

SENATE BILL NO. 158

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/22/20

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees levied by resource agencies for designated regulatory services;**
2 **and providing for an effective date."**

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

4 *** Section 1.** AS 37.10.052(a) is amended to read:

5 (a) Each resource agency shall, by regulation, establish a list of fixed fees for
6 standard designated regulatory services that it provides. A fixed fee adopted under this
7 subsection may not exceed the estimated average reasonable direct cost **and indirect**
8 **cost** incurred by the resource agency in providing the standard designated regulatory
9 service. The resource agency shall provide an explanation of the basis for the fixed
10 fee. The resource agency shall review the list of fixed fees at least once every four
11 years, identify any changes in the average actual and reasonable direct cost **and**
12 **indirect cost** of providing each standard designated regulatory service for which a
13 fixed fee has been established, and, by regulation, adjust the fees accordingly. The
14 agency shall include the results of its review in the report submitted under

1 AS 37.10.050(c).

2 * **Sec. 2.** AS 37.10.052(c) is amended to read:

3 (c) A person requiring more than one regulatory service, at least one of which
 4 is a designated regulatory service, for an activity may petition the resource agency that
 5 will provide the services or, if more than one resource agency will provide a
 6 regulatory service, the office of management and budget to establish a single fee for
 7 all regulatory services that are required for that class of activities. The resource agency
 8 or office of management and budget, as appropriate, shall grant the petition if it finds
 9 that the proposed fee meets the applicable requirements of this subsection and is likely
 10 to be used by the resource agency or office of management and budget more than
 11 once. If a petition under this subsection is granted, the resource agency or the office of
 12 management and budget shall make available to the public information concerning the
 13 single fee, including a list of regulatory services to be provided and the amount of the
 14 fee. If the resource agency or the office of management and budget denies the petition,
 15 the agency or office shall provide to the petitioner a statement setting out the agency's
 16 or office's reasons for denial. The single fee under this subsection must be

17 (1) confined to the distinct economic sector in which the petitioner is
 18 or proposes to be engaged;

19 (2) where necessary, limited by geography, facility size or capacity, or
 20 other relevant factors so as to provide a reasonable assurance that only similarly
 21 situated activities, with respect to cost, are included within the fixed fee; and

22 (3) based on the estimated average reasonable direct cost **and indirect**
 23 **cost** of each designated regulatory service required for the activity and the average fee
 24 customarily charged for a regulatory service other than a designated regulatory service
 25 discounted by the amount of savings that may be achieved by avoiding regulatory
 26 overlap and, where applicable, coordinating multi-agency review of the activity to the
 27 maximum extent possible.

28 * **Sec. 3.** AS 37.10.052(d) is amended to read:

29 (d) Except for fees determined under (a), (b), or (c) of this section or in
 30 AS 37.10.056, a fee levied by a resource agency for a designated regulatory service
 31 must be based solely on the actual and reasonable direct cost **and indirect cost**

1 incurred by the resource agency in providing the designated regulatory service to the
2 person on whom that fee is levied, computed on a time-and-expense basis.

3 * **Sec. 4.** AS 37.10.054 is amended to read:

4 **Sec. 37.10.054. Invoices for designated regulatory services.** (a) Unless a
5 negotiated service agreement reached under AS 37.10.052(b) or (c) provides
6 otherwise, a resource agency charging a fee for providing a designated regulatory
7 service other than a standard designated regulatory service for which a fixed fee has
8 been established under AS 37.10.052(a) shall, on a monthly basis, provide the person
9 who will be billed for the service with an invoice for services performed during that
10 month. The invoice must be reasonably convenient to the reader, and reasonably
11 susceptible to audit. The invoice must set out, in time increments of not greater than
12 one-quarter hour for each employee, and separately for each expenditure, the purpose
13 of the time or expenditure in sufficient detail to permit a reasonable person to
14 determine whether the time or cost was an actual and reasonable direct cost **and**
15 **indirect cost.**

16 (b) If a person believes that an invoice rendered under (a) of this section
17 exceeds the actual and reasonable direct cost **and indirect cost** of providing the
18 designated regulatory service, the person may, **not later than** [WITHIN] 30 days after
19 receiving the invoice, request that the resource agency review the invoice. The
20 resource agency shall review the invoice under the standards of this section and issue
21 its final decision on the invoice **not later than** [WITHIN] 30 days of receipt of a
22 request for review.

