

FISCAL NOTE

No. 2
 Bill Version: CSSB 161 (JUD)
 (S) Publish Date: 4/23/01

**STATE OF ALASKA
 2001 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 4/20/01 Dept. Affected _____
 Title No Pay for Judges Until Decision BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Judiciary
 Requester Senate Judiciary Component No. 768

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			654.4	1,308.9	1,308.9	1,308.9
Travel			9.0	9.0	9.0	9.0
Contractual			3.4	6.8	6.8	6.8
Supplies			4.8	9.5	9.5	9.5
Equipment			76.0			
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	747.6	1,334.2	1,334.2	1,334.2

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	0.0	0.0	747.6	1,334.2	1,334.2	1,334.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	747.6	1,334.2	1,334.2	1,334.2

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time			17	17	17	17
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached Analysis

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 Division Alaska Court System Date/Time _____
 Approved by: Stephanie J. Cole, Administrative Director Date 4/20/01
 Agency Alaska Court System

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ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 161 JUD #2

Existing law provides that no judicial officer may receive a salary warrant until he or she has filed an affidavit that no matter referred to the judicial officer for opinion or decision has been uncompleted or undecided for a period of more than six months. See AS 22.05.140(b) (supreme court justices); AS 22.07.090(b) (judges of the court of appeals); AS 22.10.190(b) (superior court judges); and AS 22.15.220(c) (district judges and magistrates). The earliest of these laws were enacted in 1959; since that time, every judicial officer has filed a salary affidavit every two weeks, or the officer has not received a paycheck.

CSSB 161 (JUD) amends two of these statutes, requiring members of the supreme court and the court of appeals to aver that no matter referred to the full court has been uncompleted or undecided for more than 12 months. If one member of an appellate court delays the release of an opinion beyond 12 months, all members would have their paychecks withheld.

It is the view of the Administrative Office of the Court that the existing laws are unconstitutional, and that judicial officers comply with those laws as a matter of comity. Similar statutes have been struck down in the three states in which they have been challenged (Nevada, Montana, and Wisconsin), for reasons which are directly applicable under the Alaska Constitution.

First, Art. IV, §13 of the Alaska Constitution provides that the salary of a justice or judge "shall not be diminished" while in office. Withholding a judge's paycheck for weeks or months acts to diminish the salary.

Second, Art. IV, §1 and §15 of the Alaska Constitution provide that the authority to administer the judiciary resides with the supreme court, not with the legislature. Time limits within which judicial officers are to decide cases relate to the efficient and effective functioning of the court system. They apply directly to the work of every judge, every day, in every case. Such management is a matter of administration within the exclusive authority of the supreme court.

Two additional problems posed by CSSB 161 (JUD) have not been addressed in the decisions of other states. The first is the requirement that all members of an appellate court lose their paychecks, if one member's actions delay the release of a decision beyond 12 months. This raises issues of fundamental fairness. The second is the application of the new time limits to judicial officers currently serving on the bench. We believe that this violates those provisions of the state and federal constitutions that prohibit the impairment of contracts, by purportedly changing the state's financial commitment to sitting judicial officers.

While the administrative office believes that CSSB 161 (JUD) makes unconstitutional amendments to unconstitutional laws, we are providing this fiscal note in conformance with AS 24.08.035. It reflects those items that would be necessary for the courts to comply with the timelines in CSSB 161 (JUD).

As noted above, the six-month rule has been in effect since the time of statehood. For over forty years, the court system has been funded by the legislature at a level which

ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 161 JUD #2

would allow trial judges to decide matters referred for decision within six months of receipt. It has also been funded to allow the appellate judge who has been assigned the task of authoring a decision (not the entire court) to do so within six months. In FY 2000, 329 appeals were filed in the court of appeals, and 529 appeals were filed in the supreme court. During FY 2000, there were eight instances in which an individual justice could not execute a salary affidavit and had a paycheck withheld.

