

HB

406

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/8/98

FURTHER: REPORTED OUT OF
5/09/98
 DATE TURNED
 IN TO OFFICE: 5/09/98

Finance Committee considered CS FOR HOUSE BILL NO. 406(FIN) am(efd fld)

SUBSISTENCE USES OF FISH AND GAME

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Handwritten signature]</i>	✓		
		<i>[Handwritten signature]</i>	X		
		<i>[Handwritten signature]</i>		X	
		<i>[Handwritten signature]</i>	✓		
		<i>[Handwritten signature]</i>	✓		
Co-Chair:		Co-Chair: <i>[Handwritten signature]</i>	✓		
Co-Chair: <i>[Handwritten signature]</i>	L	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>[Handwritten: forthcoming 129 1/2]</i>			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Court	4/12/98	0	
Law/Nat. Res	4/17/98		292.9

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

REPORTED OUT OF

5/09/98

No: 11

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Version: CSHB 406 (FIN)

(H) Publish Date: 4/17/98

Revision Date _____ Dept. Affected Law
 Title "An Act authorizing the Board of Fisheries . . . BRU Civil Division
to identify fish and game that are taken or used for subsistence . . ." Component Natural Resources
 Sponsor House Resources Committee
 Requester House Finance Committee Component Serial No 2212

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	226.4	452.9	339.6	339.6	339.6	226.4
Travel	0.7	1.4	1.0	1.0	1.0	0.7
Contractual	42.7	117.1	96.9	94.9	94.9	66.8
Supplies	3.6	7.3	5.4	5.4	5.4	3.6
Equipment	19.5	13.0				
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	292.9	591.5	443.0	441.0	441.0	297.5

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	292.9	591.5	443.0	441.0	441.0	297.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	292.9	591.5	443.0	441.0	441.0	297.5

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time	3	5	4	4	4	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CS HB 406(Fin) would substantially revise the state's subsistence statute and the way in which the Boards of Fish and Game manage fish and game resources for subsistence uses. It would establish an individual eligibility for subsistence based on customary and traditional use of individual stocks and populations. Persons who were determined to be "qualified subsistence users" for a stock or population, based on individual criteria, would be eligible to take that stock or population under subsistence regulations in times of a shortage of the stock or population. Persons who lived in an area identified as dependent on each stock or population would be presumed to be qualified subsistence users of that stock or population; those who did not could apply for such status. Eligibility for the status could be challenged. The application and challenge processes would be handled by the Department of Fish and Game, and all hearings would be held under provisions of the Administrative Procedures Act, which allows for appeal to the superior court. It is estimated by the Department of Fish and Game that approximately 122,000 applications for qualified subsistence user status would be

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date 4/14/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 4/14/98
 Agency Department of Law

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FISCAL NOTE

#11

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Workdraft M
BILL NO. CSHB 406 (FIN)

ANALYSIS CONTINUATION

received annually and that 1,000 of those would go on to the hearing officer appeal stage. The Department of Law anticipates that 40 of these determinations would be appealed to the superior court in the first year of the new program and that 30 would be appealed annually after that time. Further, one-fifth of these decisions would then be appealed to the Supreme Court.

Management of subsistence use fish and game resources would begin with an identification of nonsubsistence areas by the boards, taking into account whether a cash economy was a principal characteristic of the area. CSHB 406 (FIN) directs the boards to review all existing nonsubsistence area designations within two years and to substantially increase the proportion of the state that is designated as nonsubsistence areas.

The boards would then identify stocks and populations located outside nonsubsistence areas that are customarily and traditionally taken or used for subsistence. The boards would determine whether there was a harvestable surplus of each of those stocks and populations and, depending on the amount of the harvestable surplus, relative to the amount determined to be reasonably necessary for subsistence uses by residents, adopt regulations that provide for different groups of persons to harvest each individual stock or population. Under the provisions of CSHB 406 (FIN), the boards would differentiate among four levels of availability for each stock or population: 1) sufficient to provide for all consumptive uses; 2) sufficient to provide for a reasonable opportunity for subsistence uses by qualified subsistence users and some, but not all, other consumptive uses; 3) sufficient to provide a reasonable opportunity for subsistence uses by qualified subsistence users but no other consumptive uses; and 4) not sufficient to provide a reasonable opportunity for human consumptive uses by all qualified subsistence users.

