

SB101

SENATE FINANCE COMMITTEE REPORT

DATE: 4/2/91

FURTHER:

DATE TURNED INTO OFFICE: 4/19/91

The Finance Committee considered SENATE BILL NO. 101

"An Act relating to the jurisdiction of the district court."

and recommended:

- replace with _____ CS _____
- or adopt _____ CS SB 101 (Jud)
- attached amendment(s)
- _____ letter of intent adopted
- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) DD Law 4/8/91

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) Courts 3/4/91

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Al Adams

James Huffman

Dick Stubbins

1. FD Hawk do pass

William Roper

J. Kestler

2. Kestler no per

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSSB 101 (Jud)

Revision Date: April 8, 1991 Department Affected: Department of Law

Title: "...relating to the jurisdiction of the BRU: Legal Services"

district court and...to hear actions as small claims." Component: Operations

Sponsor: Senate Judiciary by Request

Requestor: Senate Judiciary COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) The committee substitute for SB 101 changes the original bill by denying access to the relaxed procedures of small claims court if the defendant is the state. This change should eliminate most of the incentive for claimants to bring actions in district court cited in our original fiscal note, thus making fiscal note costs unnecessary.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: April 8, 1991

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: April 8, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

io. 2

Bill Version: SB 101

(S) Publish

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the jurisdiction BRU: Trial Courts
of the district court Components: _____
 Sponsor: Judiciary
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

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						


Estimate of current year impact: None

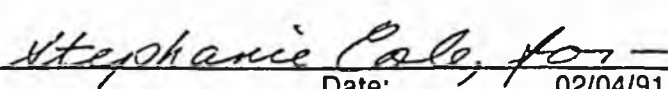
ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Changes in CS SB 101 (Jud) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

Mar 27, 91 WBS/Sm
date Comte Aide (initial)

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 02/04/91
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS FOR SENATE BILL NO. 101 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/29/91
Referred: Finance

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the jurisdiction of the district court and to the district court's ability
2 to hear actions as small claims."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 09.50.250 is amended to read:

5 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
6 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
7 against the state [IN THE SUPERIOR COURT]. A person who may present the claim under
8 AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A
9 person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under
10 this section except as set out in AS 36.30.685. However, an action may not be brought under
11 this section if the claim

12 (1) is an action for tort, and is based upon an act or omission of an employee of
13 the state, exercising due care, in the execution of a statute or regulation, whether or not the
14 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance

1 or the failure to exercise or perform a discretionary function or duty on the part of a state agency
2 or an employee of the state, whether or not the discretion involved is abused;

3 (2) is for damages caused by the imposition or establishment of a quarantine by
4 the state;

5 (3) arises out of assault, battery, false imprisonment, false arrest, malicious
6 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with
7 contract rights; or

8 (4) arises out of the use of an ignition interlock device certified under
9 AS 33.05.020(c).

10 * Sec. 2. AS 22.15.040(a) is amended to read:

11 (a) When a claim for relief does not exceed \$5,000 exclusive of costs, interest, and
12 attorney fees, and request is so made, the district judge or magistrate shall hear the action as a
13 small claim unless important or unusual points of law are involved or unless the state is a
14 defendant. The supreme court shall prescribe the procedural rules and standard forms to assure
15 simplicity and the expeditious handling of small claims.

16 * Sec. 3. AS 22.15.050 is amended to read:

17 Sec. 22.15.050. ACTIONS NOT WITHIN CIVIL JURISDICTION. The jurisdiction of
18 the district courts does not extend to

19 (1) an action in which the title to real property is in question;

20 (2) an action for false imprisonment, libel, slander, malicious prosecution, or
21 actions of an equitable nature, [() except as otherwise provided by law ()], OR ACTIONS IN
22 WHICH THE STATE IS A DEFENDANT].



SE 101
APR 20 1991

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

April 2, 1991

The Honorable Pat Pourchot
Co-Chairman, Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

I am writing to request that the Finance Committee schedule a hearing on Senate Bill 101, relating to the jurisdiction of the district court, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court.

Current law provides that the superior court has jurisdiction in civil cases exceeding \$50,000 in value; the district court has jurisdiction over claims not exceeding that amount. However, current law also requires that all actions against the state be brought in superior court, regardless of the size of the claim. This has resulted in situations like one which took place recently in Fairbanks, when the superior court was used to try a \$2000 claim against the state. Not only is \$2000 significantly less than the maximum amount of the district court's jurisdiction, it is significantly less than the maximum amount of a small claims case (\$5,000).

This restriction on district court jurisdiction was enacted at the time of statehood, when district court judges were not required to be attorneys. The prevailing view was that cases in which the state was a defendant should not be decided by a court presided over by a person who was not learned in the law. Today, however, this distinction is an anachronism, since a district court judge must be licensed to practice law in Alaska, and is subject to the same appointive and retention election processes as are judges of the superior court.

The Honorable Pat Pourchot
April 2, 1991
Page 2

CSSB 101 (JUD) proposes to treat the state like any other defendant, by making it subject to the jurisdiction of the district court when the matter in controversy does not exceed \$50,000. One exception to such jurisdiction would remain: the state would not be subject to small claims procedures in cases under \$5,000, but would always have the benefit of formal rules.

Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

PROFILE OF THE ALASKA COURT SYSTEM

JULY 1, 1989 - JUNE 30, 1990
Fiscal Year 1990

INTRODUCTION

There are four levels of courts in the Alaska Court System, each with different powers, duties and responsibilities. Alaska has no city, county or borough courts.

