

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9184 HOUSE JUDICIARY

HB

119

(7)
Date Referred to Committee: February 7, 1997

FURTHER REFERRALS:

Date of Committee Action: 3/2/97

The JUDICIARY Committee considered:

HB 119

HOUSE BILL NO. 119

INCREASE SMALL CLAIMS JURISDICTION

"An Act raising the limit on small claims actions to \$10,000; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 119 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> ORIFT	✓			
<i>[Signature]</i> BOKEBERG	✓			
<i>[Signature]</i> PORTER	✓			
<i>[Signature]</i> GREEN	✓			
<i>[Signature]</i> JAMES	✓			
<i>[Signature]</i> BUNDE	✓			
<i>[Signature]</i> PERKINS	✓			

CHAIR'S SIGNATURE *[Signature]*

Chapter I

INTRODUCTION TO SMALL CLAIMS

A. What is a Small Claims Case?

A small claims case is a simplified type of court case in which a person can attempt to recover money or personal property worth \$5,000 or less. If your claim is over \$5,000, you can still use small claims court but you must give up the right to collect the amount over \$5,000. The \$5,000 figure does not include interest or court costs.

You do not need a lawyer in a small claims case, although you may have one if you wish. Small claims court may only be used if all parties agree to use this simplified procedure.

Small claims procedure may not be used for any of the following:

- 1) disagreements about title to real property
- 2) actions to recover possession of real property
- 3) false imprisonment
- 4) malicious prosecution
- 5) slander or libel
- 6) evictions
- 7) claims against the State of Alaska or the United States government
- 8) injunctive relief (a court order requiring a person to do or not to do a specified act)
- 9) actions to foreclose or enforce statutory, common law or possessory liens

This booklet explains small claims procedure. It is based primarily on the court rules for small claims established by the Alaska Supreme Court. A copy of these rules is included in Appendix A.

B. The Choice: Small Claims Procedure or Formal Procedure.

If you choose not to use small claims procedure, you can file a formal civil suit. But, if you do so, you will have to follow the more complicated formal Rules of Civil Procedure, and you will probably need a lawyer. See the chart on page 3 for a comparison of these two types of procedure.

C. Who Can File a Small Claims Case.

Anyone 18 years of age or older may file.¹ A person under age 18 is allowed to file only with the assistance of a parent or guardian. Partnerships, unincorporated associations and corporations may also file small claims cases.

D. Who Can be Sued in a Small Claims Case.

The following may be sued:

¹ Small Claims Rule 14 and AS 25.20.010. This age limitation does not apply to children who have gone through court emancipation proceedings under AS 09.55.590 or who are considered to have reached the age of majority under AS 25.20.020.

1. Persons 18 years of age or older who are physically present in Alaska. Persons under age 18 may be sued through their parent or legal guardian.
2. Partnerships, unincorporated associations and corporations doing business in Alaska.
3. A landlord residing outside Alaska (see AS 34.03.340).

E. How to Start a Small Claims Case.

The one who begins the case is called the **plaintiff**. Procedures for the plaintiff are in Chapter II, page 5.

F. How to Respond to a Small Claims Complaint.

If you have received a small claims **Complaint**, you are the **defendant** in the case. Procedures for the defendant are in Chapter III, page 17.

G. Forms.

You can get small claims forms from your district court at no cost.

H. Lawyers.

Most people who file or defend small claims cases do not use lawyers. Small claims procedures are designed to be used without a lawyer, but you can be represented by a lawyer if you wish.

Sometimes it is difficult to decide whether you should hire a lawyer. Some cases involving only small amounts of money or property can be complicated. If you are unsure about whether you should hire a lawyer, it is a good idea to talk to one about your case before you decide whether you can handle it alone. If you do not know a lawyer, you can call or write:

**Lawyer Referral Service
Alaska Bar Association
310 K Street, Suite 602
Anchorage, Alaska 99501
Phone: 272-0352**

or

**800-478-9999 outside Anchorage
(toll free within Alaska)**

If any party in a small claims case requests formal rules, each party should talk to a lawyer.

I. A Special Situation When Lawyers are Necessary.

There is one kind of case in which the small claims rules require that the person filing the suit be represented by a lawyer. This is a suit to collect an **assigned claim**. Small Claims Rule 15(c). An assigned claim is one in which a person having a claim has assigned (given or sold) this right to another person or to a collection agency.

Another situation in which you may find it necessary to consult a lawyer is if you sue a person under age 18, a mentally incompetent person or a person in the active military service. There are special laws protecting these persons from default judgment as explained in Section F.1. on page 14.

J. Can Someone Other Than a Lawyer Represent You in a Small Claims Case?

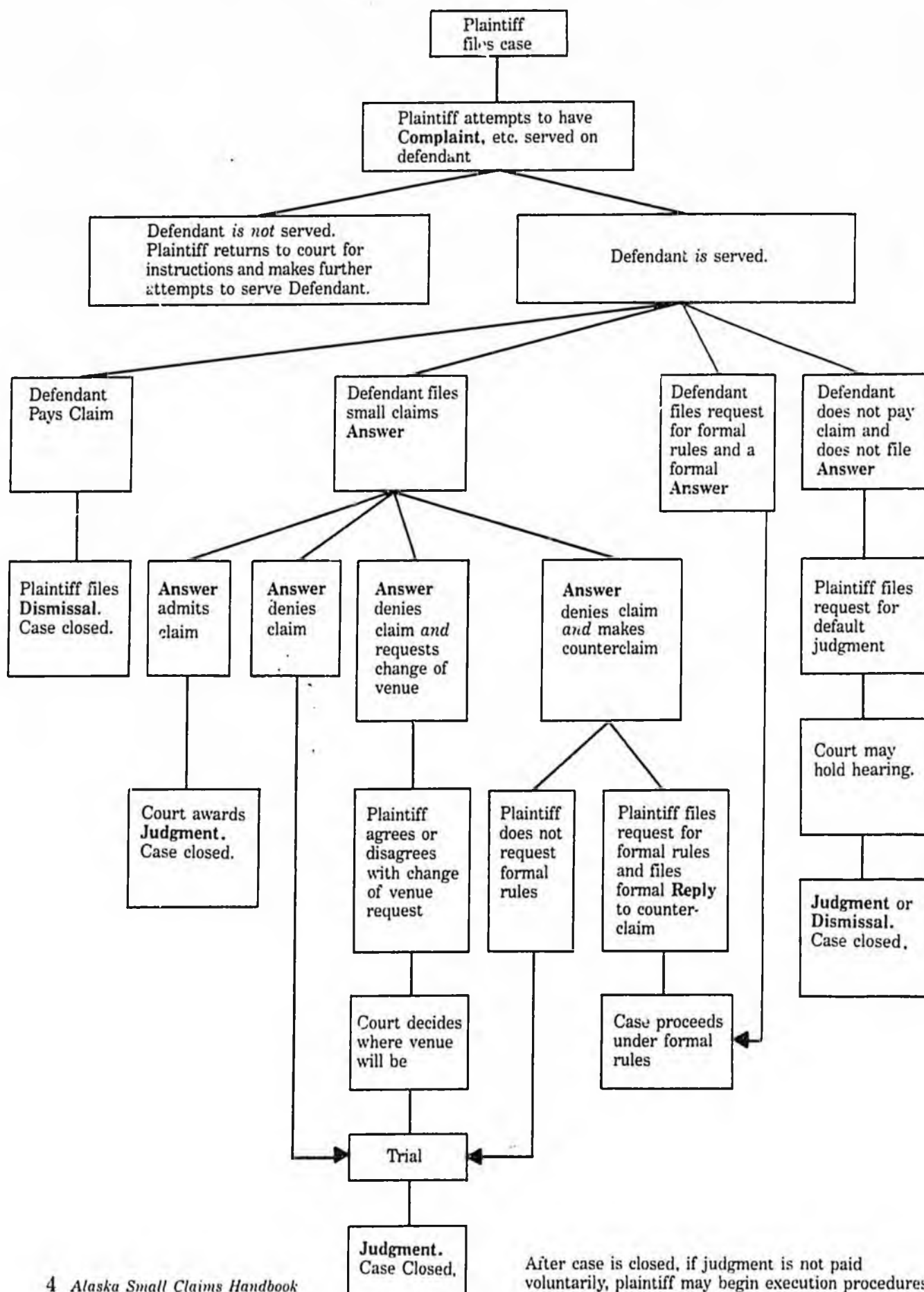
No. Only lawyers (or legal interns) may represent other people in court. (The one exception to this is that a person under age 18 may be represented by a parent or guardian.)

Even though you may have given someone a power of attorney allowing that person to act for you in certain business transactions, a power of attorney will not enable a person to represent you in court.

COMPARISON OF PROCEDURES

	SMALL CLAIMS	FORMAL CIVIL
Filing Fee	\$25	\$60 in district court
Jury Trial	no	yes, if one is requested
Need for a Lawyer	usually no	usually yes
Formal Rules of Evidence at Trial	no	yes
Forms Supplied by Court	yes	no
Cost of Serving Process on each defendant		
by Certified Mail	\$10	\$4 plus necessary postage, addressed envelope and completed postal forms
by Process Server	\$35 minimum	\$35 minimum
Service of Process Outside Alaska	Allowed only in cases arising under the Landlord-Tenant Act (AS 34.03). A nonresident landlord may be served as described in AS 34.03.340.	Allowed.
Complexity of Procedures	There are approximately 15 to 20 court rules governing small claims procedure.	There are over 80 court rules governing formal civil procedure.
Estimated Time Before Trial	4 to 12 weeks after answer is filed	6 to 10 months after answer is filed

Sequence of Events in a Small Claims Case



Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal & Research Services



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196
Phone: (907) 465-3991
Fax: (907) 463-3351

February 26, 1997

TO: Representative Mark Hodgins
FROM: Gina Spartz and Paula d. Scavera
Legislative Analyst
RE: **Small Claims Costs**
Research Request 97.059

Please check the appropriate box and return to **Mail Stop 3101** or the above mailing address.

- I approve the release of this information.
 I approve the release of this information, but remove my name.
 Keep confidential.

Date

2/26/97

Signature

A handwritten signature in black ink, appearing to read "M. Hodgins", written over a horizontal line.

To assist us in improving the quality of our research services, we would appreciate your response to the following questions. Please be assured that we will take your comments seriously in performing future research for you.

Was the information objective?

Was it clearly written?

Did it provide answers to (or, at least, useful information on) all the questions you posed?

Was the research completed and delivered to you in a timely manner?

Legislative Research Services

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130 Seward Street, Suite 218
Juneau, Alaska 99801-2196
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February 26, 1997

MEMORANDUM

TO: Representative Mark Hodgins

FROM: Gina Spartz and Paula d. Scavera
Legislative Analyst

RE: **Small Claims Costs**
Research Request 97.059

You asked several questions about small claims civil cases and about the impact to the Alaska court system of the 1986 increase in the limit from \$2,000 to \$5,000 and the potential impact to the court system of proposed increases to \$7,500 or \$10,000. We respond to each of your questions below.

What are the average and maximum dollar amounts for small claims cases in other states?

According to a table prepared in 1995 by the National Center for State Courts (NCSC), the maximum value amounts vary from state to state and from court to court. A Justice of the Peace in Arkansas can handle cases up to \$300 while a civil court in Georgia can handle cases worth up to \$25,000. Based on the information provided in this table, the typical maximum amount is roughly between \$3,000 to \$5,000. The NCSC was unable to supply average amounts of small claims for each state. Many states have a number of courts handling small claims cases, from municipal or county courts to superior courts, and determining an average would be very difficult. The table is included as Attachment A.

What are the filing fees for small claims cases in other states?

The Alaska Court System conducted a study of small claims filing fees in 1993. The study includes fees from 29 states and the District of Columbia, and the compiled results are included as Attachment B. The table also lists fees for filing an answer to the complaint, for filing counterclaims, for service of the summons, for the issuance of a writ of execution, and any miscellaneous fees. According to the amounts shown on the table, filing fees range from \$1 in the District of Columbia to \$75 in Pennsylvania. Among these jurisdictions, the fee for filing a small claims complaint averages roughly \$20.

In 1986, the dollar amount for small claims cases was raised from \$2,000 to \$5,000 in Alaska. What was the impact on the number of small claims cases filed when the limit was increased?

The following table presents the number of cases filed in small claims court in Alaska during fiscal years 1980 through 1996. As you can see, the number varies from year to year. Cases increased in 1987 after the small claims limit was raised, the number decreased in subsequent years showing there is no obvious trend.

Number of Cases Filed in Small Claims Court in Alaska (FY80-FY96)	
Fiscal Year	Number of Cases Filed
1980	8,964
1981	9,749
1982	10,922
1983	9,969
1984	10,735
1985	14,284
1986*	15,069
1987	15,364
1988	13,108
1989	11,981
1990	12,486
1991	10,641
1992	11,558
1993	11,320
1994	9,925
1995	9,717
1996	10,367

*-small claims limit increased from \$2000 to \$5000.