The legislation revamps the entire subsistence management regime and will require the boards to revisit and perhaps revise all hunting and fishing regulations during the first year after passage of the bill. They will be required to reevaluate and re-identify the nonsubsistence areas within the first two years. The boards will be required to make annual determinations of harvestable amounts, determine at which of the four levels noted above each stock and population is, and establish the appropriate types of regulations. They will also be required to determine the eligibility of those who have applied for qualified subsistence user status or whose status has been challenged.

The additional responsibilities of the boards in implementing the individual eligibility preference system of CSHB 406 (FIN) will involve extensive additional meetings of those bodies, particularly in the first year, and accompanying legal services from the Civil Division of the Department of Law. In the first year, each of the two boards will require the services of one attorney to provide advice during the regulations review and revision process. In the second year, two additional attorneys, for a total of four, will be necessary to assist with continuing advice to the boards in their eligibility and area determinations and in pursuing the challenges to hearing officer and board decisions that will be taken to court. These cases are expected to attract the attention of public interest attorneys and organizations. It is estimated that there will be at least 40 cases appealed to the superior court in the first year the new regulations will be in effect and 30 a year thereafter. It is anticipated that one-fifth of those will be appealed to the Alaska Supreme Court. As the number of appeals declines in subsequent years, the number of attorneys required will decrease to three in FY01, and to two in FY04.

A provision of the bill makes knowingly providing false information to the department or board regarding the taking or use of fish or game for subsistence uses or regarding the person's or another person's eligibility to engage in subsistence uses of fish and game a Class A misdemeanor. In addition to imposing other penalties of law, a court shall suspend the fishing and hunting privileges of a person convicted under the section not less than one year. The Criminal Division of the Department of Law will incur some additional costs under this section, but the division is unable to estimate these at this time.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. Workdraft M
CSHB 406 (FIN)

#11

ANALYSIS CONTINUATION

The bill as currently written presents constitutional issues and, given the volatility of this issue in the State of Alaska, challenges to the constitutionality of the law that would be enacted by this bill are anticipated. In this arena, too, we expect that public interest attorneys will handle cases that individuals themselves would not be able to bring. However, the costs of defending such constitutional challenges are too speculative and are not included in this fiscal note. Should extraordinary costs be incurred for such defense, the department would seek a supplemental appropriation.

Cost estimates are based on the department's standard FY98/99 cost allocation schedule (full-time equivalent attorney, \$133,500). The cost schedule includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses.

The standard cost does not include case-specific contractual and travel costs, such as the extraordinary travel to the additional multiple board meetings that Fish and Game estimates will be required by this bill, or one-time new equipment purchases for new positions. \$1,000 is added for deposition, court reporter, and transcription costs for each case anticipated to go to court, \$6,396 for travel to attend board meetings in FY99 and \$4,476 for travel to attend board meetings in the following years, and \$6,500 per new attorney position for one-time equipment purchases.

While clerical costs are included in the rate, position authorizations are required. These are included using an approximate ratio of one clerical support position for every three professional positions. One clerical support position is requested in FY99, with \$6,500 for one-time new equipment costs.

FISCAL NOTE

REPORTED OUT OF
 5/09/98 No: 4
 Bill Number: CSHB 406 (FIN)
 (H) Publish Date: 4/17/98

STATE OF ALASKA 1998 LEGISLATIVE SESSION

Revision Date: 04/15/98 Dept. Affected: Alaska Court System
 Title: An act relating to Fish and Game BRU: Trial Courts
 Sponsor: House Resources Component: _____
 Requestor: House Finance COMPONENT SERIAL NO. 788

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 00	FY 01	FY 02	FY 03	FY 04	
PERSONAL SERVICES	0.0	118.3	89.6	89.6	89.6	57.5	
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS & CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	0.0	118.3	89.6	89.6	89.6	57.5	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ()							

