

SB

286

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. SB 286

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to the duties and powers of BRU Criminal Division/Civil Division
the attorney general." Component All
 Sponsor Senate Judiciary Committee
 Requester Senate Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 286 amends AS 43.23.020, relating to the powers and duties of the attorney general. This bill may generate additional litigation over the attorney general's authority. Our opponents in litigation will use this language as another tool. Whether or not they are successful in their arguments, time must be expended to respond to the inevitable challenges. The Department of Law has no way of estimating how often the issue might arise, or how much time and expense would be necessary to respond.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 3/8/00, 4:02 PM
 Approved by Commissioner *Bruce M. Bolelho* Bruce M. Bolelho, Attorney General Date 3/8/00
 Agency Department of Law

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MEMORANDUM

March 23, 2000

SUBJECT: CSSB 286(JUD) (Work Order No. 1-LS1512\G)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
Attn: Sue Mossgrove

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

Enclosed is the bill you requested, in final form.

The purpose of this memo is to explain why this version looks different than the previous draft.

The deletion of the words "state, including the" in line 5 of the previous version of the bill (1-LS1512\A) means that there is no longer any substantive change to AS 44.23.020(a). The change to the catch line deleting the word "and" is not substantive; that is a clean-up change made by this office. The catch line is not law. Since there is no substantive change, subsection (a) should not be included in the bill. The enclosed version reflects this.

The new subsection relating to the power of the attorney general to settle actions, on page 2 line 15 of the \A version, is being added as a new subsection (d), rather than subsection (c). This re-ordering will not change the legal effect of the bill. There may be a logical preference, however, to place this more general material before the existing date-specific material dealing with title to submerged lands in the current subsection (c).

If this is the case, and the bill is enacted, you may request that the revisor re-letter these subsections so that the new material on settling actions comes before the existing subsection on title to submerged lands by simply sending a letter to the revisor. The revisor is empowered to renumber parts of sections under AS 01.05.031.

These changes shorten the bill, and will, we hope, make it easier for the reader to quickly identify what is being changed. Thank you for your understanding. Please call me if you have any questions.

KLK:pl
00-107.plm

SENATE BILL NO. 286

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 2/28/00

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties and powers of the attorney general."

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

3 * Section 1. AS 44.23.020 is amended to read:

amend #1
5

4 Sec. 44.23.020. Duties; [AND] powers; waiver of immunity. (a) The
5 attorney general is the legal advisor of the state, including the governor and other
6 state officers.

amend #2
remember
8

(b) The attorney general shall (1) defend the C. of SOA

9 (1) bring, prosecute, and defend all necessary and proper actions in the
10 name of the state for the collection of revenue;

11 (2) represent the state in all civil actions in which the state is a party;

12 (3) prosecute all cases involving violation of state law, and file
13 informations and prosecute all offenses against the revenue laws and other state laws
14 where there is no other provision for their prosecution;

15 (4) administer state legal services, including the furnishing of written
legal opinions to the governor, the legislature, and all state officers and departments

1 as the governor directs; and give legal advice on a law, proposed law, or proposed
2 legislative measure upon request by the legislature or a member of the legislature;

3 (5) draft legal instruments for the state;

4 (6) make available a report to the legislature, through the governor, at
5 each regular legislative session

6 (A) of the work and expenditures of the office; and

7 (B) on needed legislation or amendments to existing law;

8 (7) perform all other duties required by law [OR WHICH USUALLY
9 PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE]; and

10 (8) prepare, publish, and revise as it becomes useful or necessary to do
11 so an information pamphlet on landlord and tenant rights and the means of making
12 complaints to appropriate public agencies concerning landlord and tenant rights; the
13 contents of the pamphlet and any revision shall be approved by the Department of
14 Law, division of consumer protection, before publication.

15 *Amend #3* (c) *enact laws,* The attorney general may subject to the power of the legislature to
16 make appropriations, settle actions, cases, and offenses under (b) of this section
17 in which the attorney general represents the state and in which the state is a
18 party.

19 (d) Before January 1, 1999, the attorney general may, in a case that involves
20 the state's title to submerged lands, or in any case in which the state seeks to allocate
21 fault to the federal government or a federal employee under AS 09.17.080, waive the
22 state's immunity from suit in federal court provided under the Eleventh Amendment
23 to the Constitution of the United States. The expiration on January 1, 1999, of the
24 attorney general's authority to waive the state's Eleventh Amendment immunity does
25 not affect existing waivers in ongoing cases.