Source: Office of Administrative Director, Alaska Court System (Chris Christensen).
Table prepared by Legislative Research Services, February 1997 (97.059).

Representative Hodgins
February 26, 1997
Page 3

Would a one-time increase to a \$10,000 limit be more cost-effective than a phased-in increase to \$7500 in 1997, and then to \$10,000 in 1998?

The fiscal note for HB 119, prepared by the Alaska Court System, states that any increase in the small claims limit would result in increased costs to the state. Small claims cases are generally filed by members of the public who forgo the services of attorneys. The accompanying fiscal analysis states, "small claims cases require a substantially larger per-case commitment of clerical resources, because court clerks are required to provide procedural assistance to litigants. . ." The fiscal note indicates that should the limit increase to \$10,000, it would be necessary to handle additional court clerk duties, as well as to extend magistrate training. The fiscal note totals \$41,323. According to Chris Christensen, staff counsel with the Alaska State Court System, it is unclear how much additional court personnel and magistrate training will be needed if the increase rises in one year to \$10,000 versus a two-year phase-in from \$7,500 to \$10,000. The higher the dollar amount the more complicated cases can get. If there is an increase to \$7,500 magistrates and court personnel will have less cases to deal with initially, which would result in less costs to the state the first year. However, Mr. Christensen could not determine what the impact would be the next year, when magistrates and court clerks are better trained but would also be handling more cases. In addition, there could be other costs for changing forms and instructions from one year to the next, whereas with a one-time change to \$10,000 these costs could be less.

We have attached a copy of House Bill 119 and the fiscal note and analysis prepared by the Alaska Court System. This information is included as Attachment C.

We hope this information is useful to you. Please don't hesitate to call if you have any further questions.

Attachments

ATTACHMENT A

"Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995," prepared by the National Center for State Courts

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

State Court Caseload Statistics, 1995

Supplement to Examining the Work of State Courts, 1995

Court Statistics Project Staff

Brian J. Ostrom
Director

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Senior Research Analyst

Karen Gillions Way
Research Analyst

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Administrative Secretary

A joint project of the Conference of State Court Administrators,
the State Justice Institute, the Bureau of Justice Statistics,
and the National Center for State Courts' Court Statistics Project.

FIGURE C: Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995

State/Court name	Jurisdiction	Unlimited dollar amount torts, contracts, real property	Limited dollar amount torts, contracts, real property	Maximum dollar amount	Small claims		
		Minimum/maximum	Minimum/maximum		Jury trials	Summary procedures	Lawyers permitted
ALABAMA:							
Circuit Court	G	\$1,500/No maximum	-	-	-	-	-
District Court	L	-	\$1,500/\$5,000	\$1,500	No	Yes	Optional
ALASKA:							
Superior Court	G	0/No maximum	-	-	-	-	-
District Court	L	-	0/\$50,000	\$5,000	No	Yes	Yes
ARIZONA:							
Superior Court	G	\$5,000/No maximum	-	-	-	-	-
Justice of the Peace Court	L	-	0/\$5,000	\$1,500	No	Yes	No
ARKANSAS:							
Circuit Court	G	\$100/No maximum	-	-	-	-	-
Court of Common Pleas	L	-	\$500/\$1,000 (contract only)	-	-	-	-
Municipal Court	L	-	0/\$3,000 (contract and real property)	\$3,000	No	Yes	No
City Court, Police Court	L	-	0/\$300 (contract and real property)	-	-	-	-
Justice of the Peace	L	-	-	\$300	No	Yes	No
CALIFORNIA:							
Superior Court	G	\$25,000/No maximum	-	-	-	-	-
Municipal Court	L	-	0/\$25,000	\$5,000	No	Yes	No
COLORADO:							
District Court	G	0/No maximum	-	-	-	-	-
Water Court	G	0/No maximum	-	-	-	-	-
County Court	L	-	0/\$10,000	\$3,500	No	Yes	No
CONNECTICUT:							
Superior Court	G	0/No maximum	-	\$2,000	No	Yes	Yes
DELAWARE:							
Court of Chancery	G	0/No maximum	-	-	-	-	-
Superior Court	G	0/No maximum	-	-	-	-	-
Court of Common Pleas	L	-	0/\$50,000	-	-	-	-
Justice of the Peace Court	L	-	0/\$15,000	\$15,000	No	Yes	Yes
DISTRICT OF COLUMBIA:							
Superior Court	G	\$5,001/No maximum (no minimum for real property)	-	\$5,000	Yes	Yes	Yes
FLORIDA:							
Circuit Court	G	\$15,001/No maximum	-	-	-	-	-
County Court	L	-	\$2,501/\$15,000	\$2,500	Yes	Yes	Yes

(continued on next page)

FIGURE C Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995
(continued)

State/Court name	Jurisdiction	Unlimited dollar amount	Limited dollar amount	Small claims			
		torts, contracts, real property	torts, contracts, real property	Maximum dollar amount	Jury trials	Summary procedures	Lawyers permitted
		Minimum/maximum	Minimum/maximum				
GEORGIA:							
Superior Court	G	0/No maximum	-	No max	Yes	No	Yes
State Court	L	0/No maximum (No real property)	-	No max	Yes	No	Yes
Civil Court (Bibb & Richmond counties only)	L	-	0/\$7,500 - 0/\$25,000 (Bibb) - (Richmond)	\$25,000	Yes	Yes	Yes
Magistrate Court	L	-	0/\$5,000 (No real property)	\$5,000	No	Yes	Yes
Municipal Court (Columbus)	L	-	0/\$7,500	\$7,500	Yes	Yes	Yes
HAWAII:							
Circuit Court	G	\$5,000/No maximum	-	-	-	-	-
District Court	L	-	0/\$10,000 (No maximum in summary possession or ejectment)	\$2,500 (Except in residential security de- posit cases)	No	Yes	Yes
IDAHO:							
District Court: (Magistrates Division)	G	0/No maximum	-	-	-	-	-
	L	-	0/\$10,000	\$3,000	No	Yes	No
ILLINOIS:							
Circuit Court	G	0/No maximum	-	\$2,500	Yes	Yes	Yes
INDIANA:							
Superior Court and Circuit Court	G	0/No maximum	-	\$3,000	No	Yes	Yes
County Court	L	-	0/\$10,000	\$3,000	No	Yes	Yes
Municipal Court of Marion County	L	0/No maximum (effective 7/1/95)	0/\$30,000 (thru 6/30/95)	-	-	-	-
Small Claims Court of Marion County	L	-	-	\$6,000	No	Yes	Yes
City Court	L	-	0/ \$500- \$3,000 (No real property)	-	-	-	-
IOWA:							
District Court	G	0/No maximum	-	\$4,000*	No	Yes	Yes
KANSAS:							
District Court	G	0/No maximum	-	\$1,800	No	Yes	No
KENTUCKY:							
Circuit Court	G	\$4,000/No maximum	-	-	-	-	-
District Court	L	-	0/\$4,000	\$1,500	No	Yes	Yes
LOUISIANA:							
District Court	G	0/No maximum	-	-	-	-	-
City Court, Parish Court (New Orleans City Court)	L	-	0/\$15,000	\$2,000	No	Yes	Yes
Justice of the Peace Court	L	-	0/\$20,000	\$2,000	No	Yes	Yes
	L	-	0/ \$2,000	\$2,000	No	Yes	Yes

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FIGURE C: Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995
(continued)

State/Court name	Jurisdiction	Unlimited dollar amount torts, contracts, real property	Limited dollar amount torts, contracts, real property	Small claims			Lawyers permitted
		Minimum/maximum	Minimum/maximum	Maximum dollar amount	Jury trials	Summary procedures	
MAINE							
Supreme Court	G	0/No maximum	-	-	-	-	-
District Court	L	-	0/\$30,000	\$3,000	No	Yes	Yes
MARYLAND							
Circuit Court	G	\$2,500/No maximum	-	-	-	-	-
District Court	L	0/No maximum (real property)	\$2,500/\$20,000 (tort, contract)	\$2,500	No	Yes	Yes
MASSACHUSETTS							
Trial Court of the Commonwealth							
Superior Court Dept.	G	0/No maximum	-	-	-	-	-
Housing Court Dept.	G	0/No maximum	-	\$1,500	No	No	Yes
District Court Dept.	G	0/No maximum	-	\$2,000	Yes	Yes	Yes
Boston Municipal Court Dept.	G	0/No maximum	-	\$1,500	Yes	Yes	Yes
MICHIGAN							
Circuit Court	G	\$10,000/No maximum	-	-	-	-	-
District Court	L	-	0/\$10,000	\$1,750	No	Yes	No
Municipal Court	L	-	0/ \$1,500	-	-	-	-
MINNESOTA							
District Court	G	0/No maximum	-	\$5,000	No	Yes	Yes
MISSISSIPPI							
Circuit Court	G	\$200/No maximum	-	-	-	-	-
County Court	L	-	0/\$50,000	-	-	-	-
Justice Court	L	-	0/\$2,500	-	-	-	-
MISSOURI							
Circuit Court	G	0/No maximum	-	-	-	-	-
(Associate Division)	L	-	0/\$25,000	\$3,000	No	Yes	Yes
MONTANA							
District Court	G	\$50/No maximum	-	-	-	-	-
Justice of the Peace Court	L	-	0/\$5,000	\$3,000	No	Yes	No
Municipal Court	L	-	0 \$5,000	\$3,000	No	Yes	No
City Court	L	-	1/\$500	\$3,000	No	Yes	No
NEBRASKA							
District Court	G	0/No maximum	-	-	-	-	-
County Court	L	-	0/\$15,000	\$1,800	No	Yes	No
NEVADA							
District Court	G	\$7,500/No maximum	-	-	-	-	-
Justice Court	L	-	0/\$7,500	\$3,500	No	Yes	Yes
Municipal Court	L	-	0 \$2,500	\$2,500	-	-	-
NEW HAMPSHIRE							
Superior Court	G	\$1,500/No maximum	-	-	-	-	-
District Court	L	-	0/\$25,000	\$2,500	No	Yes	Yes
Municipal Court	L	-	0/ \$2,500 (only for landlord-tenant and small claims)	\$2,500	No	Yes	Yes

(continued on next page)

FIGURE C: Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995
(continued)

State/Court name	Jurisdiction	Unlimited dollar amount	Limited dollar amount	Small claims			
		torts, contracts, real property	torts, contracts, real property	Maximum dollar amount	Jury trial	Summary procedures	Lawyers permitted
		Minimum/maximum	Minimum/maximum				
NEW JERSEY							
Superior Court (Law Division and Chancery Division)	G	0/No maximum	-	-	-	-	-
(Law Division, Special Civil Part)	L	-	0/\$10,000	\$2,000	No	Yes	Yes
NEW MEXICO:							
District Court	G	0/No maximum	-	-	-	-	-
Magistrate Court	L	-	0/\$5,000	-	-	-	-
Metropolitan Court of Bernalillo County	L	-	0/\$5,000	-	-	-	-
NEW YORK:							
Supreme Court	G	0/No maximum	-	-	-	-	-
County Court	G	-	0/\$25,000	-	-	-	-
Civil Court of the City of New York	L	-	0/\$25,000	\$3,000	-	Yes	Yes
City Court	L	-	0/\$15,000	\$3,000	-	Yes	Yes
District Court	L	-	0/\$15,000	\$3,000	-	Yes	Yes
Court of Claims	L	0/No maximum	-	-	-	-	-
Town Court and Village Justice Court	L	-	0/\$3,000	\$3,000	-	Yes	Yes
NORTH CAROLINA:							
Superior Court	G	\$10,000/No maximum	-	-	-	-	-
District Court	L	-	0/\$10,000	\$3,000	No	Yes	Yes
NORTH DAKOTA:							
District Court	G	0/No maximum	-	\$3,000	No	Yes	Varies
OHIO:							
Court of Common Pleas	G	\$500/No maximum	-	-	-	-	-
County Court	L	-	0/\$3,000	\$2,000	No	Yes	Yes
Municipal Court	L	-	0/\$10,000	\$2,000	No	Yes	Yes
OKLAHOMA:							
District Court	G	0/No maximum	-	\$3,000	Yes	Yes	Yes
OREGON:							
Circuit Court	G	\$10,000/No maximum	-	-	-	-	-
District Court	L	-	\$200/\$10,000	\$2,500	No	Yes	No
Justice Court	L	-	\$200/\$2,500	\$2,500	No	Yes	No
PENNSYLVANIA:							
Court of Common Pleas	G	0/No maximum	-	-	-	-	-
District Justice Court	L	-	0/\$4,000	-	-	-	-
Philadelphia Municipal Court	L	-	0/\$5,000 (only real property)	\$5,000	No	Yes	Yes
Pittsburgh City Magistrates Court	L	-	0/No maximum (only real property)	-	-	-	-
PUERTO RICO							
Court of First Instance	G	0/No maximum	-	-	-	-	-