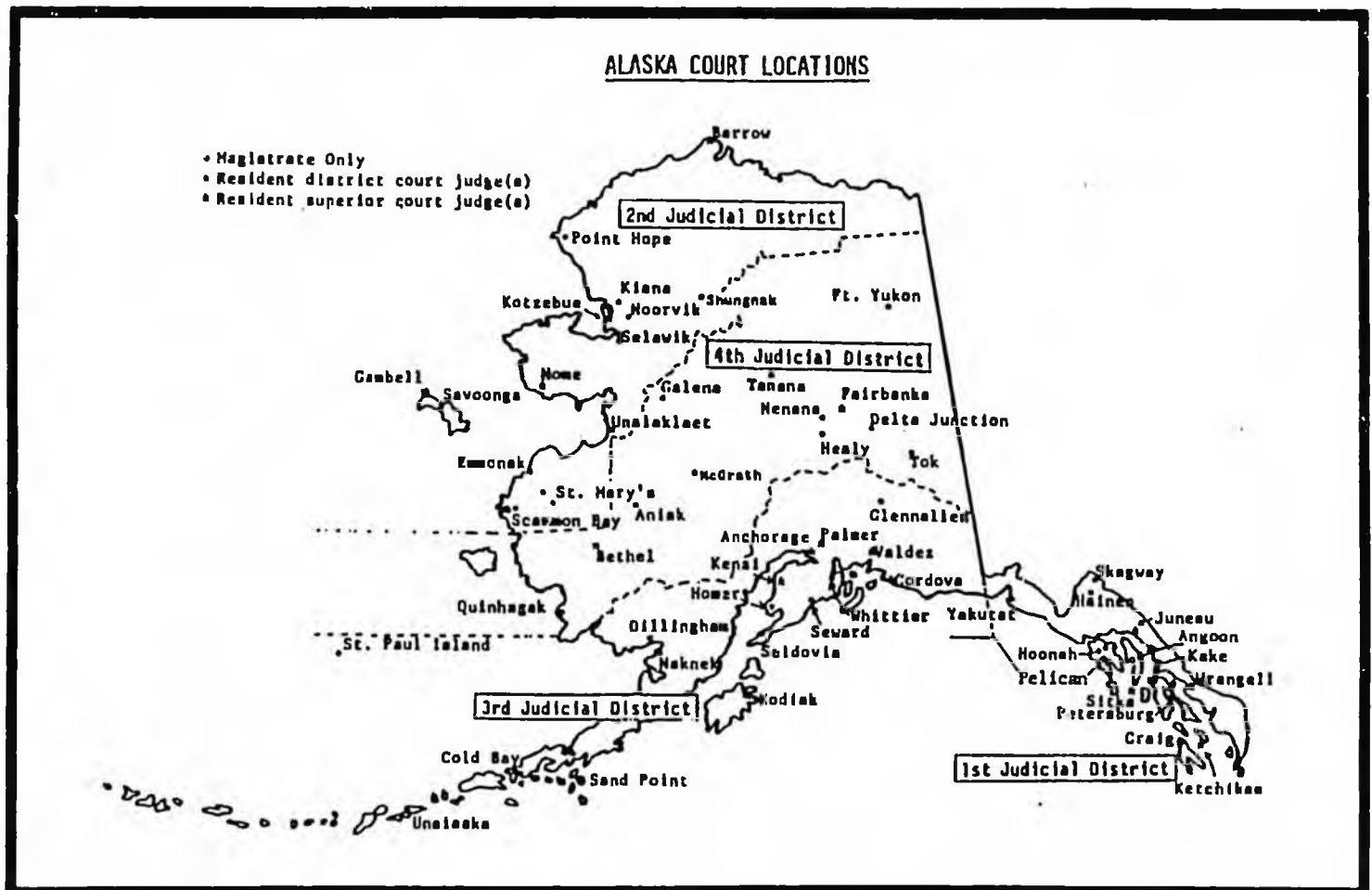
The four levels of courts in the Alaska Court System are the supreme court, the court of appeals, the superior court and the district court. The supreme court and the superior court were

established in the Alaska Constitution. The district court was established by state statute in 1959 and the court of appeals was established by state statute in 1980. Jurisdiction and other areas of the judicial responsibility for each level of court are set out in Title 22 of the Alaska Statutes.

The chief justice of the Alaska Supreme Court is the administrative head of

the Alaska Court System. An administrative director is appointed by the chief justice with concurrence of the supreme court. The director supervises the administration of all courts in the state.

Rules governing the administration of all courts and the rules of practice and procedure for civil and criminal cases are promulgated by the supreme court.



ALASKA COURT SYSTEM FACT SHEET

(Information as of June 30, 1990)

FISCAL YEAR: July 1 - June 30

Geographical area served: 566,000 square miles

Number of Judges: 5 supreme court justices
 3 court of appeals judges
 30 superior court judges
 17 district court judges
 43 magistrates

Number of court locations:
 15 combined superior and district court locations
 44 district courts only (judge and/or magistrate)

