

# FISCAL NOTE

Bill Version: CSSSHB 42 (FIN)

(H) Publish Date: 3/22/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 3/20/00 Work Draft Dept. Affected Alaska Court System  
 Title False Claims & Improper Practice in Civil BRU 769  
Cases Component Trial Courts  
 Sponsor Rep. Mulder  
 Requester House Finance Component No. \_\_\_\_\_

**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	47.0	47.0	47.0	47.0	47.0	47.0
Travel						
Contractual	17.7	17.7	17.7	17.7	17.7	17.7
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>

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

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	64.7	64.7	64.7	64.7	64.7	64.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>

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

**POSITIONS**

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time						
Part-time	2	2	2	2	2	2
Temporary	2	2	2	2	2	2

**ANALYSIS:** (Attach a separate page if necessary)  
See attached analysis

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Alaska Court System  
Fiscal Analysis  
CSSSHB 42 (3/20/00 Work Draft)

Draft CSSSHB 42 creates civil liability for actions that it describes as false claims and improper practice in civil cases. Section 1 of the bill essentially codifies Civil Rule 11, with three primary differences. First, CR 11 allows a judge to impose sanctions in a case in which improper practice took place, whereas CSSSHB 42 would authorize the aggrieved party to file a separate case before a separate judge, to be heard subsequent to the initial case. Any claim that the second case involved improper practice would result in a third case, and so on.

Second, by allowing a civil action for improper practice, CSSSHB 42 essentially makes financial sanctions (in the form of compensatory and/or punitive damages) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Third, if a party makes a false statement of a material fact the trier of fact must enter judgment against that party on the issue to which the false statement relates. This differs from CR 11, which gives the judge discretion to dismiss a case or impose lesser sanctions if appropriate under the circumstances. As noted above, the federal experience suggests that mandatory sanctions actually increase caseloads.

While potentially beneficial for certain litigants, we believe that this legislation will result in a net increase in the number of cases before the courts. Had CSSSHB 42 been in effect in FY 99 it would have applied to over 8,000 civil cases in superior court, and roughly 15,000 civil cases in district court. If only 2.5 percent of those cases had resulted in a civil action for frivolous practice (either by the defendant or the plaintiff), there would have been roughly 575 new cases filed. If only 2.5 percent of those had resulted in a trial, there would have been 15 new trials. This note provides for the judicial time, clerical costs, and jury fees necessary to cover those additional trials.

This fiscal note does not take into account the additional motion practice that will occur in those new cases that are filed but settle prior to trial. It also does not reflect the additional time required to deal with motions filed in the underlying case that relate to having the trier of fact find that one party has made a false statement of material fact. Attorneys can be expected to be aggressive in their use of CSSSHB 42 as a new tool to pressure the opposing party into settling a case on their terms. More filings and more motion practice in existing cases will result in additional judicial time, as well as increased clerical costs.