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FIGURE C. Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995
(continued)

State/Court name:	Jurisdiction	Unlimited dollar amount torts, contracts, real property	Limited dollar amount torts, contracts, real property	Maximum dollar amount	Small claims		
		Minimum/maximum	Minimum/maximum		Jury trials	Summary procedures	Lawyers permitted
RHODE ISLAND							
Superior Court	G	\$5,000/No maximum	-	-	-	-	-
District Court	L	-	\$1,500/\$5,000 \$10,000	\$1,500	No	Yes	Yes
SOUTH CAROLINA							
Circuit Court	G	0/No maximum	-	-	-	-	-
Magistrate Court	L	-	0/\$2,500 (no max. in landlord-tenant)	\$2,500	Yes	Yes	Yes
SOUTH DAKOTA							
Circuit Court	G	0/No maximum	-	\$1,000	No	Yes	Yes
TENNESSEE:							
Circuit Court, Chancery Court	G	\$50/No maximum	-	-	-	-	-
General Sessions Court	L	0/No maximum (Forcible entry, detainer, and in actions to recover personal property)	0/\$10,000 (All civil actions in counties with population under 700,000); 0/\$15,000 (All civil actions in counties with popula- tion over 700,000)	\$10,000- 15,000	No	Yes	Yes
TEXAS:							
District Court	G	\$200/No maximum	-	-	-	-	-
County Court at Law, Consti- tutional County Court	L	-	\$200/Varies	-	-	-	-
Justice of the Peace Court	L	-	0/\$5,000	\$5,000	Yes	Yes	Yes
UTAH							
District Court	G	0/No maximum	-	-	-	-	-
Circuit Court	L	-	0/\$20,000	\$5,000	No	Yes	Yes
Justice Court	L	-	0/\$5,000	\$5,000	No	Yes	Yes
VERMONT							
Superior Court	G	0/No maximum	-	-	-	-	-
District Court	G	-	-	\$3,500	Yes	Yes	Yes
VIRGINIA:							
Circuit Court	G	0-\$1,000/No maximum	-	-	-	-	-
District Court	L	0/No maximum (real property)	0/\$10,000	-	-	-	-
WASHINGTON:							
Superior Court	G	0/No maximum	-	-	-	-	-
District Court	L	-	0/\$25,000	\$2,500	No	Yes	No
WEST VIRGINIA:							
Circuit Court	G	\$300/No maximum	-	-	-	-	-
Magistrate Court	L	-	0/\$5,000 (No real property)	-	-	-	-

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FIGURE C Dollar Amount Jurisdiction for Original Tort, Contract, Real Property Rights, and Small Claims Filings in State Trial Courts, 1995
(continued)

State/Court name:	Jurisdiction	Unlimited dollar amount	Limited dollar amount	Small claims			
		torts, contracts, real property	torts, contracts, real property	Maximum dollar amount	Jury trials	Summary procedures	Lawyers permitted
		Minimum/maximum	Minimum/maximum				
WISCONSIN:							
Circuit Court	G	0/No maximum	-	\$1,000	Yes	Yes	Yes
WYOMING:							
District Court	G	\$1,000-\$7,000/No maximum	-	-	-	-	-
County Court	L	-	0/\$7,000	\$2,000	No	Yes	Yes
Justice of the Peace Court	L	-	0/\$3,000	\$2,000	No	Yes	Yes

JURISDICTION CODES:

- G = General jurisdiction court.
- L = Limited jurisdiction court.
- = Information not available.

FOOTNOTES*

Iowa-District Court: Small claims dollar amount jurisdiction increased from \$3,000 to \$4,000 effective 7/1/95

Source: State administrative offices of the courts

ATTACHMENT B

**"Nationwide Small Claims Survey, December 1992-February 1993"
prepared by Alaska Court System, 1993**

NATIONWIDE SMALL CLAIMS SURVEY
December 1992 - February 1993

STATE	12a. Fee for filing a small claims complaint	12b. Fee for filing an answer	12c. Fee for filing a counterclaim	12d. Fee for service of the summons and complaint	12e. Fee for the issuance of a writ of execution	12f. Any other fees (please describe)
Arizona	1992- \$12.00 1993- \$16.00	1992 - \$6.00 1993 - \$8.50		By mail \$3.00	\$10	
Arkansas	\$10 if claim less than \$1,000. \$30 if between \$1,000 and \$3,000.	\$0	\$0	See question 13.	\$10	Various court costs - see attachment B
California	\$15/30 if claimant has filed more than 12 claims in previous 12 months.	\$0	\$0	Varies by server - \$4 for certified mail by clerk.	\$3.50	\$10 for request of postponement and rescheduling.
Connecticut	\$30	\$0	\$0	\$25-\$35 - (if initial service unsuccessful) (Initial service is made by First Class Mail).	\$10	Post judgment Interrogatories - \$5.00.
Delaware	\$30	\$0	\$0	\$0	\$18	\$5 for each witness subpoena served.
District of Columbia	\$1	No applicable	\$10	See #13.	\$10	Alias summons \$5 Oral examination subpoena \$10 Certificate \$5
Florida	Variation statewide. See Florida Statute 34.041.	No fee.	No fee.	No Clerk of Court filing fee. Service fee by Sheriff's offices state wide varies.	No Clerk of Court filing fee. Fee by Sheriffs varies statewide.	None.
Georgia	\$20	None	None	Actual Cost of Service (not to exceed Sheriff's Fee of \$25).	\$5 1st page, \$2 each additional. Issuance and recording fees go to superior court clerk.	FIL'A \$2 Law library fee (if applicable) Levying and execution fees

NATIONWIDE SMALL CLAIMS SURVEY
December 1992 - February 1993

STATE	1a. Fee for filing a complaint or claim	1b. Fee for filing an answer	1c. Fee for filing a counterclaim	1d. Fee for service of the summons and complaint	1e. Fee for the issuance of a writ of execution	1f. Any other fees (please describe)
Hawaii	\$25.00	None	None	\$15 plus mileage (Dept. of Public Safety).	Fees established by Dept. of Public Safety	\$1 for Garnishee Disclosure
Idaho	\$25	No fee - No answer permitted	Not permitted. Rule 31(b) IRCP	\$15	\$2	Certification of judgments and documents is \$1.50 and \$1 per copy if clerk does the copying.
Illinois	\$10 - \$30 depending on amount of claim	\$5 - \$20 depending on amount of claim	Same as complaint	By certified or registered mail unless local rules provide otherwise	Varies by local rule.	
Indiana	\$30					
Iowa	\$30	None	\$30		None	
Kansas	Up to \$500, the fee is \$16.50.* *A judge may waive all costs for good cause.	\$501-\$1,000, the fee is \$36.50.*				There are no additional fees charged to the litigants in a small claims procedure.
Kentucky	\$15	0	0	\$10	\$10	Garnishments \$2
Louisiana	\$35 for each party made defendant. R.S. 13:5205	No fee required by statutes.	See, R.S. 13:5206	See, R.S. 13:5204	Unknown	See, R.S. 5205(A)
Maine	\$30	0	\$30	\$8-\$17 and \$.22/mile to Sheriff and \$10 per defendant for clerk to arrange service.	N/A	\$5 postage fee
Maryland	\$5	0	\$5	Certified Mail \$8.00	\$10 (Service Fee - Additional)	See attached Cost Schedule.

JUL 25 1993 10:00 AM
 1993 JUL 25 10:00 AM

NATIONWIDE SMALL CLAIMS SURVEY
December 1992 - February 1993

STATE	12a: Fee for filing a small claims complaint	12b: Fee for filing an answer	12c: Fee for filing a counterclaim	12d: Fee for service of the summons and complaint	12e: Fee for the issuance of a writ of execution	12f: Any other fees (please describe)
Massachusetts	\$10-15 (plus 10% surcharge)		\$10-15	Certified mail		\$25 claim "on appeal" for jury trial, plus \$100 bond.
Michigan	Claims less than \$600 - \$10 Greater than \$600 - \$20	0	Counter claims are not used, however, defendants may file a small claims action against the plaintiff and would pay the appropriate filing fee.	Certified mailing rate or \$10 per defendant plus mileage.	\$5	\$5 - Writ of Garnishment or Writ of Attachment.
Minnesota	\$13 plus local law library fee.	Not applicable	\$13 plus local law library fee.	Most are mailed by court, but see attached report regarding service on foreign defendants.	\$10	
Missouri	\$5 for claim under \$100 \$10 for a \$100 to \$1500 claim	0	There are no fees unless the counterclaim is greater than \$1,500 which would place it in the jurisdiction of the civil associate division. A filing fee of \$15 would be collected.	\$1	There are no clerk fees; however, sheriff fees are \$20 plus mileage.	Trial de Novo Application Fee - \$45. Appeal - \$50.
Montana	\$10 plus \$2 for forms.	No answers are filed.	\$10 plus \$2 for forms.	\$24/person if done by sheriff.	\$5 plus \$24 service.	
Nebraska	\$6	No answer filed.	0	Sheriff's fee and mileage or certified mail cost.	\$5 plus sheriff's fee.	

NATIONWIDE SMALL CLAIMS SURVEY
December 1992 - February 1993

STATE	12a: Fee for filing a complaint	12b: Fee for filing an answer	12c: Fee for filing a counterclaim	12d: Fee for service of the summons and complaint	12e: Fee for the issuance of a writ of execution	12f: Any other fees (please describe)
New Hampshire	\$25	0	\$25	There is a fee only if personal service is made by the sheriff. The sheriff's fee varies from county to county.	\$10	Motion for Periodic Payments \$5.
New Jersey	\$12	None	\$12	\$3 for mail service. Mileage for personal service.	\$5	\$2. Each additional defendant \$10 - Advertise property under execution. \$10 - Sell property under execution.
New Mexico	\$37	0	0	No court fees; Plaintiff pays sheriff or process server directly; Mail service also allowed.	0	0
New York	\$3	No fee required	No fee required	\$2.58 (based on #13).	No fee required.	Issuance of an information subpoena - \$2.
North Carolina	\$34	No fee	No fee	\$5	\$20	
Ohio	The \$22 filing fee covers all filing costs. The other fees are set by the Clerk of Courts.					

NATIONWIDE SMALL CLAIMS SURVEY
December 1992 - February 1993

FEB-24-1997 09:40 FROM ACS DEPUTY DIRECTOR TO JUNEAU SUPERIOR P.05/07

STATE	12a. Fee for filing a complaint	12b. Fee for filing an answer	12c. Fee for filing a counterclaim	12d. Fee for service of the summons and complaint	12e. Fee for the issuance of a writ of execution	12f. Any other fees (please describe)
Oregon	Claim and Notice. Claims not exceeding \$1,500 = \$22 over \$1,500 = \$48	Not exceeding \$1,500 = \$14.50 over \$1,500 = \$24	No fee if under \$2,500. If over must transfer case to appropriate jurisdiction and pay those fees.	See answer to #13.	\$3 or writ or garnishment \$3.	County law library fee may be added to filing and answer fee (ORS 21-350). Legal aid fee may be added to filing and answer fee (ORS 21-485). If defendant requests a jury trial \$50 per day of trial.
Pennsylvania	\$30-\$75 depending on claim amount.	0	0	Depends on county and method of service	\$22.50	Objection to levy \$10. Reinstatement of Complaint \$10. Philadelphia Municipal Court costs may be different.
Rhode Island	\$13.58	0	0	\$45 if mail service fails.	\$10	
South Carolina	\$25	0	0	\$5 plus mileage	\$10	List of Statutory fees enclosed.
South Dakota	Various. See Chapter 15-39-52.	0	Certified mailing fee - \$2.58.	\$2.58 Service of small claims notice	\$5	\$5 fee to have judgment transcribed to the clerk of court of another county, if needed.
Tennessee	Fee amounts may vary by jurisdictions and counties. \$2	\$2	\$2	\$15	\$5	Misc. clerk's fees are authorized by Tenn. Code Ann. Sec. 8-21-401. Sheriff's fees are authorized by Tenn. Code Ann., Sec. 8-21-901.

