

**HOUSE BILL NO. 361**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced: 2/11/00

Referred: Finance

**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 or fixed fees of resource agencies;  
5 relating to invoices for designated regulatory services; establishing a petition  
6 process regarding fees charged by resource agencies for regulatory services; and  
7 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9 \* **Section 1.** AS 37.10.050 is repealed and reenacted to read: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 sales 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) 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; reimbursable service agreements.** (a) Except as provided in this section, in a negotiated agreement reached under this section, or in AS 37.10.056(a) or (b), a fee levied by a resource agency for a designated regulatory service must be based

1 solely on the actual and reasonable direct cost incurred by the resource agency in  
 2 providing the regulatory service to the person on whom that fee is levied, computed  
 3 on a time-and-expense basis.

4 (b) Except in the case of a standard designated regulatory service for which  
 5 a resource agency has established a fixed fee under (c) of this section, a resource  
 6 agency shall, at the request of the person who will be billed for a designated regulatory  
 7 service, endeavor to negotiate a reimbursable service agreement for provision of that  
 8 service. An agreement that is reached under this subsection is a contract that is  
 9 enforceable by either party under generally applicable contract remedies provided by  
 10 law. An agreement reached under this subsection may include

- 11 (1) the amount of the fee;
- 12 (2) the structure or methodology by which the fee will be charged;
- 13 (3) deadlines, sequences, or milestones for the provision of the  
 14 regulatory service; and
- 15 (4) other matters reasonably related to the cost of, or procedures for,  
 16 the provision of the regulatory service.

17 (c) Notwithstanding (a) of this section, each resource agency shall, by  
 18 regulation, establish a list of fixed fees for standard designated regulatory services that  
 19 it provides. A fixed fee adopted under this subsection may not exceed \$250, unless  
 20 the resource agency determines that the fee represents the average actual and  
 21 reasonable direct cost incurred by the resource agency in providing the standard  
 22 designated regulatory service. The resource agency shall provide an explanation of the  
 23 basis for this determination upon request.

24 **Sec. 37.10.054. Invoices for designated regulatory services.** (a) A resource  
 25 agency providing a designated regulatory service shall employ a uniform accounting  
 26 and invoicing system that will provide an invoice that is reasonably convenient to the  
 27 reader, contains the information required by (b) of this section, and is reasonably  
 28 susceptible to audit.

29 (b) If a fee is charged for a designated regulatory service on a time-and-  
 30 expense basis, the resource agency shall, on a monthly basis, provide the person who  
 31 will be billed for the service with an invoice for the services performed during that

1 month. Unless an agreement reached under AS 37.10.052(b) otherwise provides, the  
2 invoice must set out, in time increments of not greater than one-quarter hour for each  
3 employee, and separately for each expenditure, the purpose of the time or expenditure  
4 in sufficient detail to permit a reasonable person to determine whether the time or cost  
5 was an actual and reasonable direct cost.

6 (c) If a person believes that an invoice rendered under (b) of this section  
7 exceeds the actual and reasonable direct cost of providing the designated regulatory  
8 service, the person may, within 30 days after receiving the invoice, request the office  
9 of management and budget to review the invoice. The office of management and  
10 budget shall, within 30 days after receiving a request for review under this subsection,  
11 review the matter de novo under the standards of this section and take action  
12 appropriate under those standards. If the office of management and budget affirms the  
13 resource agency's decision, the person requesting review must pay the actual and  
14 reasonable direct cost of the review.

15 **Sec. 37.10.056. Petitions to adopt regulations.** (a) A person requiring a  
16 designated regulatory service from a resource agency may petition the resource agency  
17 to adopt regulations that would

18 (1) amend or supplement the resource agency's list of standard  
19 designated regulatory services issued under AS 37.10.052(c); or

20 (2) establish, for a category of designated regulatory services, a fixed  
21 fee that is

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

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

28 (C) based on the average actual and reasonable direct cost  
29 incurred by the agency in providing the designated regulatory service.

30 (b) A person requiring more than one regulatory service for an activity may  
31 petition the resource agency that will provide the services, or, if more than one agency

1 will provide a regulatory service, the office of management and budget, to adopt  
2 regulations establishing a single fee for all regulatory services that are required for that  
3 class of activities. The single fee under this subsection must be

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

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

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

15 (c) The resource agency shall act under (d)(1) of this section on a petition filed  
16 under (a)(1) of this section if it appears likely that the regulatory service is a standard  
17 designated regulatory service as defined in AS 37.10.058. The agency or the office  
18 of management and budget, as appropriate, shall act under (d)(1) of this section on a  
19 petition filed under (a)(2) or (b) of this section if it appears likely that the agency or  
20 office will be able to develop a fixed or single fee for the service or activity that meets  
21 the applicable standards of (a)(2) or (b) of this section.

22 (d) Within 30 days after receipt of a petition under (a) or (b) of this section,  
23 the agency or the office of management and budget, as appropriate, shall

24 (1) schedule for public hearing under AS 44.62.190 - 44.62.215 the  
25 subject matter of the petition and propose regulations that would implement a proposed  
26 new fixed or single fee; or

27 (2) deny the petition and serve upon the petitioner a statement setting  
28 out the agency's reasons for denial.

