hearings (2771)
RDU: Centralized Administrative Services (13)

Non-Formula Component
IRIS AP Type: AOAH

	FY2023 Actuals (20746)	FY2024 Actuals (22135)	FY2025 Management Plan (21890)	FY2026 Governor (22363)	FY2026 Governor Amended (22725)	FY2026 Enrolled - Less Vetoes (23183)	FY2026 Governor Amended vs FY2026 Enrolled - Less Vetoes	
1000 Personal Services	2,298.1	2,408.3	2,913.4	3,168.1	3,202.1	3,202.1	0.0	0.0%
2000 Travel	12.6	18.5	45.2	21.0	21.0	21.0	0.0	0.0%
3000 Services	396.3	346.7	443.6	337.2	337.2	337.2	0.0	0.0%
4000 Commodities	18.8	12.2	28.8	13.8	13.8	13.8	0.0	0.0%
5000 Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
7000 Grants, Benefits	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
8000 Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Totals	**2,725.8**	**2,785.7**	**3,431.0**	**3,540.1**	**3,574.1**	**3,574.1**	**0.0**	**0.0%**
Funding Sources:								
1004 Gen Fund (UGF)	123.2	94.5	382.5	393.2	393.2	393.2	0.0	0.0%
1005 GF/Prgm (DGF)	178.4	108.9	180.0	180.0	180.0	180.0	0.0	0.0%
1007 I/A Rcpts (Other)	2,424.2	2,582.3	2,868.5	2,966.9	3,000.9	3,000.9	0.0	0.0%
Funding Totals:								
Unrestricted General (UGF)	**123.2**	**94.5**	**382.5**	**393.2**	**393.2**	**393.2**	**0.0**	**0.0%**
Designated General (DGF)	**178.4**	**108.9**	**180.0**	**180.0**	**180.0**	**180.0**	**0.0**	**0.0%**
Other	**2,424.2**	**2,582.3**	**2,868.5**	**2,966.9**	**3,000.9**	**3,000.9**	**0.0**	**0.0%**
Federal	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0%**
Positions:								
Permanent Full Time	15	15	15	15	15	15	0	0.0%
Permanent Part Time	0	0	0	0	0	0	0	0.0%
Non Permanent	0	0	0	0	0	0	0	0.0%

Changes from FY2025 Mgmt Plan to FY2026 Gov

- Salary, Health Insurance, and Retirement Increases +$109.1 | +$10.7 GF | $98.4 IA
- LIT - Align Authority for Anticipated Expenditures + $145.6 | -$24.2 Travel, -$106.4 Svcs, -$15.0 Commodities

Changes from FY2025 Gov to Gov Amend

- ASEA Salary and Benefit Increases +$34.0 IA

Changes from FY2025 Gov Amend to Enrolled Less Vetoes

- None

Component Detail (1077)

DRAFT

Department of Administration

Component: Office of Administrative Hearings (2771)
RDU: Centralized Administrative Services (13)

Non-Formula Component
IRIS AP Type: AOAH

	FY2027 Governor (23629)
1000 Personal Services	3,324.1
2000 Travel	21.0
3000 Services	337.2
4000 Commodities	13.8
5000 Capital Outlay	0.0
7000 Grants, Benefits	0.0
8000 Miscellaneous	0.0
Totals	**3,696.1**
Funding Sources:	
1004 Gen Fund (UGF)	408.1
1005 GF/Prgm (DGF)	180.0
1007 I/A Rcpts (Other)	3,108.0
Funding Totals:	
Unrestricted General (UGF)	**408.1**
Designated General (DGF)	**180.0**
Other	**3,108.0**
Federal	**0.0**
Positions:	
Permanent Full Time	15
Permanent Part Time	0
Non Permanent	0

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