23 * **Sec. 5.** AS 37.10.056 is amended to read:

24 **Sec. 37.10.056. Petitions to adopt regulations.** A person requiring a
25 designated regulatory service from a resource agency may petition the resource agency
26 under AS 44.62.220 and 44.62.230 to adopt regulations that would establish, for a
27 category of designated regulatory services, a fixed fee that is

28 (1) confined to the distinct economic sector in which the petitioner is
29 or proposes to be engaged;

30 (2) where necessary, limited by geography, facility size or capacity, or
31 other relevant factors so as to provide a reasonable assurance that only similarly

1 situated regulatory services, with respect to cost, are included within the fixed fee;

2 (3) likely to be used by the resource agency more than once; and

3 (4) based on the average reasonable direct cost **and indirect cost**
4 incurred by the agency in providing the designated regulatory service.

5 * **Sec. 6.** AS 37.10.058(6) is amended to read:

6 (6) "hourly rate of salary and benefits" means the **sum of the** hourly
7 increment of salary due the state employee under the salary schedule applicable to that
8 employee **and the hourly increment of** [, MULTIPLIED BY 149 PERCENT TO
9 ACCOUNT FOR] the cost of employment benefits paid by the state to or on behalf of
10 the employee;

11 * **Sec. 7.** AS 37.10.058 is amended by adding a new paragraph to read:

12 (11) "indirect cost" means the federal indirect cost rate developed in
13 accordance with 2 C.F.R. 200, Subpart E (200.400 - 200.475) and approved annually
14 by the responsible federal agency.

15 * **Sec. 8.** AS 44.46.025(a) is amended to read:

16 (a) Except as otherwise provided in AS 37.10.050 - 37.10.056, the Department
17 of Environmental Conservation may adopt regulations that prescribe reasonable fees,
18 and establish procedures for the collection of those fees, to cover the applicable direct
19 costs **and indirect costs as those terms are defined in AS 37.10.058**, not including
20 travel except in the case of a designated regulatory service, as that term is defined in
21 AS 37.10.058, of inspections, permit preparation and administration, plan review and
22 approval, and other services provided by the department relating to

23 (1) animals and animal products under AS 03.05; food, drugs, and
24 cosmetics under AS 17.20; and public accommodations and facilities under AS 18.35;

25 (2) certificates of inspection for motor vehicles under AS 46.14.400 or
26 46.14.510;

27 (3) drinking water systems under AS 46.03.720;

28 (4) water and wastewater operator training under AS 46.30;

29 (5) waste management and disposal authorizations under
30 AS 46.03.100;

31 (6) certification of laboratories conducting environmental analyses of

1 public drinking water systems or of oil or hazardous substances, or conducting other
2 analyses required by the department;

3 (7) certification of federal permits or authorizations under 33 U.S.C.
4 1341 (sec. 401, Clean Water Act);

5 (8) regulation of point source discharges of pollutants under the
6 program authorized by AS 46.03.020(12);

7 (9) regulation of pesticides and broadcast chemicals registered under
8 AS 46.03.320(a)(4), with a reasonable fee not to exceed \$120;

9 (10) licensing of pesticide applicators under AS 46.03.320(b), with a
10 reasonable fee not to exceed \$25.

11 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 **APPLICABILITY.** The changes made in secs. 1 - 8 of this Act apply to designated
14 regulatory services under AS 37.10.052 provided by the Department of Environmental
15 Conservation, the Department of Fish and Game, and the Department of Natural Resources
16 for designated regulatory services provided on or after the effective date of secs. 1 - 8 of this
17 Act regardless of whether the services were requested before or after the effective date of
18 secs. 1 - 8 of this Act.

19 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **TRANSITION: REGULATIONS.** The Department of Environmental Conservation
22 may adopt regulations necessary to implement the changes made by this Act. The regulations
23 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date
24 of the law implemented by the regulation.

25 * **Sec. 11.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).