However, there are currently about 20 cases in which a decision from the full court was pending 12 months or longer. Under CSSB 161 (JUD), these 20 cases would have prevented all members of the supreme court from receiving a paycheck for most of the year, regardless of the reason for the delay or the culpability of individual members.

Swifter justice is an important societal goal. However, because the court system has historically been allocated resources sufficient only to comply with current law, it would require significant additional resources to comply with the changes proposed by CSSB 161 (JUD).

Supreme Court

Unlike most state supreme courts, the Alaska Supreme Court is not a cert court for purposes of its civil caseload. This means that it does not have the discretion to reject a case; it must hear and decide every civil case that is appealed to it, regardless of the significance of the issues involved or the merit of the appeal. A cert court is able to control its caseload, and is therefore able to dispose of cases more quickly.

For example, the U.S. Supreme Court has nine justices to share the workload. As a cert court, it chose to hear 86 cases during its FY 2000 term. It believed that this was the number of cases it could reasonably dispose of in one year.

The three states closest to Alaska also have cert courts. In 1999, the California Supreme Court had seven justices to divide the workload, and it issued opinions in 88 cases (13 per justice). The Oregon Supreme Court also had seven justices, and it issued opinions in 98 cases (14 per justice). The Washington Supreme Court had nine justices, and it issued opinions in 148 cases (16 per justice).

In contrast, the Alaska Supreme Court has only five justices to share the workload. However, it issued written opinions in 153 cases in FY 2000 (31 per justice). This is a substantially greater output than the other courts cited. It is because of the sheer volume of work handled by the court that all cases cannot be disposed of within the 12 month period specified in CSSB 161 (JUD).

The supreme court would not be able to comply with CSSB 161 (JUD) unless an intermediate court of civil appeals was created, and the supreme court became a cert court. This fiscal note provides the costs for establishing a new court of appeals, using the existing court of criminal appeals as a model. An intermediate court of appeals can only be created by legislative action, and language establishing the court would need to be added to CSSB 161(JUD).

ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 161 JUD

#2

Court of Appeals

The court of appeals has three members to share the workload. While it is possible that the court of appeals could not meet the 12 month deadline without expanding its size to five judges, this fiscal note assumes that it would be able to do so if its support staff was increased by two attorneys.

Alaska Court System
 CSSB161 Supporting Documentation for FY04 and FY05 Costs
 4/20/01

#2

Description	Increased Staffing Criminal Appellate Court	Civil Appellate Court
Appellate Court Judge (83A)		141,205
Appellate Court Judge (83A)		141,205
Appellate Court Judge (83A)		141,205
Appellate Courts Staff Attorney (20A)	67,282	67,282
Appellate Courts Staff Attorney (20A)	67,282	67,282
Appellate Courts Staff Attorney (20A)		67,282
Appellate Courts Staff Attorney (20A)		67,282
Law Clerk II (14D)		51,123
Law Clerk II (14D)		51,123
Law Clerk II (14D)		51,123
Law Clerk II (14D)		51,123
Law Clerk II (14D)		51,123
Law Clerk II (14D)		51,123
Law Clerk Travel & Relocation @\$1500/Clerk		9,000
Executive Secretary (13A)		44,281
Executive Secretary (13A)		44,281
Executive Secretary (13A)		44,281
Secretary II (12A)		41,997
Office Furniture, Supplies, Wan Connection		
Office Supplies @\$500/position	1,000	8,500
WAN Connectivity @\$360/position	720	6,120
Computers & Printers @\$2500/position	5,000	42,500
Desks & Chairs@\$1500/position	3,000	25,500
Totals	144,284	1,265,941

GRAND TOTAL ALL EXPENSES - Full Year	1,410,225
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FY04 Expense

Personal Services (6 Months)	654,443
Travel	9,000
Contractual (6 Months)	3,420
Supplies (6 Months)	4,750
Equipment	76,000
	<u>747,613</u>

FY05 Expense

Personal Services	1,308,885
Travel	9,000
Contractual	6,840
Supplies	9,500
	<u>1,334,225</u>