Total number of permanent full-time court employees: 609

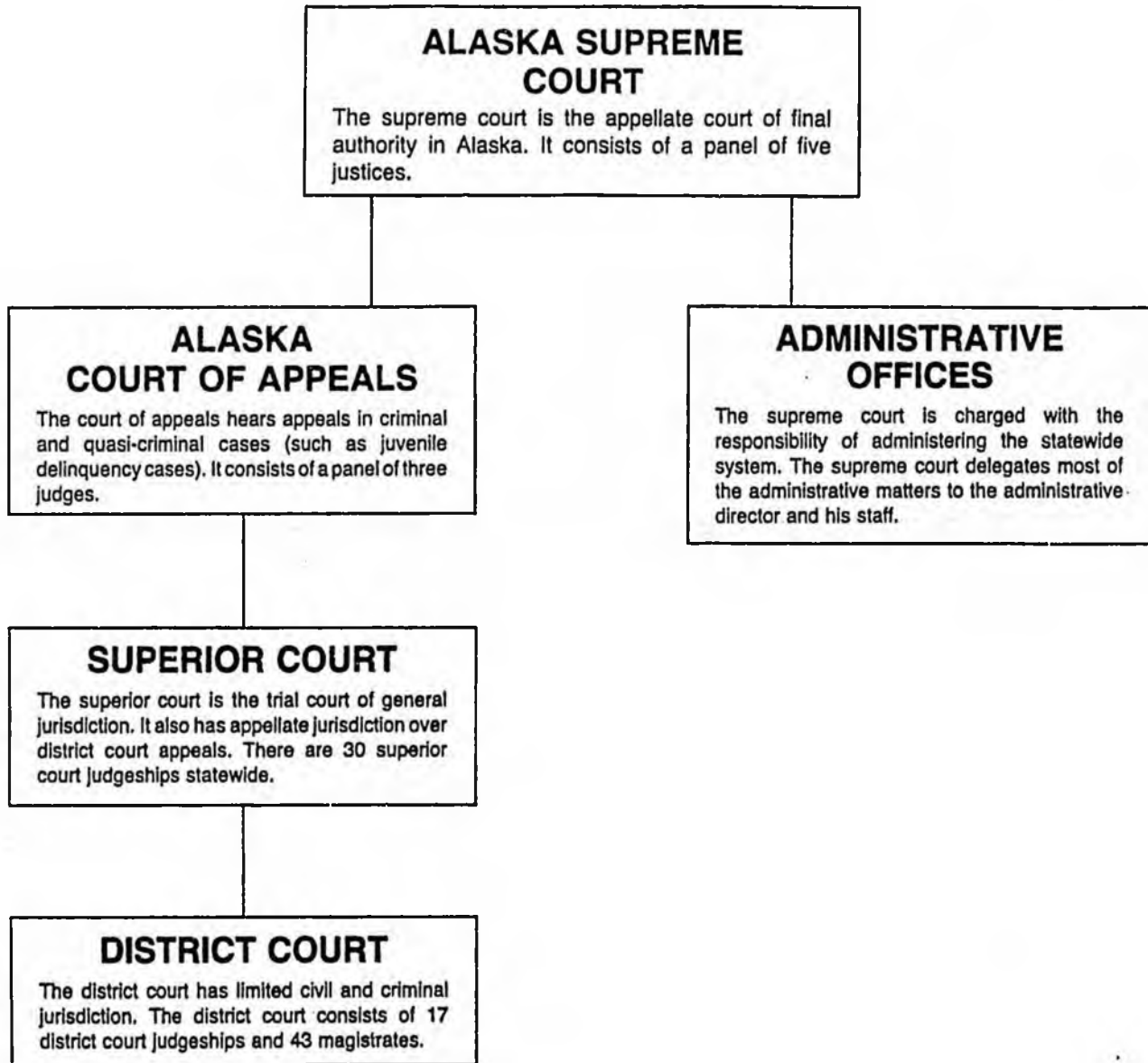
6 largest trial courts (by number of permanent full-time employees):

Anchorage: 206
 Fairbanks: 84
 Juneau: 24
 Palmer: 18
 Ketchikan: 17
 Kenai: 15

BUDGET
FY 1990 court system annual budget: \$38,909,900
Percentage decrease over FY 1989 annual budget: 1.6%
Percentage of FY 1990 annual state general fund budget: 1.4%

CASELOAD				
Number of Cases Filed and Decided in FY 1990				
Court	#of Cases FILED	% Change From FY 89	#of Cases DECIDED	% Change from FY 89
Supreme Court	578	- 3%	584	+ 8%
Appeals Court	490	+ 5%	451	- 7%
Superior Court	18,769	- 1%	19,179	+ 9%
District Court	102,319	-11%	114,465	+ 4%

ALASKA COURT SYSTEM ORGANIZATION



Alaska has a unified, centrally administered, and totally state funded judicial system. Municipal governments do not maintain a separate court system.

DISTRICT COURT JURISDICTION

A district court judge may:

- hear STATE MISDEMEANORS and violations of CITY AND BOROUGH ORDINANCES
- issue SUMMONSES, ARREST WARRANTS and SEARCH WARRANTS
- hear first appearances and PRELIMINARY HEARINGS in felony cases
- issue ABSENTEE BALLOTS and record VITAL STATISTICS (in some areas of the state)
- serve as CORONER, hold inquests and act as temporary caretaker of property of deceased persons
- hear CIVIL CASES valued up to \$50,000
- hear SMALL CLAIMS cases (\$5,000 maximum)
- handle cases involving CHILDREN on an emergency basis
- hear DOMESTIC VIOLENCE cases

