

SB

392

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 392
(S) Publish Date: 4/29/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to the expenses of investigation, RDU CIVIL
hearing, or public advocacy before the Regulatory..." Component Regulatory Affairs Public Advocacy
Sponsor Senate Labor & Commerce
Requester Senate Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	300.0	300.0	300.0	300.0	300.0	300.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	300.0	300.0	300.0	300.0	300.0	300.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)
1141 RCA Receipts	1,312.8	1,312.8	1,312.8	1,312.8	1,312.8	1,312.8
TOTAL	300.0	300.0	300.0	300.0	300.0	300.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 42.05.254 by clarifying that the general costs of public advocacy will continue to be paid from the established regulatory cost charge mechanism. The bill also exempts state agencies from reimbursing the Regulatory Commission of Alaska (commission) for commission costs in a proceeding to which the state agency is a party. The bill adjusts the previously established statutory cap on the regulatory cost charge upwards by .07% and allocates the total amount between the RCA and the Department of Law's public advocacy function. The increase is to allow for the \$300,000 increase in budget authority shown in this fiscal note. Additionally, the bill provides the Department of Law qualified access to utility and pipeline carrier books and records similar to that afforded the RCA's former public advocacy staff.

Prepared by: Kathryn A. Daughhete, Director
Division: Administrative Services
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone 465-3673
Date/Time 4/22/04 3:54 PM
Date 4/22/2004

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 392

ANALYSIS CONTINUATION

Continuing in the spirit of Executive Order 111, the Governor's FY 2005 amended budget completes the transfer of responsibility and oversight for the regulatory public advocacy function by transferring the associated staff positions and adding additional interagency receipt authority to the newly created Regulatory Affairs Public Advocacy section in the Department of Law. Through the statutory changes proposed in this legislation, the new section shall be budgeted directly from the regulatory receipts rather than through an interagency transfer of funds. This fiscal note converts the receipts portion only but may require further amending to include the transfer of expenditure authorization and positions if the portion of the Governor's amended budget that would make that change is not adopted.

SB 392 (RCA Public Advocacy) Section by Section Analysis

Sections 2, 3, 4, 9, 10 & 11: These sections clarify that the general costs of public advocacy for utility and pipeline matters before the Regulatory Commission of Alaska (RCA) will continue to be paid from the existing regulatory cost charge mechanism under AS 42.05.254 and AS 42.06.286.

Historically, advocacy on behalf of the public interest was performed by personnel within the RCA. Therefore, the cost of that advocacy was a part of the RCA's budget funded by receipts from the regulatory cost charge, not from the general fund. Effective July 1, 2003, Executive Order 111 (issued during last year's legislative session) transferred the responsibility for public advocacy from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL).

These sections of SB 392 amend existing statutes to complete the transfer of authority by expressly providing that regulatory cost charge receipts will continue to pay the costs associated with the public advocacy function that is now administered by the DOL. (Public advocacy funding is currently administered through a separate RDU within the RCA. It will be transferred from the DCED to DOL.) They do not change the regulatory cost charge mechanism.

Sections 1 & 8: First, these sections of SB 392 increase the regulatory cost charge ceiling by .0007 (from the current .80% to .87%) of the total adjusted gross revenues of all regulated public utilities and pipeline carriers derived from operations in the state. The regulatory cost charges that the RCA annually expects to collect may not exceed the ceiling. The existent cap has not changed since the statute was enacted in 1992. This adjustment in the regulatory cost charge ceiling constitutes an increment of approximately \$300,000. The purpose of the increase in the cap is to provide adequate funding to retain experts when necessary to support the DOL's public advocacy function before the RCA.

The RCA budget did not historically contain a specific line item for expert retention by its public advocacy staff.

Second, under the adjusted overall regulatory cost charge ceiling, these sections specify separate, fixed caps on the respective budgets of the RCA and the DOL public advocacy function. This will complete the transfer of authority for public advocacy by providing each entity with budgetary independence from the other. Accordingly, the RCA budget amount may not exceed .70 % of the total adjusted gross revenues of all regulated public utilities and pipeline carriers; and the DOL public advocacy budget may not exceed .17% of those same total adjusted gross revenues (.70%+.17%=.87%, the adjusted overall cap).

The legislature maintains the authority to appropriate the budget of the RCA and the budget of the DOL public advocacy function.

Sections 5 & 11: These sections of SB 392 provide the attorney general with qualified access to utility or pipeline carrier books and records when he participates in RCA dockets in a public interest advocacy role under AS 42.04.070(c) or AS 44.23.020(e).

Prior to the transfer of authority to the attorney general under Executive Order 111, public interest advocacy was performed by Commission staff, who had a statutory right to unfettered access to utility or pipeline carrier records in order to perform their function.

