

SENATE BILL NO. 296

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 3/24/00

Referred: Resources, 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 and 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9 * **Section 1.** AS 37.10.050 is repealed and reenacted to read: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 sale or lease 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) Except as provided in AS 37.10.052(a), 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; negotiated service agreements. (a) Each resource agency shall, by regulation, establish a list of fixed fees for standard designated regulatory services that it provides. A fixed fee adopted under this subsection may not exceed the estimated

1 average reasonable direct cost incurred by the resource agency in providing the
2 standard designated regulatory service. The resource agency shall provide an
3 explanation of the basis for the fixed fee. The resource agency shall review the list
4 of fixed fees at least once every four years, identify any changes in the average actual
5 and reasonable direct cost of providing each standard designated regulatory service for
6 which a fixed fee has been established, and, by regulation, adjust the fees accordingly.
7 The agency shall include the results of its review in the report submitted under
8 AS 37.10.050(c).

9 (b) In the case of a designated regulatory service for which a resource agency
10 has not established a fixed fee under (a) of this section, a resource agency shall, at the
11 request of the person who will be billed for a designated regulatory service, attempt
12 to reach a negotiated service agreement for provision of that service. A negotiated
13 service agreement that is reached under this subsection is a contract that is enforceable
14 by either party under generally applicable contract remedies provided by law. A
15 negotiated service agreement reached under this subsection may include

- 16 (1) the amount of the fee;
- 17 (2) the structure or methodology by which the fee will be charged;
- 18 (3) deadlines, sequences, or milestones for the provision of the
19 regulatory service; and
- 20 (4) other matters reasonably related to the cost of, or procedures for,
21 the provision of the regulatory service.

22 (c) A person requiring more than one regulatory service, at least one of which
23 is a designated regulatory service, for an activity may petition the resource agency that
24 will provide the services or, if more than one resource agency will provide a regulatory
25 service, the office of management and budget to establish a single fee for all regulatory
26 services that are required for that class of activities. The resource agency or office of
27 management and budget, as appropriate, shall grant the petition if it finds that the
28 proposed fee meets the applicable requirements of this subsection and is likely to be
29 used by the resource agency or office of management and budget more than once. If
30 a petition under this subsection is granted, the resource agency or the office of
31 management and budget shall make available to the public information concerning the

1 single fee, including, a list of regulatory services to be provided and the amount of the
 2 fee. If the resource agency or the office of management and budget denies the
 3 petition, the agency or office shall provide to the petitioner a statement setting out the
 4 agency's or office's reasons for denial. The single fee under this subsection must be

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

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

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

16 (d) Except for fees determined under (a), (b), or (c) of this section or in
 17 AS 37.10.056, a fee levied by a resource agency for a designated regulatory service
 18 must be based solely on the actual and reasonable direct cost incurred by the resource
 19 agency in providing the designated regulatory service to the person on whom that fee
 20 is levied, computed on a time-and-expense basis.

21 (e) Nothing in this section authorizes or requires a resource agency to charge
 22 a fee for a designated regulatory service.

23 (f) No action taken by a resource agency or the office of management and
 24 budget under (c) of this section is subject to AS 44.62 (Administrative Procedure Act).

25 **Sec. 37.10.054. Invoices for designated regulatory services.** (a) Unless a
 26 negotiated service agreement reached under AS 37.10.052(b) or (c) provides otherwise,
 27 a resource agency charging a fee for providing a designated regulatory service other
 28 than a standard designated regulatory service for which a fixed fee has been
 29 established under AS 37.10.052(a) shall, on a monthly basis, provide the person who
 30 will be billed for the service with an invoice for services performed during that month.
 31 The invoice must be reasonably convenient to the reader, and reasonably susceptible

1 to audit. The invoice must set out, in time increments of not greater than one-quarter
 2 hour for each employee, and separately for each expenditure, the purpose of the time
 3 or expenditure in sufficient detail to permit a reasonable person to determine whether
 4 the time or cost was an actual and reasonable direct cost.