NATIONWIDE SMALL CLAIMS SURVEY
December 1992 - February 1993

STATE	12a. Fee for filing a claim	12b. Fee for filing an answer	12c. Fee for filing a counterclaim	12d. Fee for service of the summons and complaint	12e. Fee for the issuance of a writ of execution	12f. Any other fee (please describe)
Texas	\$10	\$10	\$10	Varies from county to county.	\$5 per page.	Issuing abstract of judgment; \$5. Preparing transcript for appeal: \$10; Jury fee: \$5.
Utah	\$20	0	\$15	Depends - Private process.	\$5	Trial De Novo \$50
Vermont	\$35 for claim over \$500. \$25 for \$500 or under.	0	0	0	\$25	0
Virginia	\$14 to \$18	None	None	Included in a.	None	Garnishments - same as a.
Washington	\$10 up to \$15 county surcharge.			\$10 plus mileage.		
West Virginia	See 50-3-1.	None	None	Set by county commissions; statutory ceiling is \$20.	See attached cost schedule.	See attached cost schedule.
Wisconsin	See s. 814.62(3) for fees generally. \$25		\$56 (if over \$2,000)		\$5	Jury Trial Fee \$5 plus \$6 per juror Docketing Fee \$5.
Wyoming	\$10	0	0	0	0	

Prepared by Alaska State Court System, 1993.

FEB-24-1997 09:45 FDI: ACS DEPUTY DIRECTOR TO JUDGE SUPREME P.07/87

ATTACHMENT C

**House Bill 119, "An Act raising the limit on small claims actions to \$10,000," and HB 119
Fiscal Note, prepared by the Alaska Court System, February 14, 1997**

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 272

Revision Date: _____
Title: An Act relating to small claims actions

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Sens. Torgerson & Taylor
Requestor: _____

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	35.5	35.5	35.5	35.5	35.5	35.5
TRAVEL	30.1	19.6	19.6	19.6	19.6	19.6
CONTRACTUAL	0.8					
SUPPLIES	1.5					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	67.9	55.1	55.1	55.1	55.1	55.1

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

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

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	67.9	55.1	55.1	55.1	55.1	55.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	67.9	55.1	55.1	55.1	55.1	55.1

Estimate of any current year (FY 96) cost: None

Positions

Full-Time	1.0	1.0	1.0	1.0	1.0	1.0
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Phone: 264-8228
Date: 03/27/96

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 03/27/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
SB 272

SB 272 makes substantial changes to the statutes and court rules governing small claims jurisdiction.

Currently, small claims procedures can be elected in cases claiming \$5,000 or less; this limit was enacted in 1986. Sections 1 and 2 of SB 272 reflect an increase in this limit to \$10,000. According to federal figures, the consumer price index has increased only 32.86 percent since 1986; when adjusted to 1996 dollars, the \$5,000 limit should thus be approximately \$6,650.

The primary effect of the remainder of SB 272 is to make it easier and cheaper for collection agencies to use small claims procedures to litigate commercial claims assigned to them by the real party in interest. The bill does this by removing the requirement that assignees be represented by an attorney in small claims proceedings (section 4), by allowing small claims judgments to be entered without a hearing after a summary judgment motion has been filed (section 5), and by allowing service of small claims process on out-of-state defendants in all cases, not just cases involving landlord-tenant disputes or motor vehicles (section 6).

Contrary to popular belief, cases proceeding under small claims rules are more expensive for the court system to handle than are small cases subject to formal rules. Small claims procedures exist to lessen the burden on private citizens, not to lessen the burden on the courts. Small claims cases require a substantially larger per-case commitment of clerical resources, because court clerks are required to provide procedural assistance to litigants who are proceeding without the benefit of an attorney. A large percentage of small claims cases result in a trial, however brief; very few cases under \$10,000 proceeding under formal rules would result in a trial. Moreover, unlike small claims litigants, most litigants subject to formal rules will consult an attorney before filing a case, and thus the court system never sees many cases which are settled or otherwise disposed of by the lawyer prior to filing.

At court locations where there is a superior court or district court judge, the caseload shift (of claims in the \$5,000 to \$10,000 range, from district court to small claims court) will not have a severe impact. However, at court locations served only by a magistrate, there will be a substantial increase in cases filed and trials resulting from the new \$10,000 limit. This will necessitate additional clerical resources at those locations.

More than half the magistrates employed by the court system are not attorneys. The dramatic increase in jurisdictional limit, the use of summary judgment motions for disposition prior to trial, and the use of confusing long arm jurisdiction rules for out-of-state defendants will substantially increase the complexity of the caseload. This fiscal note reflects increased costs for magistrate training, as well as revision of the forms and informational literature provided to small claims litigants.

Alaska Court System
Fiscal Analysis
SB 272

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, range 10A, PFT, 12 months, Anchorage/Statewide	\$24,012	\$11,475	\$35,487

Travel

<u>Committee Meetings - (one-time cost)</u>			10,570
---	--	--	--------

This legislation will require revision of existing small claims rules of procedure, forms, informational literature for the litigants and the clerk's manual. The court system will convene special meetings in Anchorage of the Civil Rules Committee, the standing Forms Committee and Clerk's Manual Committee to revise rules, forms, clerks instructional materials and informational literature. The travel costs are for committee members stationed outside Anchorage.

<u>Regional Training Conferences -</u>			19,550
--	--	--	--------

Conferences will be held in Anchorage, Fairbanks, Kotzebue, Bethel and Juneau. The conferences will be attended by all magistrates and by administrative office training staff.

Contractual (one-time cost)

Postage for mailing forms, manuals and informational literature.			750
--	--	--	-----

Supplies (one-time cost)

<i>Paper, dividers and notebooks training materials for the regional conferences. Printing of forms, manuals and informational literature.</i>			1,500
--	--	--	-------

Estimated Total Cost

\$67,857

CPI Dept. of Labor
 '86 JUNE 30.9% JAN. 28.8%
 '96 JUNE 2.6% increase

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSB 272 (JUD)

Revision Date: 03/28/96

Dept. Affected: Alaska Court System

Title: An Act relating to small claims actions

BRU: Trial Courts

Component: _____

Sponsor: Sens. Torgerson & Taylor

Requestor: _____

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	9.5	9.5	9.5	9.5	9.5	9.5
TRAVEL	23.5	15.6	15.6	15.6	15.6	15.6
CONTRACTUAL	0.8					
SUPPLIES	0.9					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	34.7	25.1	25.1	25.1	25.1	25.1

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	34.7	25.1	25.1	25.1	25.1	25.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	34.7	25.1	25.1	25.1	25.1	25.1

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 03/28/96

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 03/28/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSSB 272 (JUD)

CSSB 272 (JUD) makes several changes to the statutes and court rules governing small claims jurisdiction.

Currently, small claims procedures can be elected in cases claiming \$5,000 or less; this limit was enacted in 1986. Sections 1 and 2 of CSSB 272 (JUD) reflect an increase in this limit to \$7,500. According to federal figures, the consumer price index has increased 32.86 percent since 1986; if adjusted upward to reflect 1996 dollars, the \$5,000 limit should be approximately \$6,650. Thus, a new limit of \$7,500 represents an actual increase in small claims jurisdiction above and beyond an inflation adjustment.

A second major change to the small claims rules allows small claims judgments to be entered without a hearing after a summary judgment motion has been filed

Contrary to popular belief, cases proceeding under small claims rules are more expensive for the court system to handle than are small cases subject to formal rules. Small claims procedures exist to lessen the burden on private citizens, not to lessen the burden on the courts. Small claims cases require a substantially larger per-case commitment of clerical resources, because court clerks are required to provide procedural assistance to litigants who are proceeding without the benefit of an attorney. A large percentage of small claims cases result in a trial, however brief; very few cases under \$7,500 proceeding under formal rules would result in a trial. Moreover, unlike small claims litigants, most litigants subject to formal rules will consult an attorney before filing a case, and thus the court system never sees many cases which are settled or otherwise disposed of by the lawyer prior to filing.

At court locations where there is a superior court or district court judge, the caseload shift (of claims in the \$5,000 to \$7,500 range, from district court to small claims court) will not have a significant impact. However, at court locations served only by a magistrate, there will be a definite increase in cases filed and trials resulting from the new \$7,500 limit. This will necessitate additional clerical resources at those locations.

More than half the magistrates employed by the court system are not attorneys. The increase in jurisdictional limit and the use of summary judgment motions for disposition prior to trial will increase the complexity of the caseload. This fiscal note reflects increased costs for magistrate training, as well as revision of the forms and informational literature provided to small claims litigants.

Alaska Court System
Fiscal Analysis
CSSB 272 (JUD)

Personal Services

Position

Total

Temporary hires to assist courts statewide

\$9,500

Travel

Committee Meetings - (one-time cost)

7,900

This legislation will require revision of existing small claims rules of procedure, forms, informational literature for the litigants and the clerk's manual. The court system will convene special meetings in Anchorage of the Civil Rules Committee, the standing Forms Committee and Clerk's Manual Committee to revise rules, forms, clerks instructional materials and informational literature. The travel costs are for committee members stationed outside Anchorage.

Regional Training Conferences -

15,600

Conferences will be held in Anchorage, Fairbanks, Kotzebue, Bethel and Juneau. The conferences will be attended by all magistrates and by administrative office training staff.

Contractual (one-time cost)

Postage for mailing forms, manuals and Informational literature.

800

Supplies (one-time cost)

Paper, dividers and notebooks training materials for the regional conferences.
Printing of forms, manuals and Informational literature.

900

Estimated Total Cost

\$34,700

MEMORANDUM

Date: March 8, 1997
To: Joe Green
From: Lisa Kirsch
Re: HB 119--Court Rule Change

*Lisa
Thanks
lets discuss
J*

The committee voted to pass Rep. Rokeberg's conceptual amendment to the small claims bill that would increase the filing fee to \$50 for cases that have \$2,501 to \$7,500 in contest.

I wanted you to be aware that there are some problems associated with changing the court's administrative rules. In simple terms, it is a problem of the legislature encroaching on the court's ability to regulate its own doings. *why not, they've encroached into our ability to do ours.*

Under the Constitution, Art. IV §15, the court has power to make its own rules. The legislature may alter rules with a 2/3 vote. The area that is not perfectly clear is whether this legislative power to alter applies to all court rules or just the procedural rules. The way the constitutional section is written, it appears that the drafters may have intended to insulate the administrative rules from legislative alteration. This interpretation makes sense in light of separation of powers doctrine. The theory is that while the legislature controls the body of statutory law the courts are bound by, the legislature may not dictate how the courts administer the internal workings of the court system. *but financial issues are the prerogative of the legislature!*

I believe Chris Christensen vaguely alluded to this problem in his testimony, but he didn't really venture an assessment of what the courts would do. However, this may be more a reflection of his own restraint, rather than an implication that the courts would not oppose this administrative rule change.

The simple solution to all of this is to make this fee change section severable from the rest of the bill. That way if the courts oppose the fees change only the fees section will be dropped and the rest of the bill will be enacted. This is what I asked leg. legal to do. They will deliver us a final set up this way on Monday.

Good.

Another thing that the committee might consider is the fact that under Admin. Rule 9 the filing fee does not increase if one party

transfers the case from small claims up to District (normally a \$60 filing fee) or Superior Court (normally a \$100 filing fee).

I'm sorry I didn't alert you to this sooner, but because no one submitted an amendment asking for a fee increase, I assumed the issue had been dropped.

Let me know if this sounds good as it is or if you would like to include another amendment increasing the fee for cases that bump up to the higher courts as well.

*Have to
address
letter in
Finance
or
on the
Floor*

Memo to Joe

HB 119

Sep of Powers

Admin rules a problem
procedural vs. admin.

rule making power Art IV § 15
can modify, full order apply to

- procedural rules
- admin rules
- or both?

Caslaw admin vs. procedural
Substantive vs. procedural

[51% of legis	vs.	[2/3 proceding of legis
-------------------	-----	-----------------------------

→ Separation of powers
Ct can't enforce open meetings

ALASKA STATE LEGISLATURE

Session

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3777 - Phone
(907) 465-2833 - Fax



145 Main St., 2nd Floor, Suite 227
Kenai, Alaska 99611
(907) 283-7223 - Phone
(907) 283-3075 - Fax

REPRESENTATIVE MARK D. HODGINS
House District 9

MARCH 12, 1997

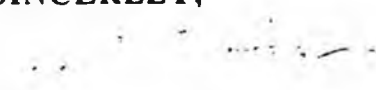
REPRESENTATIVE PETE KOTT
CHAIRMAN, HOUSE RULES COMMITTEE
ROOM 204
STATE CAPITOL BUILDING
JUNEAU, AK. 99801

DEAR CHAIRMAN KOTT:

I RESPECTFULLY REQUEST YOU TO SCHEDULE A HEARING ON HB 119. THE HOUSE JUDICIARY COMMITTEE SUBSTITUTE PASSED OUT OF H(JUD) ON 3/7/97. THE COMMITTEE SUBSTITUTE PROVIDES FOR A ZERO "0" FISCAL NOTE AND AN AMENDMENT THAT ESTABLISHED A TWO-TIERED FEE FOR FILING SMALL CLAIMS. ALSO, THE INTENT OF THE HB 119 LANGUAGE IS TO INCREASE THE SMALL CLAIMS LIMIT IN AS 22.15.040(A) FROM \$5000 TO \$7500.