DISTRICT COURT JUDGES

FIRST JUDICIAL DISTRICT



George Gucker
Appointed 1983
Ketchikan



Peter Froehlich
Appointed 1989
Juneau

TABLE I
ALASKA TRIAL COURTS CASELOAD SUMMARY FY 90
7/1/89 - 6/30/90

COURT	Superior Courts		District Courts			TOTALS		
	Filings	% of S.C. Total	Non Traffic Filings	Traffic Filings*	TOTAL FILINGS	% of D.C. Total	Total Filings	% of Statewide Total
Anchorage	10189	54.3%	16865	20908	37773	36.9%	47962	39.6%
Barrow	251	1.3%	416	301	717	.7%	968	.8%
Bethel	589	3.1%	1201	310	1511	1.5%	2100	1.7%
Cordova			584	159	743	.7%	743	.6%
Craig			630	219	849	.8%	849	.7%
Delta Jct.			153	409	562	.5%	562	.5%
Dillingham			582	62	644	.6%	644	.5%
Fairbanks	2425	12.9%	7210	6120	13330	13.0%	15755	13.0%
Glennallen			294	1285	1579	1.5%	1579	1.3%
Healy			81	893	974	.9%	974	.8%
Homer			1095	1920	3015	2.9%	3015	2.5%
Juneau	1095	5.8%	3099	1865	4964	4.9%	6059	5.0%
Kenai	877	4.7%	1959	4604	6563	6.4%	7440	6.1%
Ketchikan	759	4.0%	2565	1336	3901	3.8%	4660	3.8%
Kodiak	397	2.1%	1250	2507	3763	3.7%	4160	3.4%
Kotzebue	253	1.3%	584	234	818	.8%	1071	.9%
Nome	320	1.7%	419	184	603	.6%	923	.8%
Palmer	904	4.8%	2010	6102	8112	7.9%	9016	7.4%
Petersburg	74	.4%	355	106	461	.5%	535	.4%
Seward			697	1843	2540	2.5%	2540	2.1%
Sitka	335	1.8%	735	1334	2069	2.0%	2404	1.9%
Tok			241	420	661	.6%	661	.5%
Unalaska			370	212	582	.6%	582	.5%
Valdez	212	1.1%	700	783	1483	1.4%	1695	1.4%
Wrangell	89	.5%	385	185	570	.6%	659	.5%
Subtotal	18,769	100%	44,486	54,301	98,787	96.5%	117,556	97.1%
Lower Volume Courts			2,269	1,263	3,532	3.5%	3,532	2.9%
Statewide Totals	18,769	100%	48,755	55,564	102,319	100%	121,088	100%

BY JUDICIAL DISTRICT

FIRST	2352	12.5%	8347	5211	13558	13.3%	15910	13.2%
SECOND	824	4.4%	1622	738	2360	2.3%	3184	2.6%
THIRD	12579	67.0%	27140	40501	67641	66.1%	80220	66.2%
FOURTH	3014	16.1%	9646	9114	18760	18.3%	21774	17.9%

*Traffic case dispositions are used as filings in district court.

DISTRICT COURT

Jurisdiction

In criminal matters, the district court has jurisdiction over state misdemeanor violations and violations of ordinances of political subdivisions. District court has the authority to hear domestic violence cases, handle children's proceedings on an emergency basis, small claims cases and has civil jurisdiction up to \$50,000.

Magistrate posts have been created in the smaller, generally rural areas of the state. They have also been established in metropolitan areas to handle routine matters and to ease the workload of the district court.

In criminal matters, magistrates may give judgment of conviction upon a plea of guilty to any state misdemeanor, may try state misdemeanor cases if the defendant waives the right to a district court judge, and may hear municipal ordinance violations without consent of the accused. Magistrates may hear formal civil cases and small claims cases that involve amounts up to a \$5,000 maximum. Magistrates have emergency authority in children's matters.

FY 90 Caseload

District Court

District court statistics are separated into two categories: high and low volume courts. There are 26 magistrates in locations that are identified as lower volume courts.

During FY 90 the statewide caseload in district court decreased by 11% from FY 89. Non-traffic case filings increased by 2% while the traffic caseload decreased by 19%. This decrease was due in part to implementation of legislation which transferred responsibility for processing certain uncontested traffic tickets from the court system to the municipalities.

Table VII summarizes caseload statistics for district court locations in FY 90.

Special Note: Traffic Cases

Because traffic citation cases are not reported to the administrative office until final disposition, the number of filings for traffic matters in a year understates the court's actual workload. Whenever filing data is required to assess the overall workload of the courts, traffic disposition data has been substituted for traffic filing data.

¹For more information about district court and magistrate jurisdiction, see Profile, supra.

**PART I. PROCEEDINGS BEFORE
DISTRICT JUDGES AND
MAGISTRATES**

Annotations

Cases

Compliance with this rule's requirement that a notice of appeal contain a statement of the grounds for appeal is not jurisdictional. *Cook v. Aurora Motors, Inc.*, Op. No. 848, 503 P2d 1046 (Alaska 1972).

In deciding whether the requirements of district court rules requiring a concise statement of the grounds for appeal should be relaxed or dispensed with, a lower court should examine the standards applied by the Supreme Court in enforcing analogous rules. *Cook v. Aurora Motors, Inc.*, Op. No. 848, 503 P2d 1046 (Alaska 1972).

Rule 1. Scope of Rules—Construction.**(a) Scope of Rules.**

(1) The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable.

(2) If in any action or proceeding a magistrate finds it impracticable to proceed or finds himself at a disadvantage because of the application of any of such rules, he may hold the action or proceeding in abeyance, without prejudice to the rights of the parties, for further action by a district judge.