AS 42.05.501 and AS 42.06.440. Such access allows efficient and economical use of state resources to investigate public utility and pipeline carrier public interest issues in cases where the commission has determined that comprehensive review and hearing is appropriate. This need for efficient and economical access has not changed by the shift of responsibility for public interest advocacy to the Attorney General. The amendments to AS 42.05.501 and AS 42.06.440 acknowledge these goals but also provide the utility or pipeline carrier with an opportunity for objection to the commission.

Sections 7 & 12: These sections of SB 392 work in tandem with Sections 5 and 11 of SB 392. The amendments recognize that public utilities and pipeline carriers may need to request that documents obtained by the attorney general under the amendments contemplated by Sections 5 and 11 be held confidential from public disclosure under the Public Records Act. AS 40.25 *et. seq.* Sections 7 and 12 provide a vehicle for public utilities and pipeline carriers to do so, which request would then be reviewed by the commission for a good cause determination.

Sections 6 & 13: These sections explicitly exempt other state agencies from reimbursing the RCA for costs under AS 42.05.651 and AS 42.06.610 in proceedings to which the state agency is a party. Existent law does not expressly include or exclude state agencies from paying RCA costs. Allowing one state agency to order another state agency to pay its costs provides no net fiscal benefit to the State of Alaska. In fact, the agency subject to the RCA order expends resources to prepare and request an appropriation from the legislature to pay the RCA and the legislature expends resources examining and acting on the request. These sections would not affect the RCA's ability to require reimbursement from parties that are not state agencies.

Sections 14 & 15: These sections of SB 392 amend the uncodified law to provide that specific provisions enacted by Sections 6 and 13 of this Act apply to RCA orders issued in related proceedings begun before the effective date of the Act and that those specific provisions are retroactive to May 30, 2003.

Section 16: This section amends the uncodified law to instruct the revisor of statutes to change the heading of AS 42.05.501.

Section 17: This section provides for an effective date of July 1, 2004.

20 April 2004

Contact: Daniel Patrick O'Tierney
Senior Assistant Attorney General
for Regulatory Affairs
Office of the Public Advocate
State of Alaska Department of Law
(907) 269-5100
daniel_patrick_o'tierney@law.state.ak.us

Alaska State Legislature

DURING SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871

WEB SITE
www.akrepublicans.org/Bunde



DURING INTERIM
716 W. FOURTH AVE.
ANCHORAGE, AK 99501-2133
(907) 269-0181
FAX: (907) 269-0184

E-MAIL
Senator.Con.Bunde@legis.state.ak.us

SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

SB 392 Sponsor Statement RCA Public Advocacy/Dept of Law

Last year's Executive Order 111 transferred the responsibility for advocacy on behalf of the public in utility matters before the Regulatory Commission of Alaska (RCA) from the RCA to the attorney general, and established the public advocacy function within the Department of Law (DOL). AS 42.23.020(e). As a result, RCA personnel historically responsible for public advocacy now act under the authority and direction of the DOL. This bill completes the prior transfer of authority by expressly providing for various aspects of its execution.

SB 392 clarifies that regulatory cost charge receipts (not general fund) will continue to pay for the general costs of public advocacy now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed by RCA personnel.

The bill also adjusts the regulatory cost charge ceiling and creates two, distinct percentages of total regulatory cost charge receipts to separately fund the RCA and the DOL public advocacy function in order to provide each entity with budgetary independence from the other.

SB 392 also provides the DOL with qualified access to utility or pipeline carrier records similar to that afforded the RCA's former public advocacy staff in order to maintain efficient and economical access to information where the RCA has determined that comprehensive review and hearing is appropriate.

Finally, the bill clarifies that state agencies are exempt from paying the allocated costs of RCA proceedings to which the state agency is a party because there is no net fiscal benefit to the state in doing so.

SB ___: "An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

SB 392 (RCA Public Advocacy)

➤ **Generally:**

- the need for the bill arises from the transfer of authority for public advocacy on matters before the Regulatory Commission of Alaska (RCA) under last year's **Executive Order 111**.
- E.O. 111 transferred the responsibility for advocacy on behalf of the public interest on utility matters from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL). AS 44.23.020(e). RCA personnel historically responsible for public advocacy now act under the authority and direction of the DOL.

➤ **Accordingly:**

- the bill **completes the prior transfer of authority** by expressly providing for various aspects of its execution, as regards public advocacy funding and access to records.

➤ **Specifically, the bill would:**

- clarify that *regulatory cost charge receipts (not general fund) will continue to pay for* the general costs of public advocacy now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed under the RCA. *See Sections 2,3,4,9,10, and 11.*
- adjust the regulatory cost charge ceiling and budget the RCA and the DOL public advocacy function, respectively, with *separate, fixed percentages of total* regulatory cost charge receipts under the adjusted ceiling. *See Sections 1 and 8.*
- provide the DOL with *qualified access to records* formerly obtained by the RCA's public advocacy staff. *See Sections 5, 7, 11, 12, and 16.*
- *explicitly exempt* state agencies from paying the allocated costs of RCA proceedings to which the state agency is a party. *See Sections 6, 13, 14 and 15.*

SB 392 (RCA Public Advocacy) Sectional Analysis

Sections 2, 3, 4, 9, 10 & 11: These sections clarify that the general costs of public advocacy for utility and pipeline matters before the Regulatory Commission of Alaska (RCA) will continue to be paid from the existing regulatory cost charge mechanism under AS 42.05.254 and AS 42.06.286.

