

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 25, 2015

SUBJECT: Constitutionality of CSHB 115() and drafting changes
(CSHB 115(); Work Order No. 29-LS0587\W)

TO: Representative Mike Chenault
Speaker of the House
Attn: Don Bullock and Tom Wright

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the bill described above.

As I discussed with Don on the phone I have serious reservations about the constitutionality of new secs. 2(b) and 4.

Drafting notes

You requested that the bill include a section that reads:

(b) The affirmation, reservation, and assertion in (a) of this section include a right and claim of setoff by the state for any amount that the state claims to have been inequitably or unlawfully caused or imposed by the federal government.

It was not clear to me what this means.¹ I changed it to read:

(b) The affirmation, reservation, and assertion in (a) of this section include the right to a setoff for any amount inequitably or unlawfully deprived to the state by the federal government.

Please advise if my change is inconsistent with your intent.

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Enclosure

¹ A "setoff" is defined as "[a] defendant's counterdemand against the plaintiff, arising out of a transaction independent of the plaintiff's claim[.]" or "[a] debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed the creditor." *Black's Law Dictionary* 1404 (8th ed. 2004).