29 (e) The agency shall adopt proposed regulations with respect to the subject  
30 matter of a petition filed under (a) or (b) of this section if, on the basis of the record  
31 developed during the public comment process, the agency finds that the proposed fixed

1 or single fee meets the applicable requirements of this section.

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

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

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

11 (B) other budgeted overhead expenses, including rent and  
12 utilities;

13 (C) interagency charges;

14 (D) public notice or public consultation costs when the notice  
15 or consultation is not required by law;

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

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

20 (G) expenses incurred by employees who do not possess the  
21 education, other qualifications, or experience that would customarily be  
22 expected of a person providing an analogous service in the private sector;

23 (2) "actual hourly rate of salary and benefits" means the hourly  
24 increment of salary due the state employee under the salary schedule applicable to that  
25 employee, multiplied by 135 percent to account for the cost of employment benefits  
26 paid by the state to or on behalf of the employee;

27 (3) "agency" means a board, commission, or agency in the legislative,  
28 judicial, or executive branch, but does not include the University of Alaska or a public  
29 corporation;

30 (4) "designated regulatory service" includes a regulatory service related  
31 to the following regulatory programs:

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

3 (B) regulation of sewerage systems and treatment works and  
4 wastewater disposal systems, and drinking water systems, under AS 46.03.720;

5 (C) regulation of the disposal of waste into waters of the state  
6 under AS 46.03.100;

7 (D) certification of federal permits or authorizations under 33  
8 U.S.C. 1341 (sec. 401, Clean Water Act); and

9 (E) a coastal management consistency determination relating to  
10 a permit or authorization issued under a program listed in (A) - (D) of this  
11 paragraph, if the determination is made by the agency issuing the permit or  
12 authorization;

13 (5) "distinct economic sector" means a commercial or industrial  
14 segment, or other category of land or water use, that, because of common operational,  
15 environmental, or other factors, tends to generate similar regulatory services; each of  
16 the following is an example of a "distinct economic sector": (A) oil and gas  
17 exploration, development, and production; (B) oil and gas processing and refining; (C)  
18 mineral exploration, development and production; (D) coal exploration, development  
19 and production; (E) commercial fishing; (F) seafood processing; (G) timber harvest;  
20 (H) timber processing; and (I) residential development; nothing in this paragraph  
21 precludes a resource agency from further subdividing activities listed in (A) - (I) of  
22 this paragraph into more appropriate subcategories;

23 (6) "fee" means a charge assessed or requested by a state agency for  
24 the provision of a service to, the incurring of a burden or cost because of, or the  
25 conferring of a benefit upon, a person;

26 (7) "permit" includes a permit, license, certificate, or coastal  
27 management consistency determination;

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

30 (A) an analysis, deliberation, testing, inspection, or other review  
31 related to the application for or issuance, modification, extension, or revocation

1 of a permit; and

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

4 (9) "resource agency" means the Department of Environmental  
5 Conservation, the Department of Fish and Game, and the Department of Natural  
6 Resources;

7 (10) "standard designated regulatory service" means designated  
8 regulatory services for categories of activities that do not generally raise complex or  
9 controversial legal, technical, or policy issues, including the permitting or inspecting  
10 of activities customarily associated with small-scale mining, oil, gas, forestry, and  
11 commercial fishing operations.

12 \* **Sec. 3.** AS 44.46.025(a) is amended to read:

13 (a) **Except as otherwise provided in AS 37.10.050 - 37.10.058, the** [THE]  
14 Department of Environmental Conservation may adopt regulations that prescribe  
15 reasonable fees, and establish procedures for the collection of **those** [THE] fees, to  
16 cover the applicable direct costs [, NOT INCLUDING TRAVEL,] of inspections,  
17 permit preparation and administration, plan review and approval, and other services  
18 provided by the department relating to

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

21 (2) certificates of inspection for motor vehicles under AS 46.14.400 or  
22 46.14.510;

23 (3) [SEWERAGE SYSTEM AND TREATMENT WORKS AND  
24 WASTEWATER DISPOSAL SYSTEMS, AND DRINKING WATER SYSTEMS,  
25 UNDER AS 46.03.720;

26 (4) REPEALED

27 (5) REPEALED

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

29 [(7) CONTROL OF SOLID WASTE FACILITIES UNDER  
30 AS 46.03.020(10) AND 46.03.100;]

31 **(4)** [(8)] certification of laboratories conducting environmental analyses

1 of public drinking water systems or of oil or hazardous substances, or conducting other  
2 analyses required by the department [;

3 (9) CERTIFICATION OF FEDERAL PERMITS OR  
4 AUTHORIZATIONS UNDER 33 U.S.C. 1341 (SEC. 401, CLEAN WATER ACT)].

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

7 REGULATIONS. Each resource agency providing a designated regulatory service may  
8 proceed to adopt regulations necessary to implement this Act. Regulations to implement a  
9 provision of this Act take effect under AS 44.62 (Administrative Procedure Act), but not  
10 before the effective date of secs. 1 - 3 of this Act.

11 \* **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

12 \* **Sec. 6.** Sections 1 - 3 of this Act take effect July 1, 2001.