THANK YOU FOR YOUR CONSIDERATION OF THIS REQUEST. I AM LOOKING FORWARD TO WORKING WITH YOU ON THIS ISSUE. PLEASE ADVISE.

SINCERELY,


MARK HODGINS
REPRESENTATIVE,
DISTRICT 9

ALASKA STATE LEGISLATURE

Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3779 - Phone
(907) 465-2833 - Fax

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(907) 283-3075 - Fax

REPRESENTATIVE MARK D. HODGINS
House District 9

SPONSOR STATEMENT

HB 119, INCREASE SMALL CLAIMS LIMIT TO \$10,000.

House Bill 119 would change the small claims limit in (AS 22.15.040(a)) from \$5000 to \$10,000. This increase more accurately represents the real dollar costs involved in small claims litigation.

The effective date of the amendment is July 1, 1997.

ALASKA STATE LEGISLATURE

Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3779 - Phone
(907) 465-2833 - Fax

Interim:

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Kenai, Alaska 99611
(907) 283-7223 - Phone
(907) 283-3075 - Fax

REPRESENTATIVE MARK D. HODGINS
House District 9

SPONSOR STATEMENT

HB 119, INCREASE SMALL CLAIMS LIMIT TO \$10,000.

House Bill 119 would change the small claims limit in (AS 22.15.040(a)) from \$5000 to \$10,000. This increase more accurately represents the real dollar costs involved in small claims litigation.

Small claims cases allow creditors without legal representation in relatively small claims cases; it increases the maximum amount of a claim from \$5000 to \$10,000.

The effective date of the amendment is July 1, 1997.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 119

Revision Date: _____
 Title: Small claims actions
 Sponsor: _____
 Requestor: _____

Dept. Affected: Alaska Court System
 BRU: Trial Courts
 Component: _____
 COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	37.3	37.3	37.3	37.3	37.3	37.3
TRAVEL	4.0					
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	41.3	37.3	37.3	37.3	37.3	37.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	41.3	37.3	37.3	37.3	37.3	37.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	41.3	37.3	37.3	37.3	37.3	37.3

Estimate of any current year (FY 97) cost: None

Positions

Full-Time	1.0	1.0	1.0	1.0	1.0	1.0
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/14/97

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Date: 02/14/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

PAGE 2 IS UNAVAILABLE.
CHRIS CHRISTENSEN WILL
BE AVAILABLE TO GIVE
AN ORAL EXPLANATION
OF THIS NOTE.

Alaska Court System
Fiscal Analysis
HB 119

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, range 10A, PFT, 12 months, Anchorage/Statewide	\$25,260	\$12,063	\$37,323

Travel (one-time costs)

Extend annual magistrate training conference by one day to accommodate session on small claims actions.

4,000

Estimated Total Cost

\$41,323

Chapter V

TRIAL

A. Before Trial.

Be sure to get to court a little early on the day of your trial. This will give you time to become familiar with the courtroom. If possible, watch another small claims trial before yours. There are no strict rules of dress, but you should be neat and clean.

In small towns and villages the court may be only a single room and yours may be the only case scheduled. In cities there will be a courthouse with several courtrooms. There may be several cases scheduled for the same time as yours. If you cannot tell from your notice of trial which courtroom your trial will be in, ask the court clerk or receptionist for directions.

You may have to wait before your case is called. The judge may announce all the cases to be heard on that date, or there may be a printed "calendar" of cases posted outside the courtroom or at the clerk's office.

B. During Trial.

Each party to the lawsuit will have the opportunity to present evidence under the guidance and direction of the judge. The plaintiff must present his case first, and then the defendant may present his.

You must present your own case at the trial or have your lawyer present it for you. Court rules state that no one except you, your lawyer or a legal intern (or your parent or guardian if you are a minor) can represent you in court. Even though you may have given someone a power of attorney allowing that person to act for you in certain business transactions, such a power of attorney will not enable the person to represent you in court.

Before beginning to testify, all parties and witnesses will be required to take an oath to tell the truth.

Some suggestions for presenting your case are:

1. Start with a sentence or two stating what your case is about.
2. Then begin at the beginning and describe in more detail what happened and when it happened. Usually it is best to tell your story in chronological order. Stay on the subject. Try not to get sidetracked.
3. If you have documents or photographs or other items which may help prove your case, show them to the judge.
4. If you have witnesses, tell the judge you would like to call them to the witness stand. You will have to ask your witnesses questions which will allow them to tell what they know about the case.

The judge may ask you and your witnesses questions at any time. At the end of your testimony and also at the end of each of your witness' testimony, the judge will allow the opposing party to ask you and your witnesses questions.

When the other party presents his or her side of the case, you should sit quietly at your table. Take notes so you will remember what to ask when the judge tells you it is your turn to ask questions. Comments and questions are not proper until the judge gives you permission. Your questions should be simple and direct. The court will not allow arguments between the parties.

C. Suggestions About Settlement.

At any time during the trial, the judge may suggest that you and the other party settle the case. The judge may suggest some terms of settlement. You are not required to settle the case, but often the judge's suggestions will be helpful.

D. At the End of the Trial.

At the end of the trial, the judge will decide the case on the evidence presented. The judge may do this immediately or the judge may postpone the decision in order to study the case. This is called "taking the case under advisement."

The court will either give you a copy of its final judgment at the end of trial or mail it to you.

The court will keep any items of evidence presented to it for at least 30 days in case either party appeals. If you want your evidence back, you must ask the court for it.

Chapter VI

AFTER TRIAL

The judge will decide who wins the case. The judge may award either party all, part, or none of the party's claim. The court's decision is called a "judgment." The judge will fill out a Judgment form and either give it to the parties or mail it to them. The party who wins a money judgment is called the *judgment creditor*, and the losing party is called the *judgment debtor*.

A. Payment of Judgment.

If you are the debtor, you should pay the creditor directly. Be sure to obtain a receipt. If for any reason you cannot make payment directly to the creditor, you may pay the court. If you pay the court, make your check payable to "Clerk of Court" and *be sure to write your case number on your check*. The court will forward the money to the judgment creditor.

After you have paid the judgment and all your checks have cleared the banks, you should ask the judgment creditor to sign a **Satisfaction of Judgment** (form SC-17). These forms are available at the court. The law requires the judgment creditor to give you (the judgment debtor) a written acknowledgment that the judgment has been satisfied (unless the payment comes from *executing* upon your earnings or property). A.S. 09.30.300. Also, in small claims cases Small Claims Rule 20 (e) requires the creditor to file a **Satisfaction of Judgment** with the court.

B. Installment Payments of the Judgment.

If the parties agree that payments may be made in installments, *both* parties must complete and file with the court a **Stipulation To Pay Judgment In Installments** (form SC-18).

A Stipulation To Pay Judgment In Installments:

1. Allows the judgment creditor to receive payments on a regular basis without incurring costs of execution.
2. Allows the judgment debtor to pay what he can afford without incurring additional costs. As long as the debtor makes the payments as agreed, the court will not issue a **Writ of Execution** (definition below) against the debtor's wages, property, or bank accounts.

If the debtor fails to pay as agreed, the court will issue a **Writ of Execution** against the debtor's wages, property or bank accounts at the request of the creditor. To make this request, the creditor must file with the court an affidavit stating that the debtor has not complied with the installment payments agreement.

C. Judgment Debtor Refuses to Pay Judgment.

If the judgment debtor will not pay voluntarily, the judgment creditor may ask the court to issue a **Writ of Execution**.

A **Writ of Execution** is a court order directing a peace officer or process server to take

property of the debtor to pay the judgment. Property can include money, bank accounts, wages, personal and real property, or any other asset belonging to the debtor which has value.

For information about this, ask the court clerk for a copy of the booklet *Execution Procedure for Judgment Creditors*.

For information about the rights of the debtor, ask the clerk for the *Judgment Debtor Booklet*.

D. Relief From Judgment.

1. Request to Set Aside Default Judgment.

If you think a default judgment was improperly entered against you, you can ask the court to set aside the judgment. To do this, you must complete and file with the court within one year, a **Request to Set Aside Default Judgment** (form SC-24). You must show two things:

- a. that there are facts which show you could win the case if a trial were held; and
- b. any failure to appear at trial or answer the **Complaint** was not your fault.

The court will then allow the other party an opportunity to respond in writing to your request. The court will review both statements and notify you in writing of its decision. The court will not set aside a default judgment unless you give a good reason.

Filing a **Request to Set Aside Default Judgment** does *not* automatically stop the judgment creditor from having a **Writ of Execution** issued to collect the judgment. If you wish to keep the creditor from having a **Writ of Execution** issued against you, you must (1) file a motion requesting a stay of execution, and (2) file a bond or make a cash deposit with the court in the amount of the judgment, plus interest. You should contact the court for further information if you wish to post a bond.

2. Appeals

If either party believes the court applied the law incorrectly or reached a decision which is not supported by the evidence presented, that party may appeal the judgment to the superior court. *An appeal does not automatically give you a new trial.*

The superior court will not accept any new evidence. The only information the superior court will consider on appeal is (1) the tape recording of the trial, (2) any items presented as evidence at the trial, (3) the documents in the court file, and (4) legal memoranda.

To appeal, you must file a **Notice of Appeal** (form AP-100) in the superior court within 30 days from the date the judgment is distributed. Filing a **Notice of Appeal** does not prevent the creditor from enforcing (collecting) the judgment. Appeals are complicated, and you should consider seeing a lawyer if you want to appeal.

For more information about how to appeal your case, ask the court clerk for form AP-200, **Instructions for Filing An Appeal From The District Court To The Superior Court**.

SMALL CLAIMS STATUTE

Sec. 22.15.040. Small claims. (a) When a claim for relief does not exceed \$5,000 exclusive of costs, interest and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

SMALL CLAIMS RULES

Rule 8. Scope and Applicability.

(a) Procedure in small claim actions, as defined by AS 22.15.040, is governed by these rules and other rules specifically incorporated herein by reference, when all parties to the action elect to be governed by them. Part I of the District Court Rules of Civil Procedure governs small claim actions when the parties do not elect small claim procedure.

(b) A party having a claim or claims exceeding the maximum amount of a small claim as defined by AS 22.15.040 may waive his right to recover the excess amount and elect to proceed under this Part II, by filing a written waiver of the excess amount.

(c) Actions to foreclose or enforce statutory, common law or possessory liens and actions for recovery of real property may not be brought as small claims actions. The court may, on its own motion, order the rules in Part I to apply in any other action when important or difficult questions of fact or law are involved.

Rule 9. Informality.

Formality in pleadings, motions, and the introduction of evidence is not required. A writing filed as a complaint, answer or application shall be legible and brief.

Rule 10. Pleadings.

(a) A small claim action is commenced by filing a complaint on the form provided by the Alaska Court System. The complaint is a short, plain written statement showing the nature of the claim for relief, signed by the plaintiff. The complaint shall contain a statement that the plaintiff elects to have the claim treated as a small claim and waives the right to jury trial and the right to proceed formally. A complaint which does not contain a waiver of the right to jury trial and formal proceedings is governed by Part I of the District Court Rules of Civil Procedure. The plaintiff's mailing address shall be shown on the complaint. When the complaint is based upon a written document, the document or a copy of it shall be attached to the complaint.

(b) A party defending against a claim shall file an answer on the form provided by the Alaska Court System. The answer is a short, plain statement showing the nature of the defense and any claim that the defendant has against the plaintiff arising from the same transaction or occurrence and shall conform with Rule 12 of these rules. The answer must be filed with or mailed to the court where the action was commenced and be signed by the defendant. When the answer or counterclaim is based upon a written document, the document or a copy of it shall be attached to the answer. The defendant's mailing address shall be shown on the answer. The clerk or magistrate shall mail a copy of the answer to the plaintiff, and shall maintain a record of the mailing.

(c) An answer form shall be served with the complaint and shall advise the defendant of his right to proceed informally under this Part II or formally under Part I of these rules. The form shall contain a statement that when the defendant requests informal proceedings, he waives the right to trial by jury and to proceed formally. A plaintiff against whom a counterclaim is filed shall have ten days after such claim is mailed to him to withdraw his election to proceed under Part II, and failure to withdraw his election waives his right to trial by jury and formal procedure as to the counterclaim.

(d) A defendant who does not wish to contest the claim against him may default by failing to file an answer or may file an answer agreeing with the complaint. The latter shall be sufficient basis for entry of judgment on the pleadings by the court or clerk when the claim is for a specific amount of damages.

Rule 11. Process.

