

HB

120

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Mary Pagenkopf

Senate Rules Committee 3/5/97 11:55 am

FISCAL NOTE

No. 1
 Bill Version: CSHB 120(JUD)
 (H) Publish Date: 2/12/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...power of attorney general to waive immunity BRU: Civil Division
from suit in federal court...effective date Component: General Legal Services
 Sponsor: Representative Hudson
 Requester: House Judiciary COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact for the Department of Law.

Prepared by: Fred Fisher Phone: 465-3672
 Division: Administrative Services Division *Fred Fisher* Date: 2/7/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/97
 Agency: Department of Law

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Sponsor Statement for CSHB120

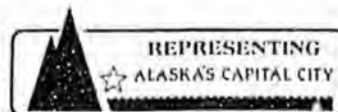
The Eleventh Amendment to the United States Constitution prohibits suits against states in federal court for damages brought by citizens of that state. Recent decisions of the United States District Court for the District of Alaska have prohibited the Attorney General from waiving this immunity without express legislative authority to do so. Although the Attorney General has statutory authority to represent the state in all civil actions in which the state is a party, there is no specific legislative grant to waive Eleventh Amendment immunity where it is in the state's best interest.

From time to time there are cases where it is procedurally advantageous for the state to waive its Eleventh Amendment immunity and have a case heard in federal court - there are presently two such cases before the state of Alaska.

The first case is addressed in the original language for HB120. The United States is being sued by plaintiffs in Alaska who seek a judgment that the US owns the tidelands in the Tongass National Forest. The State has not been named as a defendant, however it would like to intervene to determine its title to the lands in dispute.

Only by joining as a defendant in this lawsuit can the state litigate this title. The Quiet Title Act requires that the United States "claim and interest" in the disputed property. In this case, the United States has carefully avoided taking any formal position as to whether it believes it or the State has title to the tidelands in question. Therefore, by joining as a defendant, the State would secure the opportunity to establish title to lands it owns.

The second case where it would be procedurally advantageous to waive Eleventh Amendment immunity involves tort claims where the state and federal government are both potentially responsible. This issue is addressed in the amendment before you. Because of the Eleventh



Amendment immunity, and because the federal government will not appear in state court, the claims cannot be litigated in one court, and fault allocated among all parties. The state is put in a position where it cannot have fault allocated to federal agencies and employees and loses this valuable substantive right. If the state is unable to waive the Eleventh Amendment and appear and defend in federal court, it will lose its ability to have a fair allocation of fault among all responsible parties. This places the state at a substantial economic disadvantage in defending the lawsuit.

The purpose of HB120 is to ask the Alaska State Legislature to allow the Attorney General to give the State's consent to appear in Federal Court as a defendant in a case that involves the state's title to submerged lands. The amendment before you would further enable the Attorney General to waive Eleventh amendment immunity and litigate in federal court in cases where the state seeks to allocated fault to the federal government or a federal employee under AS 09.17.080.