

FISCAL NOTE

No. 36

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: CSSB 24 (JUD)
(S) Publish Date: 3-5-99

Revision Date/Time (Note if correction)	Dept. Affected <u>Law</u>
Title <u>"... relating to regulations; ... to administrative adjudications; amending Rule 65, Ak Rules of Civil Procedure; ..."</u>	BRU <u>Civil Division</u>
Sponsor <u>Senator Donley</u>	Component <u>Commercial</u>
Requester <u>Senate Finance Committee <u>JUDICIARY</u></u>	Component Serial No. <u>2211/2209</u>
	<u>Legislation/Regulations</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	449.2	449.2	449.2	449.2	449.2	449.2
Travel	11.6	11.6	11.6	11.6	11.6	11.6
Contractual	113.0	113.0	113.0	113.0	113.0	113.0
Supplies	6.8	6.8	6.8	6.8	6.8	6.8
Equipment	32.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	613.1	580.6	580.6	580.6	580.6	580.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	306.6	290.3	290.3	290.3	290.3	290.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Rcpts	306.6	290.3	290.3	290.3	290.3	290.3
TOTAL	613.1	580.6	580.6	560.6	580.6	580.6

Estimate of any current year (FY99) cost:

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	5	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 24 (JUD) makes a number of significant changes to the way regulations are adopted and administrative adjudications covered by the Administrative Procedure Act are concluded. Of significance to the Department of Law from a cost perspective are four of the proposed changes in the regulations provisions of the bill: (1) a requirement for the preparation of cost-benefit analyses on most regulation adoption, repeal, and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment for "significant changes" in proposed regulations after initial notice and public comment has occurred; (3) an assumption of invalidity by the courts unless it can be shown that the proposed regulation uses an approach that causes the least intrusion on the rights and property of the persons affected by the regulation, and if it does not, that there is a substantial state interest in using the approach; and (4) a requirement that regulations be "clearly necessary" to be valid. While there are exceptions for some situations and for some state boards and commissions, the vast majority of state regulations would be covered by

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Approved by Commissioner <u>Richard M. Roth</u> <i>Richard M. Roth</i>	Date <u>3/2/99</u>
Agency <u>Department of Law</u>	

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#36

ANALYSIS CONTINUATION

these provisions.

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations when they are challenged in court.

The Department of Law anticipates that a significant increase in the level of litigation attempting to overturn regulations would result. Quantifying costs and benefits of regulations will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least intrusion possible on rights and property of affected individuals would also be open to various interpretations in many cases. For example, it is difficult to determine even who might be affected in the case of many natural resources regulations, and proving a substantial state interest in using a particular scheme, would almost certainly involve extensive litigation because of the economic interests at stake in natural resource decisions.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 40 percent increase in time for all regulations-related projects would result from this bill. (Increases in natural resource-related litigation over regulations could be substantially higher.) At 40 percent, an additional 3000 hours would be required, a total of 2 full-time equivalent attorneys (3000/1448 hours). In addition, many of the cases in litigation would require the use of "outside" expert economists. The department anticipates that the new workload generated by this bill would be split more or less evenly between general funds and interagency agreements. Based on current interagency receipt regulations workload, the FY00 I/A funding would be divided as follows: Revenue \$47.7; H&SS \$50.3, F&G \$12.8, DCED \$33.7, DEC \$15.0.

Under the bill, a time is set for completing agency adjudications that cannot be met in many cases. At that point, the agency case is cancelled and would be re-started in state court. A Department of Law attorney must represent the agency during the court proceeding, which will necessarily be more complex, protracted, and formal than an agency hearing. The department estimates that 2 full-time equivalent attorney positions would be needed to defend the statutory challenges, to assist the boards and agencies in reaching decisions on an expedited basis, and to handle the increased court caseload. As with the regulations attorneys, the new workload is estimated to benefit approximately half general fund clients, and approximately half interagency clients, in this case almost exclusively the licensing boards of the Division of Occupational Licensing in DCED.

Based on the department's FY00 standard full-time equivalent attorney cost schedule (\$133,926), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 4 FTE attorneys is \$535,704. An additional \$5,000 per position is included for direct case costs, \$6,500 per position for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.

While clerical support funding is included in the cost schedule at an approximate ratio of 1 clerical support position for every 3 professional positions, position authorization and one-time equipment costs are separate. The total PFT estimate thus includes one permanent full-time Legal Secretary I position, and the equipment line includes \$6,500 for the position's required new equipment.

SUMMARY	PFT	FY00			FY01-05		
		GE	IA	Total	GE	IA	Total
Leg/Regs	3	\$159.5	\$159.5	\$319.1	151.4	151.4	\$302.8
Commercial	2	\$147.0	\$147.0	\$294.1	138.9	138.9	\$277.9
Total		\$306.6	\$306.6	\$613.1	\$290.3	\$290.3	\$580.6