(a) The summons shall be issued and the summons and complaint served, according to the procedures of Civil Rule 4, except that

(1) Service by publication or posting shall not be allowed; and

(2) Service outside the state shall be allowed only in accordance with the Landlord-Tenant Act, AS 34.03.340.

(b) A copy of the Alaska Small Claims Handbook and a blank answer form shall be served with the summons and complaint.

(c) If the summons and complaint are served by registered or certified mail, a delivery receipt returnable to the district court shall be required. All returned delivery receipts shall be attached to the copy of the summons retained by the court.

(d) All parties shall inform the court and other parties of any change in mailing address during the pendency of the action. The parties are deemed to have received all documents mailed to them at the addresses furnished by them.

(e) Service of any pleading or process, including the summons and complaint, shall be valid even though refused by the recipient and returned after such refusal. Upon receiving a returned refused mailing, the clerk shall mail to the refusing party by first class mail a copy of the mailing refused and a notice that service of the original was valid upon refusal and that the case will proceed as if the recipient had accepted the original mailing.

(f) Civil Rule 45(a), (b), (c), (e), and (f), concerning subpoenas is incorporated in these rules for the purpose of securing the attendance of witnesses at trial, except that the fee tendered with a subpoena need only cover the fees for mileage and for one-half day's attendance if the person's attendance, including travel time, requires no more than three consecutive hours.

Rule 12. Venue.

(a) The action shall be filed and the complaint shall contain a statement that it is filed:

(1) At the nearest place to the residence or place of employment of an individual defendant; or

(2) At the place where the defendant's alleged wrongful conduct caused personal injury or damage to the plaintiff's property; or

(3) At a place where the defendant does or solicits business; and

(4) At a place which will not cause unnecessary expense or inconvenience to the defendant.

(b) The answer shall contain any application of the defendant for change of place of trial. The change shall be granted if the action is not filed in accordance with Rule 12(a). An effective waiver of Rule 12(a) can be made only after the commencement of the action.

(c) The plaintiff shall have twenty days from the date of mailing receipt of the answer by the clerk or magistrate to file a statement opposing an application for change of place of trial. The court shall consider the application upon the statements of the parties, and shall issue an order granting or denying the application. A copy of the order shall be sent to the parties by first class mail at the addresses shown on their pleadings. When the application is granted, the file shall be transferred. When the application is denied, the court shall set the action for trial.

Rule 13. Defenses and Objections — When and How Presented.

(a) A defendant shall file or state his answer within 20 days after service of the summons and complaint upon him. A counterclaim shall be deemed denied by the plaintiff.

(b) When an answer is plainly insufficient to state a defense, the court may on its own motion enter judgment on the pleadings without trial. A judgment on the pleadings shall state the reasons for its entry.

Rule 14. Joinder of Parties and Claims.

(a) Minors and other persons under legal disability may appear only through guardians, guardians ad litem, or conservators.

(b) Any person having a claim or against whom a claim is made arising from the same transaction or occurrence which gave rise to the complaint may be joined as a party to the action.

(c) Persons having a joint interest in the subject matter of the action and other persons whose participation is necessary for the court to give complete relief to those already parties shall be joined in the action if the court can obtain jurisdiction over them.

(d) Parties may be added or dropped by order of the court on application of any party or on its own motion at any stage of the action and on such terms as are just. A person not already a party to the action added by the court shall be served copies of all pleadings and a summons in the manner provided by these rules unless such service is waived.

(e) A party may join any number of claims arising from any number of transactions and occurrences against an opposing party, so long as the total amount of the claims does not exceed the small claim jurisdictional limitation.

(f) The court may order any claim against any party to be severed and proceed to try it separately.

Rule 15. Attorneys — Interns.

(a) A corporation or other public or private organization may be represented in any stage of a small claims proceeding including an appeal by any officer or employee authorized in writing to represent it, AS 22.20.040 notwithstanding.

(b) Any party to a small claims action may be represented at any stage of the proceedings by an attorney at law or a legal intern.

(c) Any party, except an attorney at law, asserting a claim as an assignee thereof, whether for collection, fee, or value, shall be represented at all stages of an action upon the claim by an attorney at law, or a legal intern. On application of a party or on its own motion, the court shall dismiss without prejudice any action filed or proceeded with in violation of this rule.

(d) Representation of a party by a legal intern at any stage of an action shall be governed by Part IV of the Alaska Bar Rules.

Rule 16. Trial.

(a) Every small claims action shall be tried by the court without a jury. A judge may not be peremptorily challenged either under Civil Rule 42(c) or AS 22.20.022.

(b) The court shall admit any evidence which is relevant and material, despite the fact that such evidence might be inadmissible under formal rules of evidence.

(c) The court may investigate the controversy between the parties either in or out of court. The investigation must be made in the presence of the parties and the findings of fact resulting from the investigation must be stated on the record or reduced to writing and placed in the case file by the court.

(d) Testimony shall be given under oath and may be given in narrative fashion, and the examination of witnesses shall be informal. An adverse party has the right to cross-examine a party or witness. The court may take an active role in the examination of witnesses.

(e) The court may, at any time, consult with the parties on the record for the purpose of reaching a compromise or conciliation.

(f) The date set for trial shall be not less than 15 days from the date the court mails notice of the trial date to the parties.

Rule 17. Judgment.

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend the trial, he is in default. Default judgment shall be entered only upon proof under oath made upon personal knowledge that the defendant is not an infant or

otherwise incompetent, and that he is not in the active military service of the United States. The court shall also require proof under oath, made upon personal knowledge or based on business records, of the truth of every essential element of the claim for relief. The clerk may enter a default judgment if the damages alleged are liquidated and no default hearing is required. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer. The court may allow an answer to be filed after the defendant is in default, but before judgment is entered, upon a showing of good cause. The plaintiff may move the court to enter a default judgment if the defendant is in default. Affidavits or exhibits necessary to the entry of default judgment under this rule shall accompany the motion.

(b) Judgment on the pleadings may be entered pursuant to Rules 13(b) and 10(d).

(c) If the plaintiff fails to attend the trial, he is in default. When neither party appears, the court may dismiss the action with prejudice. When the defendant appears and the plaintiff does not, the court shall inquire of the defendant concerning the validity of his defense and his knowledge, if any, of the reasons for the plaintiff's absence. The court may then, in its discretion, enter judgment dismissing the claim with prejudice. If the defendant has asserted a counterclaim, it shall be disposed of according to paragraph (a) of this rule.

(d) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(e) A default judgment shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a default judgment is entered, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(f) Dismissal for Want of Prosecution. Actions which have been pending in a court for more than six months without any proceedings having been taken may be dismissed as a matter of course for want of prosecution by the court on its own motion or on motion of a party to the action. The clerk shall review all pending cases semi-annually, and in all cases in which no proceedings have been taken for more than six months, shall send notice to the parties to show cause in writing why the action should not be dismissed. If good cause to the contrary is not shown within 30 days of distribution of the notice, the court shall dismiss the action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal. A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(g) A claim may be dismissed with or without prejudice and without court order at any time by agreement of the parties, or upon written notice by the plaintiff at any time before the defendant has filed an answer. A dismissal with prejudice bars action in any court based on the claim dismissed.

(h) Judgment by confession may be entered pursuant to Civil Rule 57. Judgment pursuant to a compromise may be entered by written agreement of the parties or by oral declarations on the record at trial.

(i) After trial, the court shall enter judgment. The judgment need not be supported by findings of fact or conclusions of law. The judgment shall specify the exact relief given.

(j) If the judgment is entered upon a written instrument, the instrument shall be filed with the court and cancelled by marks or writing across its face, unless the court orders otherwise.

(k) The court or the clerk may order a money judgment payable in installments and stay levy of execution upon stipulation of the parties. In the event the judgment is ordered payable in installments, it shall bear interest as provided by law. If the terms of a judgment made payable in installments are violated, execution may issue for the balance of the judgment remaining unpaid.

(l) The clerk shall distribute a copy of every order or judgment entered to all parties to the action. Every order and judgment shall include a clerk's certificate of distribution as defined in Civil Rule 58.1(d).

Rule 18. Appeal.

Either party may appeal a judgment or an order refusing to relieve any party from a default. The procedure on appeal shall be governed by the rules for appeal of judgments of the district court to the superior court, except that the superior court shall grant trial de novo if the proceedings in the district court were not of record.

Rule 19. Relief From Judgment.

Civil Rule 60 applies to motions for relief from judgment in small claim actions.

Rule 20. Remedies.

(a) A small claims judgment may be enforced in the same manner as other judgments. No execution shall issue for two days after the date shown in the clerk's certificate of distribution on the judgment.

(b) No attachment or garnishment shall issue before judgment in a small claim action.

(c) Costs shall be allowed as of course to a prevailing party. A party entitled to costs may be allowed the filing fee and other charges made by the court, the expense of service of process, witness fees, and reasonable attorney's fees.

(d) A party may deposit with the court all or any part of any sum of money or any other thing capable of manual delivery which is sought in the action or due under a judgment. The party making the deposit shall inform all other parties to the action of the deposit. The court shall be governed by Rule 5, Alaska Rules Governing the Administration of All Courts, and shall release the deposit to the party entitled to it when the party becomes entitled to it. No interest shall accrue against a party making a deposit, to the extent of the deposit, after it is made.

(e) When the judgment has been satisfied, the judgment creditor shall file an acknowledgment of satisfaction with the court. The court may issue a satisfaction of judgment if the judgment debtor, by motion served on the judgment creditor, establishes that the judgment has been satisfied. The clerk may issue the satisfaction if the motion is unopposed.

Rule 21. Assistance to Litigants – Handbook.

Magistrates and clerks of any district court are authorized, where necessary, to assist litigants in the preparation of complaints and answers. First recourse shall be had to the Alaska Small Claim Handbook, which shall be available for distribution to prospective litigants at all seats of any court empowered to handle small claims actions, and shall be served upon the defendant with the summons and complaint. When a party is illiterate or otherwise unable to write his pleading and is unable to obtain assistance from a friend or relative, the clerk or magistrate shall write it on the appropriate form. A form written by the clerk or magistrate shall be signed by the party or bear his witnessed mark. The clerk shall note upon its face the method of preparing the pleading under this rule.

Rule 22. Legal Effect of Rules.

(a) The forms published by the Alaska Court System to accompany these rules are legally sufficient and are intended to indicate the simplicity and brevity which the rules contemplate.

(b) The Alaska Small Claims Handbook published by the Alaska Court System to accompany these rules is not a rule of court.

(c) The forms for the complaint, the summons and the answer published by the Alaska Court System shall be used by the parties. All other forms are illustrative and not mandatory.

CS FOR HOUSE BILL NO. 119(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HODGINS, Green, Croft

A BILL

FOR AN ACT ENTITLED

1 **"An Act raising the limit on small claims actions to \$7,500; amending Rule 9,**
 2 **Alaska Rules of Administration; and providing for an effective date."**

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

4 *** Section 1.** AS 22.15.040(a) is amended to read:

5 (a) When a claim for relief does not exceed \$7,500, [\$5,000] exclusive of
 6 costs, interest, and attorney fees, and request is so made, the district judge or
 7 magistrate shall hear the action as a small claim unless important or unusual points of
 8 law are involved or the state is a defendant. The supreme court shall prescribe the
 9 procedural rules and standard forms to assure simplicity and the expeditious handling
 10 of small claims.

11 *** Sec. 2.** AS 22.15.120(a) is amended to read:

12 (a) A magistrate shall preside only in cases and proceedings under
 13 AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

14 (1) for the recovery of money or damages only when the amount

1 claimed, exclusive of costs, interest, and attorney fees, does not exceed \$7,500
2 [\$5,000];

3 (2) for the recovery of specific personal property when the value of the
4 property claimed and the damages for the detention do not exceed \$7,500 [\$5,000];

5 (3) for the recovery of a penalty or forfeiture, whether given by statute
6 or arising out of contract, not exceeding \$7,500 [\$5,000];

7 (4) to give judgment without action upon the confession of the
8 defendant for any of the cases specified in this section, except for a penalty or
9 forfeiture imposed by statute;

10 (5) to give judgment of conviction upon a plea of guilty or no contest
11 by the defendant in a criminal proceeding within the jurisdiction of the district court;

12 (6) to hear, try, and enter judgments in all cases involving
13 misdemeanors that are not minor offenses if the defendant consents in writing that the
14 magistrate may try the case;

15 (7) to hear, try, and enter judgments in all cases involving minor
16 offenses and violations of ordinances of political subdivisions;

17 (8) for the extradition of fugitives as authorized under AS 12.70;

18 (9) to provide post-conviction relief under the Alaska Rules of Criminal
19 Procedure for any of the cases specified in (5), (6), or (7) of this subsection if the
20 conviction occurred in the district court [;

21 (10) REPEALED].