Mark K. Johnson
13631 Windward Circle
Anchorage, Alaska 99516
907-345-3850

RECEIVED
JAN 24 2000

Ans'd.....

January 19, 2000

The Honorable Robin Taylor
Alaska State Senate
State Capitol Building
Juneau, Alaska 99811

Dear Robin:

Enclosed is a copy of the recommendations of the subcommittee which reviewed the Department of Law for the Commission on Privatization, along with the Department's response and some of the appendices.

I do not take the Department's response very seriously for one paramount reason: The Department is unable as an institution to view itself critically and objectively. The Department consists almost entirely of career employees with a uniform political philosophy and close loyalty to Bruce Botelho. Mr. Botelho has hired a good number of these employees and has the ability to discharge any attorney at any time for pretty much any (or no) reason.

At the risk of repeating myself: The subcommittee found, and the Department reluctantly agreed that the Attorney General is NOT a constitutional officer and that Legislature, by statute, may define the role and responsibilities of the head of the Department of Law.

The subcommittee drafted a proposed amendment to AS 44.23.010 which would limit to some degree the scope of the Attorney General's powers and clarify that his obligation as a legal advisor runs to the State of Alaska, not "the governor and other state officers." The draft legislation would also put into law that the Legislative power to make appropriations constrains and limits the Attorney General's authority to settle cases.^{1 2} Finally, the draft legislation would

¹ The power to settle litigation in my view poses great danger to the State and is the source of considerable mischief by this and previous Attorney Generals. As a recent example, as I understand it an attorney with the State with knowledge of the World Plus Travel scandal brought litigation against the State in connection with her discharge but that litigation was quickly settled. Through settlement, the State has the ability to quickly close and limit the potential for embarrassment from a variety of problems.

² Please note that this legislation does not address the authority of the Attorney General to enter into settlements of Alaska's anti-trust laws under Title 45.

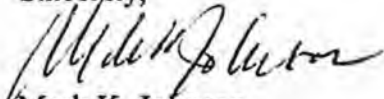
remove language which can be interpreted to vest common law powers in the Attorney General. It is my belief, and a belief shared by the subcommittee, that the Attorney General's powers should be enumerated powers – not unlimited powers.

Once it is appreciated that the Legislature can define and control the scope and powers of the Attorney General, it is interesting to consider the effect of dissolution of the office of Attorney General and the entire Department of Law. The office of State Prosecutor and Department of Prosecution could be established, which would address only criminal matters. Individual executive departments could be given authority to retain and employ counsel for needed legal services. The Governor could hire Bruce Botelho as the Governor's lawyer, which is the present situation.

Interestingly enough, under this set-up, the departmental commissioner would retain control of the legal budget of the department and the traditional relationship between client and attorney would be brought back to state government. Counsel retained in this fashion would be subject to the direction of the client – not the Attorney General. I personally believe that this arrangement would produce better results for the State of Alaska as the focus would shift to the issues presented in litigation. I would guarantee that discussions between the Governor and his department heads which touched upon legal issues would be much more substantive.

I hope this information is interesting and useful to you. Please let me know if I can answer any questions. My home phone is listed above. My work phone is 273-5290, but I am not always able to discuss non-work related matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark K. Johnson".

Mark K. Johnson

Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

Sec. 44.23.020. Duties; and powers; waiver of immunity.

- (a) The attorney general is the legal advisor of the state, including the governor and other state officers.
- (b) The attorney general shall
- (1) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;
 - (2) represent the state in all civil actions in which the state is a party;
 - (3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;
 - (4) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;
 - (5) draft legal instruments for the state;
 - (6) make available a report to the legislature, through the governor, at each regular legislative session
 - (A) of the work and expenditures of the office; and
 - (B) on needed legislation or amendments to existing law;
 - (7) perform all other duties required by law [OR WHICH USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE]; and
 - (8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication.
- (c) The Attorney General may, subject to the power of the legislature to make appropriations, settle actions, matters and prosecutions under subsection (b) in which the Attorney General represents the state and in which the state is a party.
- (d) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.

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IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 2/28/00

Referred: Judiciary

*empowers the AG to defend
the Const. when conflict
between the Const & Gov.*

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9 name of the state for the collection of revenue;

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