

HB

148

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99811

February 9, 1977

Hon. Terry Gardiner, Chairman  
House Judiciary Committee  
Tenth State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: HB 43; HB 148

Dear Representative Gardiner:

The following are comments on behalf of the Attorney General's Office on the referenced bill.

1. As a general rule the Attorney General's Office will be in court, even on small claims matters should this bill pass, on the request of the judge. We do not foresee a major impact on the Attorney General's Office, either financially or in terms of the time required to cover matters that may be brought in the future as small claims.

2. It appears unlikely that monetary claims against the State of a contractual nature can be brought as small claims. AS 44.77 and the Administrative Procedures Act in conjunction with Appellate Rule 45 both require that claims of this type first be processed administratively, with the right of appeal being from the administrative determination to the superior court.

3. The court rules have worked substantial changes in the statutory small claims procedure. AS 22.15.040 states that the court "shall hear" the matter as a small claim unless there is an "important or unusual" rule of law involved, whereas the rule provides that the small claims procedure shall be followed when all parties elect, or there are "important or difficult questions of law or fact." The Attorney General's Office supports the rule in its present form.

4. The bill provides for service as usual on the Attorney General's Office. The Attorney General's Office strongly supports this provision of the bill. Please note that there is a typographical error in the bill: The reference in section 3 to Civil Rule 4(c)(7) and (8) should

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refer to Civil Rule 4(d) (7) and (8).

5. Civil Rule 12(a) presently grants to the State 40 days within which to respond to a complaint. District Court Rule 13, which sets forth small claims procedure, allows 20 days. Since at present the small claims procedure does not apply to claims against the State, there is no provision in the small claims rules allowing 40 days to the State to answer a complaint. There are very sound reasons for allowing the State 40 days to answer, and the Attorney General's Office advocates continuation of the present allowance in the rules. The Attorney General's Office proposes that the bill incorporate the following additional provision:

District Court Civil Rule 13(a) is amended to read: The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim within 40 days after the service upon the attorney general of the pleading in which the claim is asserted.

I am sure you are aware also of HB 148, which proposes to amend AS 22.15.040 so as to increase the jurisdictional amount for small claims from \$1,000 to \$2,000. The same comments above apply to this bill as well.

Very truly yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By: 

William T. Council  
Assistant Attorney General

WTC:chp