22 * Sec. 3. Rule 9(c)(2), Alaska Rules of Administration is amended to read:

23 (2) Filing fees, small claims actions, claim for relief

24 (i) \$2,500 or less 25.00

25 (ii) more than \$2,500 50.00

26 No additional filing fee is due when a small
27 claims case is removed to district or superior
28 court.

29 * Sec. 4. This Act takes effect July 1, 1997.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 119(JUD)

Revision Date: 3/7/97 Dept. Affected: Courts
 Title: _____ BRU: _____
 _____ Component: _____
 Sponsor: Hodgins
 Requester: House Judiciary COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING EXPENDITURES						
PERSONAL SERVICES						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Lisa Kirsch
 Division: House Judiciary Committee
 Approved by Commissioner:
 Agency: Chairman, House Judiciary Committee

Phone: 465-4990
 Date: 3/7/97
 Date: 3/7/97

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HB

120

(7)
Date Referred to Committee: February 7, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/11/97

The JUDICIARY Committee considered:

HB 120

HOUSE BILL NO. 120

STATE IMMUNITY FROM SUIT IN FED COURT

"An Act relating to the power of the attorney general to waive immunity from suit in federal court; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 120 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

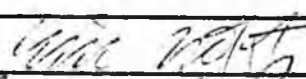
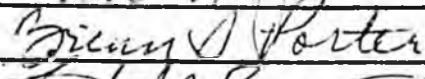
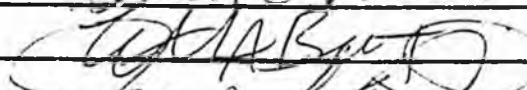
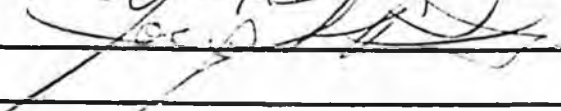
APPROVES PREVIOUS: (Dept/Date)

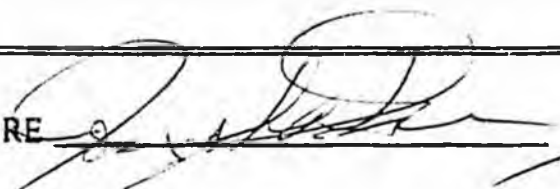
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SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	CROFT	<input checked="" type="checkbox"/>			
	PORTER	<input checked="" type="checkbox"/>			
	BERKOWITZ	<input checked="" type="checkbox"/>			
	GREEN	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE 

CS FOR HOUSE BILL NO. 120(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the power of the attorney general to waive immunity from
2 suit in federal court; and providing for an effective date."

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

4 * Section 1. AS 44.23.020 is amended by adding a new subsection to read:

5 (c) Before January 1, 1999, the attorney general may, in a case that involves
6 the state's title to submerged lands, or in any case in which the state seeks to allocate
7 fault to the federal government or a federal employee under AS 09.17.080, waive the
8 state's immunity from suit in federal court provided under the Eleventh Amendment
9 to the Constitution of the United States. The expiration on January 1, 1999, of the
10 attorney general's authority to waive the state's Eleventh Amendment immunity does
11 not affect existing waivers in ongoing cases.

12 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 120

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 for* Date: 2/7/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/97
 Agency: Department of Law

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Cook

2/10/97

Suit #0 210
2/11/97

CS FOR HOUSE BILL NO. 120()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the power of the attorney general to waive immunity from
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9 to the Constitution of the United States. The expiration on January 1, 1999, of the
10 attorney general's authority to waive the state's Eleventh Amendment immunity does
11 not affect existing waivers in ongoing cases.

12 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

Page 1, line 8&9, replace with the following:

"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."

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Chairman: Representative Joe Green
Vice-Chairman: Representative Con Bunde

Representative Ethan Berkowitz
Representative Eric Croft
Representative Jeannette James
Representative Brian Porter
Representative Norman Rokeberg

AGENDA

Tuesday, February 11, 1997
12:00 Noon

**HB 120 Attorney General's Waiver of State's Immunity
from Suit in Federal Court**

*Please note that there is a proposed Committee Substitute
submitted by Representative Hudson.
Dated 2/10/97--LS 0519\B.*

Copies are available in the Committee Room.

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Date: February 11, 1997

To: House Judiciary Committee Members

From: Lisa Kirsch
House Judiciary Committee Aide

Subject: **Proposed CS for HB 120 Waiver of Sovereign Immunity
for today's Noon hearing**

I have attached two pages. The first is an amendment with new language for the sunset clause of HB 120. The second page is a proposed CS which includes the new sunset clause from the first page, and the amendment we adopted as amendment #1 on Monday's meeting at Rep. Hudson's request.

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE HUDSON

TO: HB 120

- 1 Page 1, line 6. following "lands,":
- 2 Insert "or in any case in which the state seeks to allocate fault to the federal
- 3 government or a federal employee under AS 09.17.080,"

— Adopted
2/10/97

MEMORANDUM

State of Alaska

Department of Law

TO: The Honorable Bill Hudson
Alaska House of Representatives

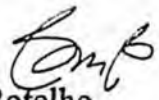
DATE: February 7, 1997

FILE NO:

TEL. NO: 465-2133

SUBJECT: House Bill 120

FROM:


Bruce M. Botelho
Attorney General

I support House Bill 120, which authorizes the Attorney General to waive the state's Eleventh Amendment immunity and thereby consent to suit in federal court in very limited cases. The Eleventh Amendment to the United States Constitution provides that a state generally may not be sued in federal court without its consent. This bill would permit the Attorney General to consent to suit in federal court in cases involving the state's title to submerged lands, which will benefit the state in ongoing litigation.

I also support a proposed amendment which would allow the Attorney General to consent to suit in federal court in tort cases in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080. The state needs to be able to litigate, in federal court, tort cases in which federal entities are potentially liable, because the federal government and its employees cannot be sued in state court.

If you have any questions about either of these issues, please do not hesitate to contact my office.

BMB:SDC:kh

Background on the Need for the Proposed Amendment to House Bill 120

As a "deep pocket," the State of Alaska is frequently named as the only defendant in cases where other nonparties are clearly at fault, and ordinarily the state can receive a fair allocation of potential liability by joining those parties as third-party defendants for apportionment of fault under AS 09.17.080. However, a problem exists when the federal government is involved.

By federal law the federal government (agencies, officials, employees, etc.) can only be sued in federal court. Thus, fault can only be apportioned to the federal government in federal court. However, the Eleventh Amendment of the United States Constitution deprives federal courts of jurisdiction over tort actions brought by private parties against consenting states. Thus, the state cannot appear in federal court as a defendant (or third-party plaintiff) in a tort action brought by a private party unless it waives its Eleventh Amendment immunity.

While it clearly would not be in the state's interest to waive its Eleventh Amendment immunity in all cases, in the occasional case where the state could reduce its liability in a tort action by joining the federal government as a third-party defendant for apportionment of fault under AS 09.17.080 it would be in the state's interest to waive its Eleventh Amendment immunity, since federal court is the only forum where a third-party claim against the federal government can be brought.

In fact, the state faces such a situation now. The state has been sued by approximately one hundred and fifty residents of Hooper Bay in two civil actions in Superior Court in Bethel. The cases are Smith v. State and Melba Joseph, et al. v. State, and they arise out of one wrongful death (Smith case) and many illnesses (Joseph case) which were caused by excess fluoride in Hooper Bay's public water system. (The liability issues in the two cases are identical, and the Joseph case has been stayed pending a determination of liability in the Smith case.)

Hooper Bay is responsible under state law to prevent the distribution of contaminated water, but Hooper Bay had no insurance. Consequently, Smith originally filed suit against the Yukon Kuskokwim Health Corporation (YKHC), alleging that YKHC failed to properly supervise Hooper Bay's water system. However, YKHC was acting under a contract with the federal government, and the action was removed to federal court.¹ After the case against YKHC was removed to federal court Smith essentially abandoned the action, and initiated a new action against the State of Alaska in Bethel Superior Court. Smith now claims that the state should have assured the safety of Hooper Bay's water system. And more specifically, Smith seeks

¹ The state and federal governments are engaged directly and indirectly in several programs to improve drinking water and sanitation facilities in the bush communities, and both were aware of problems in Hooper Bay and both had been providing direct and indirect assistance to Hooper Bay.

to hold the state vicariously liable for the negligence of Steve Weaver, a federal (Public Health Service) employee detailed to the State of Alaska (Village Safe Water) who was working to rehabilitate Hooper Bay's public water system.

It obviously would be in the state's best interest to have fault allocated to any negligent federal entities in the Smith and Joseph actions (and in any similar action in the future) pursuant to AS 09.17.080. Indeed, the federal government intended to join the state as a third-party defendant in the original action against YKHC if that action had gone forward.

Some federal courts have held that only the Alaska Legislature can waive the state's Eleventh Amendment immunity, and only by giving an unequivocal indication of its intent to do so. Thus the purpose of the proposed bill is to unequivocally authorize the Attorney General to waive the state's Eleventh Amendment immunity on a case by case basis in any case in which the state seeks to allocate fault to the federal government or a federal employee pursuant to AS 09.17.080.

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Date: February 10, 1997
To: House Judiciary Committee Members
From: Lisa Kirsch
House Judiciary Committee Aide
Subject: HB 120 Amendment
Barbara Brink--additional information

I just received the enclosed documents this morning.

HB 120

First we have a proposed amendment, supported by the AG's office, that allows the AG to waive immunity in appropriate tort cases. There is an explanatory memo attached, as well as the AG's statement in support. Susan Cox, from the Office of Special Litigation, will be present at the hearing today to answer any questions about the amendment.

Appointment of Barbara Brink:

Enclosed are some of the results from the survey of the Bar Association. I provided you with an excerpt. If you would like to see the entire pamphlet I have it here in the committee room (120). I also enclosed the evaluations from some of the prosecutors who recently had trials with Barbara Brink as defense counsel.

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
(907) 465-3744
Fax (907) 465-2273

COMMITTEES

CO-CHAIR
Resources Committee

MEMBER
Transportation Committee
Labor & Commerce Committee

HB 120 Sponsor Statement

"An Act relating to the power of the attorney general to waive immunity from suit in federal court; and providing for an effective date."

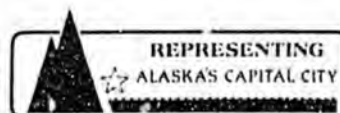
The State of Alaska is presented with a rare opportunity to determine its title to certain submerged lands. The ability to move forward in a precedent setting case can only be determined by the Legislature, which may waive the State's 11th Amendment immunity and allow the state to enter into a lawsuit with the federal government.

A decision must be reached by this body by the 14th of February or the court will dismiss the case.

The United States is currently being sued by private citizens 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.

This rare opportunity is afforded to the state because 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 an 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 by virtue of the equal footing doctrine, as an essential attribute of its sovereignty.

The purpose of this bill 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.



MEMORANDUM

State of Alaska

Department of Law

TO: Ron Somerville
Special Assistant

DATE: February 5, 1997

FILE NO: 269-5100

TEL NO: 11th Amendment Bill

SUBJECT:

FROM: Joanne Grace
Assistant Attorney General
Federal Relations, Anchorage

CONFIDENTIAL

This memorandum explains the need of the Department of Law for passage of the draft bill attached.

A group of plaintiffs has sued the United States, claiming that the federal government rather than the State owns the tidelands and territorial sea within the Tongass National Forest (*Peratrovich v. United States*). They seek this judgment because if the United States owns these submerged lands, they constitute "public lands" under the Alaska National Interest Lands Conservation Act ("ANILCA") and are subject to the jurisdiction of the Federal Subsistence Board. The plaintiffs want their purchase of herring roe on kelp from rural residents and resale to other markets to constitute "customary trade" subject to a priority under title VIII of ANILCA.

The plaintiffs have not named the State as a defendant, however. They want title to the submerged lands litigated without the State's involvement. The United States has not answered the complaint, and therefore has not stated whether it believes it owns the submerged lands, but has moved for judgment. One of its bases for judgment is that the plaintiffs have failed to join an indispensable party, the State. The United States argues that the Court cannot decide the issue of title to the submerged lands without the State's participation because of the State's strong interest in them. We agree with this argument and believe the Court will dismiss the case unless the State intervenes.

The State would like to intervene because it wants to litigate title to these lands against the United States. The State would have problems simply filing suit against the United States to quiet title to them, however, because the Quiet Title Act requires as a prerequisite to federal court jurisdiction that the United States "claim an interest" in the property in dispute. The United States has carefully avoided taking any formal position as to whether it

believes it or the State has title to the submerged lands within the boundaries of the Tongass, although Forest Service employees certainly have taken the position that they are federally-owned in dealings with the state. Therefore, this litigation affords the State an opportunity to litigate title to these lands that the State otherwise may not have for many years.

