

# FISCAL NOTE

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title "...relating to civil liability...amending Rule 13(e) BRU Criminal Division; Civil Division  
and 82(b), Alaska Rules of Civil Procedure..." Component Criminal Justice Litigation;  
 Sponsor Representative Mulder Special Litigation  
 Requester House Judiciary Committee Component Serial No. 2202;2213

### Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	123.5	123.5	123.5	123.5	123.5	123.5
Travel	3.5	3.5	3.5	3.5	3.5	3.5
Contractual	47.9	47.9	47.9	47.9	47.9	47.9
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>183.4</b>	<b>176.9</b>	<b>176.9</b>	<b>176.9</b>	<b>176.9</b>	<b>176.9</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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### FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	76.5	74.0	74.0	74.0	74.0	74.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	106.9	102.9	102.9	102.9	102.9	102.9
<b>TOTAL</b>	<b>183.4</b>	<b>176.9</b>	<b>176.9</b>	<b>176.9</b>	<b>176.9</b>	<b>176.9</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

### POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

### ANALYSIS: (Attach a separate page if necessary)

This bill creates several new causes of action similar to but broader than common law abuse of process. A party to a civil suit could bring a separate civil action against persons who signed pleadings in the original suit, under certain circumstances, or against persons who "take part in the initiation, continuation, defense, or procurement" of the original suit, if they acted "without probable cause on a claim or defense" or for an improper purpose. Potential defendants in the separate action are not limited to people who were parties to the original case, but include witnesses (who sign affidavits or otherwise "take part" in the litigation), attorneys, and others who are involved in litigation of the original case. A civil suit under this bill could not be brought until after a final judgment was entered in the original case, but there is no requirement that the judgment be in favor of the party bringing the subsequent action under this bill. In addition, other preconditions to a separate lawsuit are that the

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 Approved by Commissioner Bruce M. Botelho, Attorney General Date 2/28/00  
 Agency Department of Law

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## FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. SSHB 42

### ANALYSIS CONTINUATION

party bringing an action under this bill must have given notice to the opposing party of the allegedly improper conduct in the original case and that party must not have corrected the challenged conduct within 21 days of the notice. The bill does not require notice and opportunity to correct be given to non-parties, such as witnesses or employees of parties, even though they could be sued separately under this bill.

As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state or state employees that would have merit, but rather by encouraging a large number of unfounded claims that would increase litigation costs. The department handles a disproportionate volume of pro se litigation (where the opposing party is unrepresented by legal counsel) in a variety of legal subject areas. Although the bill does not apply to an action "brought by a person incarcerated by the state," or involving divorce, dissolution, or child adoption, custody, support or visitation, it may not foreclose litigation under the bill by former prison inmates or parties to Child In Need of Aid proceedings.

We anticipate that many pro se litigants would assert that state filings and defenses violated the prohibitions of this bill, and would file separate lawsuits against state employees, officials, and attorneys who were involved in civil litigation with which the pro se litigants were unhappy. Because the defendants could have varying degrees of responsibility for the underlying litigation, and could likely have divergent defenses, the potential for conflicts among defendants is significant and may well result in the need to retain separate counsel. While the state could counterclaim on its own behalf under the provisions of this bill, or could be awarded attorney's fees if it prevails on litigation brought under this bill, the state would not likely recover much, as many pro se litigants are judgment proof.

If it can be demonstrated that the plaintiff in an action brought under this bill had failed to give the required notice of improper conduct to the opposing party in the original case, the action could be dismissed on motion practice, without a trial. However, in situations where notice was given and the challenged issue was not corrected (as, for example, where it goes to the heart of the dispute between the parties), the action brought under this bill would likely present triable issues that could not be resolved by motion.

Overall, the department estimates that SSHB 42 would increase the cost of litigation by about 1 or 2 percent in each division. Based on the number of equivalent positions handling civil litigation, this will result in an increase of one full-time attorney position in the civil division, and an estimated 120 hours of attorney time in the criminal division.

The department's FY01 weighted cost for an attorney position is \$134,712 per year, and \$93.42 per hour. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel, or one time new equipment purchases. The projected in-house staff cost would be \$134,712 for the civil division, plus \$6,500 in FY01 only for new equipment, (37.5% GF and 62.5% IAR) and \$11,200 in general funds for the criminal division. \$5,000 will be needed by the civil division for direct case costs (37.5% GF and 62.5% IAR), and \$1,000 for the criminal division. Additionally, due to conflicts, \$25,000 in outside counsel costs will probably be incurred by the civil division (37.5% GF and 62.5% IAR). No outside counsel costs are anticipated for the criminal division.