(3) The following rules are inapplicable in their entirety to proceedings before district judges and magistrates:

CIVIL RULE	TITLE
Rule 18(b)	Joinder of Remedies— Fraudulent Conveyances.
Rule 27	Deposition Before Actions or Pending Appeal.
Rule 40(c)	Visiting Judges.
Rule 40(d)	Applications for Orders.
Rule 48(b)	Instructions; Argument; Retirement of Jury.
Rule 57	Declaratory Judgments.
Rule 65	Injunctions.
Rule 66	Receivers.
Rule 70	Judgment for Specific Acts— Vesting Title.
Rule 72	Eminent Domain.
Rule 84	Change of Name.

(b) **Construction.** Where the words "court" or "judge" are used in these rules, they shall be construed to include a district judge or a magistrate, and where functions and duties are prescribed for the clerk, they shall be performed by a magistrate or a clerk.

(Amended by SCO 540 effective October 1, 1982)

Cross References

CROSS REFERENCE: AS 22.15.040

Rule 2. Record of Proceedings—Transcript as Evidence.

There shall be kept an electronic record of the following:

(1) All contested actions and proceedings had in open court unless the parties with the approval of the judge shall specifically agree to the contrary; and

(2) Such other proceedings as the judge may direct or as may be required by order of the court or as may be requested by any party to the action or proceeding.

Rule 3. Notice of Orders or Judgments.

Notice of the entry of an order or judgment shall be given as provided by Civil Rule 73(d). Every order and judgment shall include a clerk's certificate of distribution as defined in Civil Rule 58.1 (d).

(Amended by SCO 554 effective April 4, 1983)

Rule 4. Assignment and Hearing of Cases—Calendars.

The assignment and calendaring of cases in the district court shall be as set forth in Civil Rule 40(a), or by such procedures established by the presiding judge as will cause all cases to be regularly reviewed for placement on the trial calendar for dismissal for want of prosecution, or other appropriate disposition.

(Amended by SCO 838 effective August 1, 1987)

Rule 5. Jurors.

The procedure for the selection, summoning and impaneling of jurors shall be as provided by statute. The procedure for the examination of jurors shall be governed by Civil Rule 47.

Cross References

CROSS REFERENCES: AS 09.20.010—AS 09.020.090

Small Claims Handbook

- e. Fill in the lines at the bottom of the form and sign it. Be sure to include your title if you are answering for a business defendant.

If you have documents supporting your claim (for example: checks, receipts, bills), you must attach them to the Answer. Attach a copy for the court and copy for the plaintiff.

Return the original and one copy of the Answer to the court. Keep one copy for your records.

- f. Trial Date.

If you file an SC-3 Answer disagreeing with the plaintiff's claim, the court will set the matter for trial and notify you and the plaintiff in writing of the place, date and time of the trial.

2. Formal Rules Election.

If you want the formal rules of civil procedure to apply to your case instead of the small claims rules, you cannot use the SC-3 Answer form provided by the court. Instead you must:

- a. file with the court (1) a written request for formal rules and (2) a formal answer to the complaint in compliance with Civil Rules 7 through 16, 76 and 77; and
- b. serve a copy of these documents on the plaintiff; and
- c. file with the court proof that the documents were served on the plaintiff.

You must do all this within 20 days after you receive the Summons and Complaint or risk having a default judgment entered against you.

The court does not provide forms for your answer or your request for formal procedure. The court cannot help you prepare your answer or give you any other assistance once you have requested the formal rules. The court will automatically grant your request and send you an Order for Formal Procedure. If you need assistance, you must contact a lawyer.

D. Change of Address.

If you change your mailing address while the case is pending, you must notify both the court and the plaintiff. The court will consider that you have received all documents mailed to you at the address you furnished. Small Claims Rule 11(d).

Alaska State Legislature



Senate Judiciary Committee

March 27, 1991

Senator Kerttula, Co-Chairman
Senator Pourchot, Co-Chairman
Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Re: CSSB 101 (Judiciary) Relating to the jurisdiction of the
district Court

Dear Co-Chairs,

At the direction of the Senate Judiciary Committee I am sending you this communication concerning CSSB 101 (Judiciary). This bill was heard by Senate Judiciary February 12, February 22 and March 26, 1991. The Department of Law was present at the February 12 hearing.

While it was first thought that the bill would have little or no fiscal impact on the Department of Law, we received on March 20, 1991, a fiscal note for about \$700,000 annually. It is the sense of the committee that this is not in any way a fair appraisal of the fiscal impact of the bill.

Having considered the bill three times, it was passed out of committee with the Department of Law fiscal note but subject to the concerns expressed herein.

Sincerely,

A handwritten signature in cursive script that reads "Rick Halford".

Senator Rick Halford
Chair, Senate Judiciary

RH/db

Post Office Box V • Juneau, Alaska 99811

FISCAL NOTE

No. 1

Bill Version: SB 101

(S) Publish Da

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to the BRU: Legal Services
jurisdiction of the district court." Component: Operations
 Sponsor: Senate Judiciary
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	486.9	501.5	516.6	532.0	548.0	564.4
TRAVEL	32.5	33.5	34.5	35.5	36.6	37.7
CONTRACTUAL	99.8	102.8	105.9	109.1	112.4	115.8
SUPPLIES	37.2	38.3	39.4	40.6	41.8	43.1
EQUIPMENT	59.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	715.9	676.1	696.3	717.2	738.8	761.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER - IAR	715.9	676.1	696.3	717.2	738.8	761.0
TOTAL						

POSITIONS:

FULL-TIME	8	8	8	8	8	8
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

Changes in CS SB 101 (Jud) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.*

March 27, 91 OBail
date Comte Aide (initial)

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

* See letter to Senate Finance.

