

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 86
(H) Publish Date: 4/28/01

Revision Date/Time (Note if correction): 4/10/01 4:53 PM Dept. Affected: Law
Title "An Act relating to civil liability for certain false
or improper allegations in a civil pleading or ..." BRU Criminal Division; Civil Division
Sponsor Representative Mulder Component Criminal Justice Litigation;
Special Litigation
Requester House Judiciary Committee Component No. 2202;2213

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	100.8	100.8	100.8	100.8	100.8	100.8
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	43.6	43.6	43.6	43.6	43.6	43.6
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	155.6	149.1	149.1	149.1	149.1	149.1

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	75.0	72.1	72.1	72.1	72.1	72.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	80.6	76.9	76.9	76.9	76.9	76.9
TOTAL	155.6	149.1	149.1	149.1	149.1	149.1

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill creates three new causes of action stemming from conduct occurring in civil litigation. A party to a civil suit could bring a separate civil action against persons who (1) signed pleadings containing false allegations that are material to the claims asserted, with the intention of asserting false allegations, claims or defenses; (2) "initiated" or signed a pleading without making reasonable inquiry and forming a reasonable belief in the existence of the factual basis for a claim or defense and its validity under applicable law; or (3) participated as a party or representative of a party in the continuation of a claim or defense after the person discovers that the claim or defense is not "supported by a reasonable basis in fact" or "valid under applicable law." Potential defendants in the separate action are not limited to people who were parties to the original case, but include attorneys and others who participate as representatives of parties in the litigation of the original case. A civil suit under this bill could not be brought until after a final judgment was entered in the original case. In addition, other preconditions to a separate lawsuit are that the party bringing an action under this bill must have given notice to the opposing party of the allegedly improper conduct in the original case and that party must not have corrected the challenged conduct within 21 days of the notice. The bill does not require notice and opportunity to

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Agency Department of Law

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BILL NO. HB 86, Fiscal Note #2

ANALYSIS CONTINUATION

correct be given to non-parties, such as representatives of parties, even though they could be sued under this bill for having signed pleadings or participated in the original case. The party bringing the action under this bill must have prevailed on the claim or defense that was at issue in the notice given to the opposing party.

As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state or state employees that would have merit, but because it creates causes of action and remedies that do not presently exist. Although we do not anticipate having liability for the types of wrongdoing addressed by the bill, the department would incur increased litigation costs for defending cases brought under this bill. The reasons for these costs are:

1. The bill does not require that a party prevail on the original case as a whole in order to file a separate action under this bill; they need only prevail on a claim or defense that was raised in a notice to their opponent. So even if they win a battle, but lose the war, they may proceed to seek unrecovered damages, costs, and fees from their opponent and/or the opponent's lawyers;
2. There will likely be cases where the determination of who prevailed on an issue may not be clear-cut (such as where there is an allocation of fault to both plaintiff and defendant) which will require litigating if a second action is brought;
3. Even where a party has not met the preconditions to filing an action under this bill, if a separate action is brought, time and effort will be needed to demonstrate that the party is not entitled to proceed; and
4. Under subsection (a)(3), the winner in the original action can sue the loser (and that party's representatives and lawyers) for damages or costs not recovered in the first case if they claim that the loser's claim or defense was not supported by "reasonable basis in fact" or "valid applicable law." This is presumed to be a different standard than is used in subsection (a)(2) where a party has filed pleadings without making reasonable inquiry and forming a reasonable belief regarding the facts and law underlying a claim or defense. The standard for potential liability under (a)(3) appears to be much broader, and could essentially result in examination of the legal strategy and conduct of the original action, if not relitigation of the underlying issues to determine whether the loser (or the loser's representatives or lawyers) had a reasonable basis in fact or valid applicable law to support their claims or defenses. Expert witnesses may well be needed to address these issues. Factual disputes will prevent cases from being resolved on motion practice.
5. The potential for conflicts arising between losing parties and their own lawyers when they are sued in an action under this bill will likely result in the need for multiple attorneys to represent them.

The bill will provide a vehicle for parties who are not satisfied with the outcome of a case to further pursue their opponent's lawyers and other representatives to "make them whole." Some may view HB 86 actions as a means to extract additional monies through settlement from different opponents. The bill's full fee provision may not be effective due to the failure to include a court rule amendment provision in the bill. The threat of having to pay a small percentage of an opponent's fees will not prevent all questionable litigation from being brought under this bill, particularly by pro se litigants and others who are judgment-proof.

Overall, the department estimates that HB 86 would result in increased litigation defense costs. We anticipate an increase of approximately 1090 hours of attorney time (three-quarters of a full-time equivalent attorney position) in the civil division, and an estimated 120 hours of attorney time in the criminal division. This is based on an estimated 10-15 actions, of varying complexity, being handled by the civil division (compared to over 2,200 general litigation and tort litigation files open at any given time), and 3-4 actions disposed of by motion defended by the criminal division.

This estimate is conservative. In order to defend these lawsuits, the department's attorneys will not be able to simply rely on work already completed in the course of the underlying case. New discovery and proof will be required to show what the lawyers and their clients knew, when they knew it, and whether it amounted to a reasonable factual basis for a claim, or whether the claim was supported by valid applicable law.

The department's FY02 weighted cost for an attorney position is \$97.57 per hour. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel, or one time new equipment purchases. The projected in-house staff cost would be \$106,332 for the civil division, plus \$6,500 in FY02 only for new equipment, (43.59% GF and 56.41% IAR) and \$11,708 in general funds for the criminal division. \$5,000 will be needed by the civil division for direct case costs (43.59% GF and 56.41% IAR), and \$1,000 for the criminal division. Additionally, due to conflicts, \$25,000 in outside counsel costs will probably be incurred by the civil division (43.59% GF and 56.41% IAR). No outside counsel costs are anticipated for the criminal division. Component line item detail follows:

	<u>Special Litigation</u>	<u>Criminal Justice Litigation</u>	<u>Total</u>
100	90.8	10.0	100.8
200	2.8	0.5	3.3
300	41.5	2.0	43.6
400	1.2	0.1	1.3
500	6.5		6.5
Total	142.9	12.7	155.6