

SENATE CS FOR CS FOR HOUSE BILL NO. 361(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/14/00

Referred: Rules

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to charges for state services; requiring that fees levied by
2 resource agencies for designated regulatory services be based on the actual and
3 reasonable direct cost of providing the services, except in the case of certain
4 negotiated or fixed fees; relating to negotiated and fixed fees of resource
5 agencies; relating to invoices for designated regulatory services; establishing a
6 petition process regarding fees charged by resource agencies for regulatory
7 services; and providing for an effective date."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * **Section 1.** AS 37.10.050 is repealed and reenacted to read:

10 **Sec. 37.10.050. Charges for state services; collection, accounting, and**
11 **deposit of state money.** (a) A state agency may not charge a fee for the provision
12 of state services unless the fee (1) is set or otherwise authorized by statute; and (2)
13 where a regulation is necessary, is set by or provided for in a regulation that meets the

standards of AS 44.62.020 and 44.62.030. Unless specifically exempted by statute, a state agency authorized to collect or receive fees, licenses, taxes, or other money belonging to the state shall account for and remit the receipts, less fees to which the collector is entitled by statute or regulation, to the Department of Revenue at least once each month. The commissioner of administration shall separately account under AS 37.05.142 for receipts deposited under this subsection. A fee or other charge that is set by regulation may not exceed the estimated actual costs of the state agency in administering the activity or providing the service unless otherwise provided by the statute under which the regulation is adopted; however, this limitation does not apply to sale or lease of property by a state agency or fees charged by a resource agency for a designated regulatory service as defined in AS 37.10.058.

(b) Money collected for the state shall be deposited by the collector in the nearest bank to the account of the Department of Revenue when the Department of Revenue directs this to be done.

(c) Except as provided in AS 37.10.052(a), each state agency shall annually review fees collected by the agency. By October 1, each state agency shall submit a report to the office of management and budget regarding existing fee levels set by the agency by regulation and adjustments made to fee levels by the agency during the previous fiscal year, and recommended adjustments in fees set by statute that the agency collects. Each year by December 15, the office of management and budget shall submit a report to the Legislative Budget and Audit Committee summarizing the reports and recommendations and the extent to which the fee adjustments have been incorporated in the governor's budget. Within 30 days after the convening of each regular session of the legislature, the committee shall prepare a report on the status of fee regulations and making recommendations for changes in regulations or statutes as appropriate. The committee shall notify the legislature that the report is available.

* **Sec. 2.** AS 37.10 is amended by adding new sections to read:

Sec. 37.10.052. Fees levied by resource agencies for designated regulatory services; negotiated service agreements. (a) Each resource agency shall, by regulation, establish a list of fixed fees for standard designated regulatory services that it provides. A fixed fee adopted under this subsection may not exceed the estimated

1 average reasonable direct cost incurred by the resource agency in providing the
 2 standard designated regulatory service. The resource agency shall provide an
 3 explanation of the basis for the fixed fee. The resource agency shall review the list
 4 of fixed fees at least once every four years, identify any changes in the average actual
 5 and reasonable direct cost of providing each standard designated regulatory service for
 6 which a fixed fee has been established, and, by regulation, adjust the fees accordingly.
 7 The agency shall include the results of its review in the report submitted under
 8 AS 37.10.050(c).

9 (b) In the case of a designated regulatory service for which a resource agency
 10 has not established a fixed fee under (a) of this section, a resource agency shall, at the
 11 request of the person who will be billed for a designated regulatory service, attempt
 12 to reach a negotiated service agreement for provision of that service. A negotiated
 13 service agreement that is reached under this subsection is a contract that is enforceable
 14 by either party under generally applicable contract remedies provided by law. A
 15 negotiated service agreement reached under this subsection may include

- 16 (1) the amount of the fee;
- 17 (2) the structure or methodology by which the fee will be charged;
- 18 (3) deadlines, sequences, or milestones for the provision of the
 19 regulatory service; and
- 20 (4) other matters reasonably related to the cost of, or procedures for,
 21 the provision of the regulatory service.