The attorney for the United States has notified the State's attorneys that if the State tries to intervene as a defendant, he will assert a violation of the 11th Amendment. The 11th Amendment provides that federal courts do not have jurisdiction over suits against consenting states. A state may waive its 11th amendment immunity, but only by giving an "unequivocal indication" that it consents to suit in a federal court. This authority is held by the legislature, however, which may delegate it to the Attorney General. The federal district court in Alaska twice has found that Alaska has no statute expressly waiving 11th amendment immunity, and that the Attorney General's power to expressly consent to federal jurisdiction "in the context of litigation" does not grant him or her the authority to consent to federal jurisdiction for the trial of a single case. Although the Department of Law thinks it has good arguments that the legislature has delegated this authority, these cases carry some weight as precedent, and we want to eliminate the issue in the *Peratrovich* case and other submerged lands cases.

This is the purpose of the drafted bill. Judge Holland has indicated that he will withhold decision on the United States' attempt to have the case dismissed until February 14 to give the State an opportunity to intervene. The State must have some level of assurance by that date that the bill will pass and the State will be able to intervene.

¹ AS 44.23.020(b) provides in part that the Attorney General shall "represent the State in all actions in which the State is a party" and "perform all other duties required by law or which usually pertain to the office of Attorney General in a state."

II. FACTS

On September 27, 1993, Olson filed a wrongful death action in the Superior Court for the State of Alaska, alleging that defendants negligently failed to employ reasonable rescue efforts and negligently prevented others from performing a rescue when her husband was in imminent danger of serious injury or death (Docket 1). The complaint alleges that on September 30, 1991, decedent Gordon Olson ("Mr. Olson") was in a skiff on the Wood River/Nushagak River drainage, within the City of Dillingham. The skiff ran aground, and Mr. Olson was forced to disembark and wade to an exposed gravel bar. The bar became submerged by the tide, and Mr. Olson drowned (Docket 1). The complaint further alleges that the Dillingham Police Department and the Alaska State Troopers were advised of the emergency and:

negligently failed to respond in a reasonable fashion by wasting valuable time, by advising other individuals that additional rescue efforts were not necessary, by preventing other individuals from engaging in rescue efforts, by trying to employ unreasonable and improper procedures and methods for engaging in the rescue, and by not employing manpower and equipment readily available to engage in the rescue.

(Docket 1, pp. 3-4).

After conducting some discovery, Olson moved to amend the complaint to add a claim under 42 U.S.C. § 1983 against Dillingham for "inadequacy of police training that amounted to deliberate indifference to the rights of persons with whom the police come into contact." She simultaneously moved for an order establishing Dillingham as the place of trial. The superior court granted both

motions (Docket 2; Docket 6, pp. 3-4). Dillingham then petitioned for removal to this court under 28 U.S.C. §§ 1441(a) and (b), and the State concurred and joined (Docket 1).

III. DISCUSSION

The parties do not dispute that this court has jurisdiction to hear Olson's 42 U.S.C. § 1983 claim and, consequently, Olson's pendant state claim against Dillingham. Olson argues that this court does not have jurisdiction to hear her claims against the State because the Attorney General has not effectively waived immunity under the Eleventh Amendment to the United States Constitution. Defendants assert that the Attorney General has broad powers, including the implicit power to consent to federal jurisdiction for the trial of a single case.¹

The removal statute, 28 U.S.C. § 1441, provides that a defendant may remove an action to federal court on the basis of federal question or diversity jurisdiction. Under the unanimity requirement for removal of an action in which there is more than one defendant, all defendants must unanimously agree to join in removal. Hewitt v. City of Stanton, 798 F.2d 1230, 1232 (9th Cir. 1986); Ford v. New United Motors Mfg., Inc., 857 F. Supp. 707 (N.D.Cal. 1994). In multiple defendant cases, any defendant can dictate that the action remain in

¹AS 44.23.020(b) provides in pertinent part that the Attorney General shall "represent the State in all actions in which the State is a party" and "perform all other duties required by law or which usually pertain to the office of Attorney General in a state."

state court by refusing to join in another defendant's notice of removal. Ford, 857 F. Supp. at 709; 28 U.S.C. § 1446(a). Defendants have the burden of establishing that removal was proper, and federal jurisdiction must be rejected if there is any doubt as to the right of removal. Gaus v. Miles, Inc., 980 F.2d 564, 566-67 (9th Cir. 1992).

Defendants unanimously have attempted to remove this case to federal court on federal question grounds, because Olson raised a Section 1983 claim against Dillingham. Under the Eleventh Amendment, however, this court is barred from entertaining a suit between a state and a citizen of that state, unless that state has consented to be sued. Charley's Taxi Radio Dispatch v. SIDA of Hawaii, 810 F.2d 869, 873 (9th Cir. 1987).

The Eleventh Amendment may be described as either creating an immunity for states or establishing a jurisdictional limitation on federal courts. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S. Ct. 900, 907 (1984). "A state may waive its Eleventh Amendment immunity only by giving an 'unequivocal indication' that it consents to suit in a federal court." Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 105 S. Ct. 3142, 3145 n.1, reh'g denied, 473 U.S. 926, 106 S. Ct. 18 (1985); Collins v. State of Alaska, 823 F.2d 329 (9th Cir. 1987). The court may find such an indication where:

(1) the state expressly consents to federal jurisdiction in the context of the litigation, see Actmedia, Inc. v. Stroh, 789 F.2d 766, 772 (9th Cir. 1986) [republished, 830 F.2d 957 (9th Cir. 1986)]; (2) a state statute or constitutional provision expressly provides for suit in a federal court, Atascadero, 105 S. Ct. 3142 at n. 1; or (3) Congress clearly intends to condition the

state's participation in a program or activity on the state's waiver of its immunity. Id. at 3150; Doe v. Maher, 793 F.2d 1470, 1474 (9th Cir. 1986).

Charley's Taxi Radio Dispatch, 810 F.2d at 873 (footnote omitted). There is no Alaska statute expressly waiving Eleventh Amendment immunity. Therefore, the first issue is whether the Attorney General's power to expressly consent to federal jurisdiction "in the context of the litigation," grants him or her the authority to consent to federal jurisdiction for the trial of a single case. This court concludes that it does not.

The United States Supreme Court has held that a state's consent to claims in the federal courts must be "stated by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction." Atascadero, 473 U.S. at 238, 105 S. Ct. at 3145 (quoting Edelman v. Jordan, 415 U.S. 651, 673, 94 S. Ct. 1347, 1360 (1974)).

Many courts, including this one, have held that the Attorney General may not waive Eleventh Amendment immunity on the state's behalf, unless the legislature has expressly authorized the Attorney General to do so. State of Alaska v. O/S Lynn Kendall, 310 F. Supp. 433 (D. Alaska 1970). See also Frances J. v. Wright, 19 F.3d 337, 343 (7th Cir. 1994), cert. denied, Wright v. Frances, ___ U.S. ___, 115 S. Ct. 204 (1994) (Attorney General may not waive sovereign immunity, even by removing case to federal court); Silver v. Baggiano, 804 F.2d 1211, 1214 (11th Cir. 1986) (state official may not waive sovereign immunity on behalf of state unless "explicitly authorized in state's constitution, statutes, or decisions");

Gwinn Area Community Sch. v. State of Michigan, 741 F.2d 840, 846 (6th Cir. 1984) (where Michigan joined federal defendants in removal to federal court, claims against state defendants were remanded because Michigan law had no unequivocal expression of waiver).

In O/S Lvnn Keridall, 310 F. Supp. at 433, the State appeared in federal court as plaintiff in a maritime tort case, seeking reimbursement for salvage services in abating a public nuisance. The State requested a ruling that it had not waived its Eleventh Amendment immunity with respect to defendants' counterclaims. Defendants argued that immunity from suit in federal court may be waived either by specific declaration or by act, such as filing a general appearance, or by the State becoming an actor, by being a plaintiff, or by intervening, in a suit brought in the federal courts. The court responded as follows:

The State of Alaska cannot be sued without its consent being expressly granted by legislative authority. The Legislature has not expressly or otherwise consented to suits against the State in federal court. Under the laws of the State, the Attorney General is without authority to waive the State's Eleventh Amendment immunity.

(Citations omitted). Id., 310 F. Supp. at 434. In the absence of express statutory authority for the waiver, this court concludes that the Attorney General cannot effectively consent to this court's jurisdiction by joining in Dillingham's removal petition.

Dillingham argues that, because the amended complaint essentially alleges a negligent rescue at sea, and because the State's rescue efforts are specifically

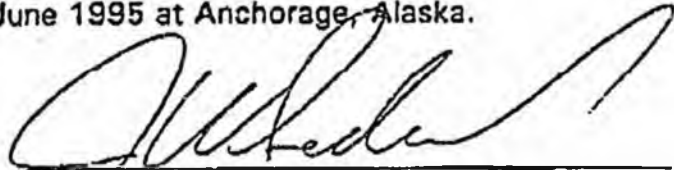
authorized by Alaska statutes (AS 18.60.120 designates the State as the civil authority responsible for search and rescue in Alaska), this court has maritime jurisdiction over the State due to its deliberate involvement in maritime rescue. In support, Dillingham cites Parden v. Terminal Railway of the Alabama State Docs Dep't, 377 U.S. 184, 196, 84 S. Ct. 1207, reh'g denied, 377 U.S. 1010, 84 S. Ct. 1903 (1964), in which the Supreme Court held that Congress had abrogated the State's sovereign immunity pursuant to its powers under the Commerce Clause by passing the Federal Employers' Liability Act ("FELA"), a regulatory scheme applicable to every common carrier in interstate commerce, under which the State constructively consented to suit because it owned and operated an interstate railroad. However, Parden was overruled by Welch v. Texas Dep't of Highways and Public Transp., 483 U.S. 468, 107 S. Ct. 2941 (1987), when the Court held that the Eleventh Amendment prohibits admiralty suits against a state, unless the state expressly waives its immunity and consents to suit in federal court.

The second question thus becomes whether Olson's claim against Dillingham should be heard in this court or remanded back to the state court with Olson's action against the State. The consent to removal by the State not having been effective, the original removal was defective and this case must be remanded. Even if this court could somehow retain jurisdiction to hear the claims against Dillingham, doing so would be inappropriate. Remand avoids having two different trials in two different courts over essentially the same issues.

IV. CONCLUSION

The motion at Docket 6 is GRANTED. This action is hereby REMANDED to the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

DATED this 28 day of June 1995 at Anchorage, Alaska.



JOHN W. SEDWICK
UNITED STATES DISTRICT COURT

A95-0092--CV (JWS)

.....
D. POPE
J. BENDALL
V. VERHOFF, JR. (AG-SYE-200)

RECEIVED
JUN 30 1995

Department of Law
Office of Attorney General
3rd Judicial District
Anchorage, Alaska



STATE OF ALASKA
Department of Law
Attorney General's Office
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994

Phone No. (907) 269-5100
Fax No. (907) 279-2834/278-4607

FAX TRANSMITTAL SHEET

Please deliver the following pages:

DATE: February 6, 1997 TIME: TOTAL PAGES: 8
(including cover sheet)

TO: Lisa Kirsch Fax No. 465-4316
House Judiciary Committee

RE:

FR: Joanne Grace
Ann Berwick
Assistant Attorneys General

* * * * *

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HB-120

Susan Cox

2/10/97

Because of tort reform
have to have all
the parties

Fed CA only place to
sue Feds

State Δ

Want to include Feds in allocation of fault
comparative % for ea party resp.
Case

MEMORANDUM

Date: February 10, 1997
To: Joe Green
From: Lisa Kirsch
Re: **HB 120 Tort Amendment to Sovereign
Immunity Waiver**

After our staff meeting this morning I received an amendment to HB 120 which will allow the AG to waive State immunity in tort cases as well as the submerged lands cases.

I hand delivered the amendments and the backup memos to the members' offices. I called Susan Cox who is the AAG at Special Litigation who will be here to defend the tort amendment this afternoon. She tells me that this amendment is needed in cases where the State has been sued and the federal government is also partially liable. Because of tort reform, all of the parties who may be liable must be included in the suit if you want the jury to apportion fault between them. Currently, the State can neither compel the feds into the State case, nor move the case to federal court. With the amendment, the State **may** waive their immunity in federal court and move the case to federal court where the federal government may be sued.

Susan Cox assures me that the removal to federal court is at the AG's discretion and under this amendment a plaintiff could not compel the State into federal court against the AG's wishes. In other words, the AG could pick and choose which cases they wanted to take to federal court. Susan estimated that there would probably be few cases where the State would want to go to federal court because it would only be to the State's advantage under certain circumstances. For example, when a Federal employee partly caused the injury and the State wanted part or all of the fault to be apportioned to the feds.

She also noted that most defendants would prefer to stay in State court since it was less complicated. As a result, she thought there