Fund Source		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	118.3	89.6	89.6	89.6	57.5	
1005 GF; Program Receipts							
1037 GF; Mental Health							
Other							
TOTAL	0.0	118.3	89.6	89.6	89.6	57.5	

Estimate of any current year (FY 98) cost: \$ None

Positions							
Full-Time							
Part-Time	0	3	3	3	3	3	
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, General Counsel *[Signature]* Phone: 264-8228
 Agency: Alaska Court System Date: 04/15/98
 Approved by: Stephanie J. Cole, Administrative Director *[Signature]* Date: 04/15/98
 Agency: Alaska Court System

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**Alaska Court System
Fiscal Analysis
CSHB 406 (FIN)**

CSHB 406 (FIN) creates a presumption that a resident who is domiciled in an area determined by the Board of Fisheries or Board of Game to be customarily and traditionally dependent on a resource is a qualified subsistence user, and that a resident who is not domiciled in such an area is not a qualified subsistence user.

The presumption is rebuttable by a preponderance of the evidence presented at a hearing before the appropriate board, and such hearings must be held in accordance with the Administrative Procedures Act (APA). Sec. 44.62.560 of the APA provides for judicial review by the superior court of a final administrative order.

The judicial function is reactive in nature, and thus the court system generally relies on estimates of administrative appellate caseload provided by the executive branch agencies with responsibility for handling the original administrative actions. The Department of Law has estimated that 40 cases will be appealed to the superior court during the first year that the new regulations are in effect (FY 00), 30 cases will be appealed during the second, third and fourth years, and 20 cases per year will be appealed during the fifth and subsequent years. The Department of Law anticipates that these will be extremely complex, time consuming administrative appeals, and that one attorney will be able to handle 10 cases per year.

Appeals under the APA consume substantially more judicial time than do other types of civil cases. While the large majority of other civil cases are resolved with relatively little judicial time spent (95% settle before trial, for example), all administrative appeals require substantial judicial time to review the record and render a decision. Using the estimates of case complexity made by the Department of Law, this note assumes that handling the FY 00 caseload generated by four attorneys will require 10 months of pro tem judicial time with proportionate reductions in later years.

This note does not include costs associated with adjudicating any constitutional challenges which might be mounted against the legislation, because of the speculative nature of such costs. It does not include costs associated with the creation of a new Class A misdemeanor for providing false information regarding the taking or use of fish or game for subsistence uses, because the Department of Law has not estimated the number of such case which might be prosecuted per year. Finally, it does not include costs associated with handling the administrative appeals which are appealed from the superior court to the supreme court.

Alaska Court System

Fiscal Analysis

CSHB 406 (FIN)

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Personal Services

by Fiscal Year

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>FY 00</u>			
Superior Court Pro Tem Judge, Anchorage, PPT, 10 months	\$ 48,750	\$ 23,762	\$ 72,512
Law Clerk, 13D, Anchorage, PPT, 10 months	28,320	11,558	39,878
In-Court Clerk, 12A, Anchorage, PPT, 2 months	4,822	1,045	<u>5,867</u>
FY 00 Total Personal Services			<u>\$ 118,257</u>
<u>FY 01 - FY 03</u>			
Superior Court Pro Tem Judge, Anchorage, PPT, 8 months	\$ 38,583	\$ 17,821	\$ 54,384
Law Clerk, 13D, Anchorage, PPT, 8 months	22,656	6,718	29,374
In-Court Clerk, 12A, Anchorage, PPT, 2 months	4,822	1,045	<u>5,867</u>
FY 01 - FY 03 Total Personal Services			<u>\$ 89,625</u>
<u>FY 04</u>			
Superior Court Pro Tem Judge, Anchorage, PPT, 5 months	\$ 24,375	\$ 11,881	\$ 38,256
Law Clerk, 13D, Anchorage, PPT, 5 months	14,160	4,199	18,359
In-Court Clerk, 12A, Anchorage, PPT, 1 month	2,411	523	<u>2,934</u>
FY 04 Total Personal Services			<u>\$ 57,549</u>