22 (c) A person requiring more than one regulatory service, at least one of which
 23 is a designated regulatory service, for an activity may petition the resource agency that
 24 will provide the services or, if more than one resource agency will provide a regulatory
 25 service, the office of management and budget to establish a single fee for all regulatory
 26 services that are required for that class of activities. The resource agency or office of
 27 management and budget, as appropriate, shall grant the petition if it finds that the
 28 proposed fee meets the applicable requirements of this subsection and is likely to be
 29 used by the resource agency or office of management and budget more than once. If
 30 a petition under this subsection is granted, the resource agency or the office of
 31 management and budget shall make available to the public information concerning the

single fee, including, a list of regulatory services to be provided and the amount of the fee. If the resource agency or the office of management and budget denies the petition, the agency or office shall provide to the petitioner a statement setting out the agency's or office's reasons for denial. The single fee under this subsection must be

(1) confined to the distinct economic sector in which the petitioner is or proposes to be engaged;

(2) where necessary, limited by geography, facility size or capacity, or other relevant factors so as to provide a reasonable assurance that only similarly situated activities, with respect to cost, are included within the fixed fee; and

(3) based on the estimated average reasonable direct cost of each designated regulatory service required for the activity and the average fee customarily charged for a regulatory service other than a designated regulatory service discounted by the amount of savings that may be achieved by avoiding regulatory overlap and, where applicable, coordinating multi-agency review of the activity to the maximum extent possible.

(d) Except for fees determined under (a), (b), or (c) of this section or in AS 37.10.056, a fee levied by a resource agency for a designated regulatory service must be based solely on the actual and reasonable direct cost incurred by the resource agency in providing the designated regulatory service to the person on whom that fee is levied, computed on a time-and-expense basis.

(e) Nothing in this section authorizes or requires a resource agency to charge a fee for a designated regulatory service.

(f) No action taken by a resource agency or the office of management and budget under (c) of this section is subject to AS 44.62 (Administrative Procedure Act).

Sec. 37.10.054. Invoices for designated regulatory services. (a) Unless a negotiated service agreement reached under AS 37.10.052(b) or (c) provides otherwise, a resource agency charging a fee for providing a designated regulatory service other than a standard designated regulatory service for which a fixed fee has been established under AS 37.10.052(a) shall, on a monthly basis, provide the person who will be billed for the service with an invoice for services performed during that month. The invoice must be reasonably convenient to the reader, and reasonably susceptible

1 to audit. The invoice must set out, in time increments of not greater than one-quarter
 2 hour for each employee, and separately for each expenditure, the purpose of the time
 3 or expenditure in sufficient detail to permit a reasonable person to determine whether
 4 the time or cost was an actual and reasonable direct cost.

5 (b) If a person believes that an invoice rendered under (a) of this section
 6 exceeds the actual and reasonable direct cost of providing the designated regulatory
 7 service, the person may, within 30 days after receiving the invoice, request that the
 8 resource agency review the invoice. The resource agency shall review the invoice
 9 under the standards of this section and issue its final decision on the invoice within 30
 10 days of receipt of a request for review.

11 **Sec. 37.10.056. Petitions to adopt regulations.** A person requiring a
 12 designated regulatory service from a resource agency may petition the resource agency
 13 under AS 44.62.220 and 44.62.230 to adopt regulations that would establish, for a
 14 category of designated regulatory services, a fixed fee that is

15 (1) confined to the distinct economic sector in which the petitioner is
 16 or proposes to be engaged;

17 (2) where necessary, limited by geography, facility size or capacity, or
 18 other relevant factors so as to provide a reasonable assurance that only similarly
 19 situated regulatory services, with respect to cost, are included within the fixed fee;

20 (3) likely to be used by the resource agency more than once; and

21 (4) based on the average reasonable direct cost incurred by the agency
 22 in providing the designated regulatory service.

23 **Sec. 37.10.058. Definitions.** In AS 37.10.050 - 37.10.058,

24 (1) "agency" means a board, commission, or agency in the legislative,
 25 judicial, or executive branch, but does not include the University of Alaska or a public
 26 corporation;

27 (2) "designated regulatory service" means a regulatory service provided
 28 under the following regulatory programs:

29 (A) regulation of the disposal of waste into waters of the state
 30 under AS 46.03.100;

31 (B) certification of federal permits or authorizations under 33

1 U.S.C. 1341 (sec. 401, Clean Water Act); and

2 (C) a coastal management consistency determination relating to
3 a permit or authorization issued under a program listed in (A) or (B) of this
4 paragraph, if the determination is made by the agency issuing the permit or
5 authorization;

6 (3) "direct cost" means the hourly rate of salary and benefits of each
7 agency employee, including clerical staff, directly involved in providing a regulatory
8 service, multiplied by the number of hours spent in performing the service, together
9 with the expenditures for goods or third-party services made in providing that service;
10 "direct cost" does not include

11 (A) the costs and salaries of administrative, support, or
12 supervisory personnel who are not directly engaged in providing the service;

13 (B) other budgeted overhead expenses, including rent and
14 utilities;

15 (C) interagency charges that would not meet the requirements
16 of AS 37.10.052 - 37.10.058 if those charges had been incurred or invoiced by
17 the agency providing the designated regulatory service;

18 (D) public consultation costs when the consultation is not
19 required by law;