Prepared By: Richard I. Pegues Phone: 465-3672

Division: Administrative Services Date: March 19, 1991

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: March 19, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 101

Senate Bill No. 101 amends AS 09.50.250 and AS 22.15.050 to provide that a person or a corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in district court. At the present time, claims against the state, not settled administratively by state agencies, can be filed only in superior court, irrespective of the value of the claim. The superior court normally only adjudicates claims that exceed \$50,000. This bill would act to direct claims of up to \$50,000 to the district court. Claims that exceed \$50,000 would still be heard in superior court if they were not settled administratively.

Most contract claims against the state are handled administratively by the contract remedy process provided in AS 36.30.560 - AS 36.30.695, and AS 44.77.010 - AS 44.77.070. Contract claims that are currently appealed to the superior court after these administrative proceedings usually exceed the \$50,000 threshold for original entry as a superior court appeal, although they need not exceed the threshold to do so. The bill should not cause a substantial fiscal impact for contract appeals because of the comprehensive mandatory administrative remedy process provided in the state's Procurement Code, which must be exhausted before an appeal can be undertaken in court.

Tort claims, however, are an entirely different matter. The number of personal injury claims filed against the state during the past four and one-half years has averaged 700 claims per year and is growing steadily each year. Of this number, about 130 claims now result in lawsuits in superior court. Extending the jurisdiction of the district court to include claims against the state which do not exceed \$50,000 is expected to substantially increase the number of claims that result in lawsuits. This should result in a corresponding increase in the state's cost to defend against tort suits.

Most tort claims, about 570 of the 700 claims now being filed annually, are settled administratively by the state's contracted insurance adjustor. If resolution fails at the adjustor's level, a claim is settled by the Division of Risk Management. If a claimant is not satisfied with a settlement offer, or if a claim is denied, a claimant currently has the option of bringing a tort action in superior court. During the past four years approximately forty-five percent of the claims handled administratively were denied.

There is no existing requirement, however, that a claimant even contact the state to seek an administrative settlement, and a claimant may bring a lawsuit without ever having sought a settlement from the state's adjustor or the Division of Risk Management.

It is important to note that the state on its own initiative already contacts potential claimants in the course of investigating state agency accident reports and voluntarily offers settlements where it is appropriate to do so. Nevertheless, there are many instances where injuries are alleged in a lawsuit where the state does not have prior notice or knowledge. Indeed, the state does not receive prior notice of about ninety percent of the claims that are filed as lawsuits.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 101

It is unknown to what extent the bill, by itself, will encourage additional claims, but that eventuality seems likely in view of less complex district court procedures, and because of the relative ease by which claimants can represent themselves as pro se counsel in district court. There is no totally accurate way, and certainly no easy way to forecast the number of new lawsuits that will occur as a result of the enactment of this bill. However, we live in a litigious age where the state is perceived by some, including some of those who make their living prosecuting personal injury suits, as having a deep pocket. Therefore, for the purposes of this analysis, we have attempted to show that there will be an appreciable increase in the state's tort defense, while still employing conservative cost projections.

For example, if twenty-five percent of the 570 claims that do not now result in lawsuits end up in district court, the department would have to defend 142 new suits. Although the state's defense would be under rules that are less formal or strenuous than those required by the superior court, it is anticipated that a minimum of twenty attorney hours would be required to prepare for and present the state's defense in each case. This is an estimate of the minimum time that would be required, and there will be many occasions when a substantially greater effort will be necessary.

Furthermore, some percentage of the outcome of the new cases that will be heard in district court will be appealed to the superior court. Here again, it is difficult to provide an exact estimate, but it is not unreasonable to expect that about twenty-five percent of the district court cases will be appealed to the superior court by either claimant plaintiffs or the defendant state. It is estimated that each appeal of a district court judgment will require a minimum of 100 hours of state attorney time to prepare and litigate in superior court. There will also be numerous times when either side in a district court trial will appeal the court's rulings to the superior court during the course of a trial, in the form of petitions for review.

Apparently one of the anticipated results of this bill is to decrease superior court caseload by directing claims that do not exceed \$50,000 to the district court. Our analysis does not lead to this result.

The number of cases now filed in superior court with a value that does not exceed \$50,000 is relatively small, perhaps ten to fifteen percent of the 130 tort cases filed against the state in superior court. Thus the number of cases that would be directed to district court will be easily offset, and very likely be outweighed, by the number of district court appeals to the superior court. Moreover, the superior court will be repeatedly called upon to rule on petitions for review for tort cases being tried in district court. Also, because tort claims filed in district court will automatically have an additional level of appeal (Rule 601), some claims will take one or two years longer to complete before a final judgment is entered.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 101

Aside from the issue of the superior court serving as an appeals court for district court decisions, expanding the jurisdiction of the district court to hear tort claims will increase the number of claims that are filed in court and decrease the number of claims settled administratively, resulting in a corresponding increase in state costs. Although the individual value of most claims filed under the bill in district court would be relatively small, the state's tort defense will not change and it will often involve complex government immunity arguments. District courts rarely deal with these arguments and do not have the benefit of law clerk research assistants to help sort them out. Consequently, district courts will see a sharp increase in complicated civil caseload on top of their already crowded criminal calendars.

