

FISCAL NOTE

Bill Version: HCS CSSB 24 (JUD)

(H) Publish Date: 4/12/00

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to regulations; amending Rule BRU Civil Division
65, Alaska Rules of Civil Procedure; and ... effective date." Component Legislation/Regulations
 Sponsor Senator Donley
 Requester House Judiciary Committee Component Serial No. 2209

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 | 114.0 | 114.0 | 114.0 | 114.0 | 114.0 | 114.0 |
| Travel | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| Contractual | 45.9 | 45.9 | 45.9 | 45.9 | 45.9 | 45.9 |
| Supplies | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| Equipment | 6.5 | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 171.3 | 164.8 | 164.8 | 164.8 | 164.8 | 164.8 |

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|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 171.3 | 164.8 | 164.8 | 164.8 | 164.8 | 164.8 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 171.3 | 164.8 | 164.8 | 164.8 | 164.8 | 164.8 |

Estimate of any current year (FY00) cost: _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)
 CSSB 24 (FIN) AM makes a number of significant changes to the way regulations are adopted by the Departments of Natural Resources and Environmental Conservation, and parts of the Department of Fish and Game (Habitat and Restoration). These changes would take effect July 1, 2000.
 Of significance to the Department of Law from a cost perspective are four of the proposed changes (unless an exemption applies) for the designated state agencies in the regulations provisions of the bill: (1) a requirement for the preparation of cost-benefit analyses on regulation adoption, repeal, and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment if rewriting substantially changes the substance in proposed regulations after initial notice and public comment has occurred; (3) a new standard for regulation challenges in court

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 Agency Department of Law

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ANALYSIS CONTINUATION

based on if the proposed regulation uses an approach that causes more than the least necessary intrusion on the rights and property of the persons affected by the regulation, and if the regulation is not required by substantial state interest; and (4) a requirement that regulations be within the intent of the statute to be valid. While there are exceptions for some situations, many state regulations by the designated agencies would be covered by these provisions.

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to the designated state agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations of those designated agencies 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 for these designated state agencies will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least necessary intrusion possible on rights and property of affected persons 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 of the designated state agencies. While the version that passed out of the Senate contains several exemptions, the Department of Law will still have to advise designated state agencies on whether the exemption applies in a particular case and the record necessary to support a decision made regarding an exemption, and to defend any court challenges regarding those exemptions.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 20 percent increase in time for regulations-related projects for these designated agencies would result from this bill. At 20 percent, an additional 1500 hours would be required, a total of 1 full-time equivalent attorney. In addition, many of the cases in litigation would require the use of "outside" expert economists.

Based on the department's FY01 standard full-time equivalent attorney cost schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 1 FTE attorney is \$134,712. An additional \$5,000 is included for direct case costs, \$6,500 for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.