20 (E) costs related to an appeal of permit issuance by a person
21 other than the applicant for that permit;

22 (F) expenses that are not reasonably necessary to comply with
23 the law under which the service is provided; or

24 (G) travel expenses for inspecting businesses having not more
25 than 20 employees;

26 (4) "distinct economic sector" means a commercial or industrial
27 segment, or other category of land or water use, that, because of common operational,
28 environmental, or other factors, tends to require similar designated regulatory services;
29 each of the following is an example of a "distinct economic sector": (A) oil and gas
30 exploration, development, and production; (B) oil and gas processing and refining; (C)
31 mineral exploration, development and production; (D) coal exploration, development

1 and production; (E) commercial fishing; (F) seafood processing; (G) timber harvest;
 2 (H) timber processing; and (I) residential development; nothing in this paragraph
 3 precludes a resource agency from further subdividing activities listed in (A) - (I) of
 4 this paragraph into more appropriate subcategories;

5 (5) "fee" means a charge assessed or requested by a state agency for
 6 the provision of a service to, the incurring of a burden or cost because of, or the
 7 conferring of a benefit upon, a person; "fee" does not include charges assessed or
 8 requested by the Department of Natural Resources associated with pipeline right-of-
 9 way leases granted under AS 38.35;

10 (6) "hourly rate of salary and benefits" means the hourly increment of
 11 salary due the state employee under the salary schedule applicable to that employee,
 12 multiplied by 149 percent to account for the cost of employment benefits paid by the
 13 state to or on behalf of the employee;

14 (7) "permit" means a permit, license, certificate, approval, or coastal
 15 management consistency determination;

16 (8) "regulatory service" includes the following services provided by a
 17 resource agency:

18 (A) an analysis, deliberation, testing, inspection, approval, or
 19 other review related to the application for or issuance, modification, extension,
 20 or revocation of a permit; and

21 (B) an inspection, testing, monitoring, or compliance review
 22 undertaken under law or the terms of a permit;

23 (9) "resource agency" means the Department of Environmental
 24 Conservation, the Department of Fish and Game, and the Department of Natural
 25 Resources;

26 (10) "standard designated regulatory service" means designated
 27 regulatory services for categories of activities that do not generally raise complex or
 28 controversial legal, technical, or policy issues.

29 * **Sec. 3.** AS 37.10.058(2) is amended to read:

30 (2) "designated regulatory service" means a regulatory service provided
 31 under the following regulatory programs:

(A) control of solid waste facilities under AS 46.03.020(10)(D) and (E);

(B) regulation of the disposal of waste into waters of the state under AS 46.03.100;

(C) [(B)] certification of federal permits or authorizations under 33 U.S.C. 1341 (sec. 401, Clean Water Act); and

(D) [(C)] a coastal management consistency determination relating to a permit or authorization issued under a program listed in (A) - (C) [(A) OR (B)] of this paragraph, if the determination is made by the agency issuing the permit or authorization;

* Sec. 4. AS 44.46.025(a) is amended to read:

(a) Except as otherwise provided in AS 37.10.050 - 37.10.056, the [THE] Department of Environmental Conservation may adopt regulations that prescribe reasonable fees, and establish procedures for the collection of those [THE] fees, to cover the applicable direct costs, not including travel except in the case of a designated regulatory service, as that term is defined in AS 37.10.058, of inspections, permit preparation and administration, plan review and approval, and other services provided by the department relating to

(1) agriculture and animals under AS 03.05; food, drugs, and cosmetics under AS 17.20; and public accommodations and facilities under AS 18.35;

(2) certificates of inspection for motor vehicles under AS 46.14.400 or 46.14.510;

(3) sewerage system and treatment works and wastewater disposal systems, and drinking water systems, under AS 46.03.720;

(4) [REPEALED

(5) REPEALED

(6)] water and wastewater operator training under AS 46.30;

(5) [(7)] control of solid waste facilities under AS 46.03.020(10) and 46.03.100;

(6) [(8)] certification of laboratories conducting environmental analyses of public drinking water systems or of oil or hazardous substances, or conducting other

1 analyses required by the department;

2 (7) [(9)] certification of federal permits or authorizations under 33
3 U.S.C. 1341 (sec. 401, Clean Water Act).

4 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 REGULATIONS. Each resource agency providing a designated regulatory service and
7 the office of management and budget may proceed to adopt regulations necessary to
8 implement this Act. Regulations to implement a provision of this Act take effect under
9 AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1, 2, and
10 4 of this Act.

11 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

12 * **Sec. 7.** Sections 1, 2, and 4 of this Act take effect July 1, 2001.

13 * **Sec. 8.** Section 3 of this Act takes effect July 1, 2002.