As mentioned previously, the bill will encourage additional lawsuits, to a large extent turning an administrative process into a legal fight. This will result in some unmeritorious lawsuits. And, in some instances, the bill will result in nuisance suits when it is understood that in some circumstances it will cost the state more to defend itself in court than the value of the claim, irrespective of a claim's merit. For example, the state receives numerous claims alleging vehicle damage caused by potholes, ranging from a few hundred dollars to a few thousand dollars per claim. The state is generally immune from this type of claim because it cannot repair all potholes at one time, and it must necessarily exercise its discretion in carrying out repairs. However, under the bill the state will have to defend against such claims in court, often at a cost that exceeds the amount being claimed. Most of these claims would otherwise be properly denied under the existing administrative process, at minimal cost to the state.

Therefore, based on the foregoing estimates of 142 new lawsuits and 33 new appeals, the bill will result in an annual increase of over 6,100 hours of attorney case work for the department. On average, each of the department's tort attorneys produce about 1500 hours annually devoted solely to case work. Consequently, the bill will require the addition of at least four attorneys. Moreover, because these cases could be heard before as many as fifteen different district court judges, scheduling will present some difficulties for these attorneys requiring additional paralegal and clerical support staff. It is therefore our estimate that two attorneys, one paralegal assistant, and one legal secretary will be required in Anchorage, and one attorney each and one legal secretary each will be required in both Fairbanks and Juneau.

COST SUMMARY - SB 101

<u>Location</u>	<u>Title</u>	<u>Personal Services</u>	<u>Travel</u>	<u>Contractual</u>	<u>Supplies</u>	<u>Equipment</u>	<u>Total</u>
Anchorage	Attorney IV	81.8	7.5	20.0	6.0	6.5	121.8
	Attorney III	72.4	7.5	20.0	6.0	6.5	112.4
	Paralegal Asst II	49.3	2.5	6.6	3.3	6.5	68.2
	Legal Secretary I	35.9		4.4	3.3	9.0	52.6
Fairbanks	Attorney IV	92.6	7.5	20.0	6.0	6.5	132.6
	Legal Secretary I	37.2		4.4	3.3	9.0	53.9
Juneau	Attorney IV	81.8	7.5	20.0	6.0	6.5	121.8
	Legal Secretary I	35.9		4.4	3.3	9.0	52.6
TOTAL		486.9	32.5	99.8	37.2	59.5	715.9

FY92 costs are shown above. Costs after FY92 include a three percent inflation factor.

Position Title Attorney III		No. of Positions 1	Range / Step 22 A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 5 - 15, 23 - 27
TYPE OF EXPENDITURE		Amount	Justification This Attorney III position will be needed to handle part of the increased caseload in Southcentral Alaska caused by implementation of SB101. The position will handle many of the new lawsuits in district court and a few of the appeals of these cases in superior court. Most of this new work involves court trials and requires personal injury defense experience. Because of the extensive trial work, additional amounts are needed for travel, depositions, expert witnesses, and exhibits. This position requires three or more years of experience of an Attorney III to handle this level of work.	
Salary		53,298		
Benefits		19,092		
Premium Pay				
Other				
Tbtal Personal Services		72,390		
Travel		7,500		
Contractual		20,000		
Commodities		6,000		
Equipment		6,500		
Other				
Tbtal Cost		112,390		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004				
I-A Receipts 1007		112,390		
CIP Receipts 1061				
Other				

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1
 Revised Date: _____

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16 A	Barg. Unit GG
Time Status PFT	Staff Months 12	Location Anchorage		Election District 5 - 15, 23 - 27
TYPE OF EXPENDITURE		Amount	Justification This paralegal assistant will be needed to handle witness scheduling that will be needed by the two attorneys in Anchorage who will handle the new torts caseload caused by the implementation of SB101. The position will also assist and prepare case files and evidence used at trial. These duties are appropriate for a Paralegal Assistant II.	
Salary		35,166		
Benefits		14,110		
Premium Pay				
Other				
Total Personal Services		49,276		
Travel		2,500		
Contractual		6,600		
Commodities		3,300		
Equipment		6,500		
Other				
Total Cost		68,176		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007	68,176		
CIP Receipts	1061			
Other				

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1
 Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10 B	Barg. Unit GG
Time Status PFT	Staff Months 12	Location Anchorage		Election District 5 - 15, 23 - 27
TYPE OF EXPENDITURE		Amount		
Salary		24,636		
Benefits		11,276		
Premium Pay				
Other				
Total Personal Services		35,912		
Travel				
Contractual		4,400		
Commodities		3,300		
Equipment		9,000		
Other				
Total Cost		52,612		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004				
I-A Receipts 1007		52,612		
CIP Receipts 1061				
Other				
Justification The Legal Secretary I position will be needed to prepare the trial documents required by the new attorneys in Anchorage who will handle the additional tort caseload caused by implementation of SB101. Trial work of this sort is paper-intensive, involving extensive motion practice and briefing. Allocation of the position to the Legal Secretary I level is therefore appropriate.				