5 (b) If a person believes that an invoice rendered under (a) of this section
 6 exceeds the actual and reasonable direct cost of providing the designated regulatory
 7 service, the person may, within 30 days after receiving the invoice, request that the
 8 resource agency review the invoice. The resource agency shall review the invoice
 9 under the standards of this section and issue its final decision on the invoice within 30
 10 days of receipt of a request for review.

11 (c) A person who timely filed a request for review under (b) of this section
 12 may appeal a resource agency's adverse final decision to the office of management and
 13 budget within 30 days after receipt of the decision. The office of management and
 14 budget shall, within 30 days after receiving an appeal under this subsection, review the
 15 matter de novo under the standards of this section and AS 37.10.052(d) and take action
 16 appropriate under those standards. If the office of management and budget affirms the
 17 resource agency's decision, the person appealing must pay the reasonable direct cost
 18 of the appeal.

19 **Sec. 37.10.056. Petitions to adopt regulations.** A person requiring a
 20 designated regulatory service from a resource agency may petition the resource agency
 21 under AS 44.62.220 and 44.62.230 to adopt regulations that would establish, for a
 22 category of designated regulatory services, a fixed fee that is

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

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

28 (3) likely to be used by the resource agency more than once; and

29 (4) based on the average reasonable direct cost incurred by the agency
 30 in providing the designated regulatory service.

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

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

4 (2) "designated regulatory service" means a regulatory service provided
5 under the following regulatory programs:

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

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

10 (C) regulation of the disposal of waste into waters of the state
11 under AS 46.03.100;

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

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

18 (3) "direct cost" means the hourly rate of salary and benefits of each
19 agency employee, including clerical staff, directly involved in providing a regulatory
20 service, multiplied by the number of hours spent in performing the service, together
21 with the expenditures for goods or third-party services made in providing that service;
22 "direct cost" does not include

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

25 (B) other budgeted overhead expenses, including rent and
26 utilities;

27 (C) interagency charges that would not meet the requirements
28 of AS 37.10.052 - 37.10.058 if those charges had been incurred or invoiced by
29 the agency providing the designated regulatory service;

30 (D) public consultation costs when the consultation is not
31 required by law;

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

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

5 (G) travel expenses for inspecting businesses having not more
6 than 20 employees;

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

17 (5) "fee" means a charge assessed or requested by a state agency for
18 the provision of a service to, the incurring of a burden or cost because of, or the
19 conferring of a benefit upon, a person; "fee" does not include charges assessed or
20 requested by the Department of Natural Resources associated with pipeline right-of-
21 way leases granted under AS 38.35;

22 (6) "hourly rate of salary and benefits" means the hourly increment of
23 salary due the state employee under the salary schedule applicable to that employee,
24 multiplied by 149 percent to account for the cost of employment benefits paid by the
25 state to or on behalf of the employee;

26 (7) "permit" means a permit, license, certificate, approval, 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, approval, or
31 other review related to the application for or issuance, modification, extension,

1 or revocation 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.

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

11 (a) **Except as otherwise provided in AS 37.10.050 - 37.10.056, the** [THE]
12 Department of Environmental Conservation may adopt regulations that prescribe
13 reasonable fees, and establish procedures for the collection of **those** [THE] fees, to
14 cover the applicable direct costs [, NOT INCLUDING TRAVEL,] of inspections,
15 permit preparation and administration, plan review and approval, and other services
16 provided by the department relating to

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

19 (2) certificates of inspection for motor vehicles under AS 46.14.400 or
20 46.14.510;

21 (3) sewerage system and treatment works and wastewater disposal
22 systems, and drinking water systems, under AS 46.03.720;

23 (4) [REPEALED

24 (5) REPEALED

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

26 **(5)** [(7)] control of solid waste facilities under AS 46.03.020(10) and
27 46.03.100;

28 **(6)** [(8)] certification of laboratories conducting environmental analyses
29 of public drinking water systems or of oil or hazardous substances, or conducting other
30 analyses required by the department;

31 **(7)** [(9)] certification of federal permits or authorizations under 33

1 U.S.C. 1341 (sec. 401, Clean Water Act).

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

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

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

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