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HOUSE COMMITTEE REPORT

(7)

Date Referred: May 4, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/1/90

The LABOR & COMMERCE Committee considered:

HB 335

HOUSE BILL NO. 335 [AMEND COURT RULE 68: COSTS/ ATTORNEY FEES]
 "An Act amending Rule 68 of the Alaska Rules of Civil Procedure relating to the award of costs and attorney fees and to the payment of prejudgment interest."

RECOMMENDATIONS:

- be replaced with CS HB 335 (L+C) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note AK Court System
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

[Signature] Finkelstein
[Signature] Donley Donley
[Signature] Greenberg
[Signature] [unclear]

(Check approp. column)	Do Not Pass	No Rec	Amend
<u>[Signature]</u>			<input checked="" type="checkbox"/>
<u>[Signature]</u> Leman			<input checked="" type="checkbox"/>
<u>[Signature]</u> Collins			<input checked="" type="checkbox"/>
<u>[Signature]</u> [unclear]			<input checked="" type="checkbox"/>

~~_____~~

 Chairman's Signature
[Signature]

**STATE OF ALASKA
1990 LEGISLATIVE SESSION**

Bill Version: HB 935
Publish Date: 5/4/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act amending Rule 68 BRU: Trial Courts
 Sponsor: Labor & Commerce Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/26/90
 Date: 02/26/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title : "An Act amending Rule 68... relating
 to the award of costs and attorney fees..."
 Sponsor : House Labor and Commerce
 Requestor : House Labor and Commerce

Agency Affected : Department of Law
 BRU : Legal Services
 Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by : Richard I. Pegues, Director

Division : Administrative Services

Phone : 465-3672

Date : February 27, 1990

Approved by Commissioner : *Richard I. Pegues / FOR*
 Douglas B. Bailey, Attorney General

Date : February 27, 1990

Agency : Department of Law

Distribution (by preparer) :

Legislative Finance
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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 335

This bill repeals and reenacts Rule 68(b) of the Alaska Rules of Civil Procedure in a way that increases the likelihood that a party who unreasonably offers, or unreasonably refuses an offer, for the settlement of a claim, will have to pay the other side's reasonable, actual costs and attorney's fees. Currently, costs and fees are determined on the basis of a portion of the reasonable fees, usually about 50 percent of actual costs, or on the basis of the sliding scale percentage of the value of a claim as provided by Rule 82. It appears that the bill is intended to serve as an incentive for the reasonable, timely settlement of claims and as a disincentive for prolonged and costly litigation. In this respect, the bill would increase the penalty for unreasonably rejecting a settlement offer, and it would increase the penalty for making an unreasonable settlement offer.

The settlement process, in lieu of continued litigation, may often be somewhat more complicated than is generally understood. This process may involve substantial bargaining on both sides, with several offers and counter-offers made by each of the parties over a long period of time. Although some claims are clear-out, making them amenable to the process proposed by this legislation, in the majority of cases the issues and facts usually present varying degrees of weakness and strength for all the parties to a claim requiring a flexible settlement process. Consequently, the bill's attempt to quantify, or simplify an oftentimes complex process may not provide the intended incentive to settle a claim.

It has been the department's experience that only about one in fifty personal injury claims made against the state ever reaches trial. Of this number, about thirty claims are unmeritorious and are either dropped or settled for small sums due to their nuisance value. Of the remaining twenty meritorious claims, one will probably proceed to trial and perhaps nineteen will be settled without going to trial. Viewed in this light, a change in the current process is probably not necessary, at least insofar as the state is a claims' litigant.

To the extent that the state as a defendant may run afoul of the limitations contained in the bill, the cost might be as high as \$50,000 per year. These costs are not reflected in this fiscal note because the cost of personal injury claims is borne by the Division of Risk Management. To the extent that the plaintiffs against the state run afoul of the proposed limitations, the state will probably not receive much additional benefit because such plaintiffs often do not have the ability to pay.

FISCAL NOTE

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Equipment						
Land & Structures						
Grants & Claims						
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CAPITAL						
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REVENUE						
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Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
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