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1
 Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 24 A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 17 - 22, 24
TYPE OF EXPENDITURE		Amount	Justification This Attorney IV position will be needed to handle the increased caseload in Central and Northern Alaska caused by implementation of SB101. The position will handle the new lawsuits in district court and the appeals of these cases in superior court. Most of this work involves court trials and requires experience in personal injury defense and state immunity defenses. Because of the extensive trial work, additional amounts are required for travel, depositions, expert witnesses, and exhibits. This position requires full journey-level skills as an Attorney IV because of the involvement in appeals.	
Salary		70,092		
Benefits		22,558		
Premium Pav				
Other				
Total Personal Services		92,560		
Travel		7,500		
Contractual		20,000		
Commodities		6,000		
Equipment		6,500		
Other				
Total Cost		132,560		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007	132,560		
CIP Receipts	1061			
Other				

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1

Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10 B	Barg. Unit GG
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 17 - 22, 24
TYPE OF EXPENDITURE		Amount		
Salary		25,620		
Benefits		11,541		
Premium Pay				
Other				
Total Personal Services		37,161		
Travel				
Contractual		4,400		
Commodities		3,300		
Equipment		9,000		
Other				
Total Cost		53,861		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004				
I-A Receipts 1007		53,861		
CIP Receipts 1061				
Other				
Justification The Legal Secretary I position will be needed to prepare the trial documents required by the new attorney in Fairbanks who will handle the additional tort caseload caused by implementation of SB101. Trial work of this sort is paper-intensive, involving extensive motion practice and briefing. In addition, the position will handle witness scheduling in the absence of paralegal support at this location. Allocation of the position to the Legal Secretary I level is therefore appropriate.				

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1
 Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 24 A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Juneau		Election District 1 - 4
TYPE OF EXPENDITURE		Amount		
Salary		61,008		
Benefits		20,760		
Premium Pay				
Other				
Total Personal Services		81,768		
Travel		7,500		
Contractual		20,000		
Commodities		6,000		
Equipment		6,500		
Other				
Total Cost		121,768		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004				
I-A Receipts 1007		121,768		
CIP Receipts 1061				
Other				
Justification This Attorney IV position will be needed to handle the increased caseload in Southeastern Alaska caused by implementation of SB101. The position will handle the new lawsuits in district court and the appeals of these cases in superior court. Most of this work involves court trials and requires experience in personal injury defense and state immunity defenses. Because of the extensive trial work, additional amounts are required for travel, depositions, expert witnesses, and exhibits. This position requires full journey-level skills as an Attorney IV because of the involvement in appeals.				

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1

Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10 B	Barg. Unit GG
Time Status PFT	Staff Months 12	Location Juneau		Election District 1 - 4
TYPE OF EXPENDITURE		Amount		
Salary		24,636		
Benefits		11,276		
Premium Pay				
Other				
Total Personal Services		35,912		
Travel				
Contractual		4,400		
Commodities		3,300		
Equipment		9,000		
Other				
Total Cost		52,612		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004				
I-A Receipts 1007		52,612		
CIP Receipts 1061				
Other				
Justification The Legal Secretary I position will be needed to prepare the trial documents required by the new attorney in Juneau who will handle the additional tort caseload caused by implementation of SB101. Trial work of this sort is paper-intensive, involving extensive motion practice and briefing. In addition, the position will handle witness scheduling in the absence of paralegal support at this location. Allocation of the position to the Legal Secretary I level is therefore appropriate.				

Request For New Position

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 92

Page 1 of 1

Revised Date: _____

SENATE BILL NO. 101

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 2/1/91
Referred: Judiciary and Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the jurisdiction of the district court."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 09.50.250 is amended to read:

4 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
5 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
6 against the state [IN THE SUPERIOR COURT]. A person who may present the claim under
7 AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A
8 person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under
9 this section except as set out in AS 36.30.685. However, an action may not be brought under
10 this section if the claim

11 (1) is an action for tort, and is based upon an act or omission of an employee of
12 the state, exercising due care, in the execution of a statute or regulation, whether or not the
13 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance
14 or the failure to exercise or perform a discretionary function or duty on the part of a state agency

1 or an employee of the state, whether or not the discretion involved is abused;

2 (2) is for damages caused by the imposition or establishment of a quarantine by
3 the state;

4 (3) arises out of assault, battery, false imprisonment, false arrest, malicious
5 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with
6 contract rights; or

7 (4) arises out of the use of an ignition interlock device certified under
8 AS 33.05.020(c).

9 * Sec. 2. AS 22.15.050 is amended to read:

10 Sec. 22.15.050. ACTIONS NOT WITHIN CIVIL JURISDICTION. The jurisdiction of
11 the district courts does not extend to

12 (1) an action in which the title to real property is in question;

13 (2) an action for false imprisonment, libel, slander, malicious prosecution, or
14 actions of an equitable nature, [() except as otherwise provided by law ()], OR ACTIONS IN
15 WHICH THE STATE IS A DEFENDANT].

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 2/1/91

FURTHER: Finance

Date of 5-Day Notice: Feb 7, 1991
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: March 27, 1991

Judiciary Committee considered SB 101

Relating to the jurisdiction of the district court.

and recommended: *it be replaced*
SB 101

- replace with CS (Judiciary) same title new title
- attached amendment(s) *5 rpts at the top plus*
- _____ letter of intent adopted

- do pass *reports it back as follows:*
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

*17W
107W*

ATTACHES NEW FISCAL NOTE(S):
Department(s)/Date:

Department(s)/Date:

fiscal note(s)
Court System 2/04/91
Dept of Law 3/19/91

zero fiscal note(s)
Court System 2/04/91

- appropriation-no fiscal note
- Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Patrick Rydley do pass

1 Ad Adams - No Rec
1 Major FRANK - No Rec
1 Coltin Collins - No Rec
~~*Patrick Rydley do pass*~~

1 Rick Halford do pass
 Chair: Signature and Recommendation