Historically, advocacy on behalf of the public interest was performed by personnel within the RCA. Therefore, the cost of that advocacy was a part of the RCA's budget funded by receipts from the regulatory cost charge, not from the general fund. Effective July 1, 2003, Executive Order 111 (issued during last year's legislative session) transferred the responsibility for public advocacy from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL).

These sections of SB 392 amend existing statutes to complete the transfer of authority by expressly providing that regulatory cost charge receipts will continue to pay the costs associated with the public advocacy function that is now administered by the DOL. (Public advocacy funding is currently administered through a separate RDU within the RCA. It will be transferred from the DCED to DOL.) They do not change the regulatory cost charge mechanism.

Sections 1 & 8: First, these sections of SB 392 increase the regulatory cost charge ceiling by .0007 (from the current .80% to .87%) of the total adjusted gross revenues of all regulated public utilities and pipeline carriers derived from operations in the state. The regulatory cost charges that the RCA annually expects to collect may not exceed the ceiling. The existent cap has not changed since the statute was enacted in 1992. This adjustment in the regulatory cost charge ceiling constitutes an increment of approximately \$300,000. The purpose of the increase in the cap is to provide adequate funding to retain experts when necessary to support the DOL's public advocacy function before the RCA. The RCA budget did not historically contain a specific line item for expert retention by its public advocacy staff.

Second, under the adjusted overall regulatory cost charge ceiling, these sections specify separate, fixed caps on the respective budgets of the RCA and the DOL public advocacy

function. This will complete the transfer of authority for public advocacy by providing each entity with budgetary independence from the other. Accordingly, the RCA budget amount may not exceed .70 % of the total adjusted gross revenues of all regulated public utilities and pipeline carriers; and the DOL public advocacy budget may not exceed .17% of those same total adjusted gross revenues (.70%+.17%=.87%, the adjusted overall cap).

The legislature maintains the authority to appropriate the budget of the RCA and the budget of the DOL public advocacy function.

Sections 5 & 11: These sections of SB 392 provide the attorney general with qualified access to utility or pipeline carrier books and records when he participates in RCA dockets in a public interest advocacy role under AS 42.04.070(c) or AS 44.23.020(e).

Prior to the transfer of authority to the attorney general under Executive Order 111, public interest advocacy was performed by Commission staff, who had a statutory right to unfettered access to utility or pipeline carrier records in order to perform their function. AS 42.05.501 and AS 42.06.440. Such access allows efficient and economical use of state resources to investigate public utility and pipeline carrier public interest issues in cases where the commission has determined that comprehensive review and hearing is appropriate. This need for efficient and economical access has not changed by the shift of responsibility for public interest advocacy to the Attorney General. The amendments to AS 42.05.501 and AS 42.06.440 acknowledge these goals but also provide the utility or pipeline carrier with an opportunity for objection to the commission.

Sections 7 & 12: These sections of SB 392 work in tandem with Sections 5 and 11 of SB 392. The amendments recognize that public utilities and pipeline carriers may need to request that documents obtained by the attorney general under the amendments contemplated by Sections 5 and 11 be held confidential from public disclosure under the Public Records Act. AS 40.25 *et. seq.* Sections 7 and 12 provide a vehicle for public utilities and pipeline carriers to do so, which request would then be reviewed by the commission for a good cause determination.

Sections 6 & 13: These sections explicitly exempt other state agencies from reimbursing the RCA for costs under AS 42.05.651 and AS 42.06.610 in proceedings to which the state agency is a party. Existent law does not expressly include or exclude state agencies from paying RCA costs. Allowing one state agency to order another state agency to pay its costs provides no net fiscal benefit to the State of Alaska. In fact, the agency subject to the RCA order expends resources to prepare and request an appropriation from the legislature to pay the RCA and the legislature expends resources examining and acting on the request. These sections would not affect the RCA's ability to require reimbursement from parties that are not state agencies.

Sections 14 & 15: These sections of SB 392 amend the uncodified law to provide that specific provisions enacted by Sections 6 and 13 of this Act apply to RCA orders issued in related proceedings begun before the effective date of the Act and that those specific provisions are retroactive to May 30, 2003.

Section 16: This section amends the uncodified law to instruct the revisor of statutes to change the heading of AS 42.05.501.

Section 17: This section provides for an effective date of July 1, 2004.

20 April 2004

Contact: Daniel Patrick O'Tierney
Senior Assistant Attorney General
for Regulatory Affairs
Office of the Public Advocate
State of Alaska Department of Law
907.269.5100
daniel_patrick_o'tierney@law.state.ak.us