

HB

43

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

Hon. Terry Gardiner, Chairman
February 9, 1977
Page 2

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:

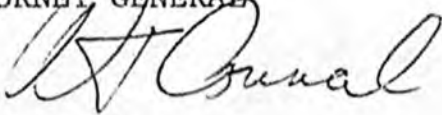
District Court Civil Rule 13(a) is amended to read: The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim within 40 days after the service upon the attorney general of the pleading in which the claim is asserted.

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

*House
Jud.
for members
at request of
Mrs. Brown*

HB43 by Brown, Gardiner
& Miller

Jurisdiction of District
Courts
Do not pass as submitted.

Recommend:

Reason: It appears unfair and inconsistent to permit district judges and magistrates to hear only "small claims" against the State and not other cases within the jurisdiction of the District Court. It also seems unfair for the State to be able to file claims against individuals and corporations in the District Court but to prohibit individuals and corporations from filing claims in the District Court. We believe that it should be reciprocal - both sides should be permitted to file or both sides should be prohibited from filing any case where the State is a party.

Technical objection: It appears line 28 of the bill should be corrected to read, "Civil Rule 4 (d) (7) and (8)".

People who are involved in small claim cases may have problems with the rules of "service of process" on the State.

HB46 by Rudd, Specking, Brown,
Eliaison, Miles &
Gardiner

Sale of Intoxicating
Liquor

Recommend:

Do not pass.

Reason: This bill would decrease notice to interested parties who may desire to object or protest the issuance, renewal or transfer of a liquor license.

SB11 by Orsini

Service of civil process
by Alaska State Troopers

Recommend:

Do not pass!

Reason: We most strongly oppose the passage of this bill. It would make it extremely difficult to serve process in civil cases. The validity of service in many "bush cases" would be challenged and in many cases the cost of service would become prohibitive. Under the terms of the bill the state troopers are not even required to assist persons appointed to serve civil process when that person encounters physical resistance or obstruction, although they may do so.