

MINUTES
SENATE FINANCE COMMITTEE
April 23, 2001
9:12 AM

TAPES

SFC-01 # 82, Side A
SFC 01 # 82, Side B

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 9:12 AM.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Jerry Ward, Vice Chair
Senator Lyda Green
Senator Gary Wilken
Senator Alan Austerman
Senator Lyman Hoffman

Also Attending: LORETTA BROWN, staff to Senator Ward; GAIL FENUMIAI, Election Program Specialist, Division of Elections, Office of the Governor;

Attending via Teleconference: From Anchorage: WEV SHEA, Attorney; AL SUNDQUIST, President, Alaska Chapter of Americans United for the Separation of Church and State

SUMMARY INFORMATION

HB 81-DENTISTS/DENTAL HYGIENISTS & ASSISTANTS

The bill moved from Committee.

SJR 24-AMEND CONSTITUTIONAL BUDGET RESERVE FUND

The Committee heard from the sponsor and the bill moved from Committee.

SB 183-ATTY FEES:APPORTIONMT/PUBLIC INT.LITIGANT

The Committee heard from the sponsor and took public testimony. The

bill moved from Committee.

SB 187-ABSENTEE VOTING STATIONS

The Committee heard from the Committee and the Division of Elections. An amendment was considered and adopted. The bill moved from Committee.

#HB81

CS FOR HOUSE BILL NO. 81(FIN)

"An Act extending the termination date of the Board of Dental Examiners; relating to the Board of Dental Examiners and regulation of the practice of dentistry; and relating to dental hygienists and dental assistants."

This was the second hearing for this bill in the Senate Finance Committee.

Senator Wilken noted his concerns voiced at the previous hearing regarding temporary licenses. He stated that while there is a need for "an underserved population", determining the best way to address the issue within this bill would delay its passage. Therefore, he concluded he would work on separate legislation during the interim.

Senator Wilken offered a motion to move from Committee SCS CS HB 81 (FIN) with accompanying zero fiscal note from the Department of Community and Economic Development.

The bill MOVED from Committee without objection.

#SJR24

SENATE JOINT RESOLUTION NO. 24

Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund.

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Donley testified this resolution would reform the language governing the Constitutional Budget Reserve fund (CBR) in the Alaska Constitution (Article IX, Section 17). He stated that when the constitutional amendment creating this section was initially proposed, the intent was that the CBR could be accessed by a simple

majority vote of the legislature in years where the amount of general fund spending was not higher than the previous year's spending. However, in a series of rulings, he pointed out the court "misinterpreted the meaning of the language of 'all funds available' or 'unrestricted funds'". The resulting definition, he said, requires a three-quarters vote every time the CBR is accessed.

Co-Chair Donley opined, "This turned the intent of the amendment effectively on its head" and transformed it from a vehicle to restrain state spending into "a vehicle that actually promotes increased state spending." He explained any group of legislators constituting at least one-fourth of either the House of Representatives or the Senate could "force additional spending to occur" by refusing to vote for the CBR draw until their budget requests are included. He stated this reverses the original intent of the constitutional amendment approved by the voters.

Co-Chair Donley informed this resolution clarifies the language in the constitution to allow the provision to function as originally intended. He detailed that in years of spending higher than in the previous year, the three-quarters vote would be necessary to access the CBR.

Co-Chair Donley noted the "sweep provision" is removed from the constitution by this resolution. He defined the provision, saying that without a specific three-quarters vote, non-general funds, such as from the Marine Highway System and Aerospace development, are used to repay the CBR for previous withdrawals. He stated that this provision is "unpalatable" to those working in the state government as well as most Alaskans, who would be "injured" from reductions to the affected programs.

Co-Chair Donley summarized that the resolution corrects an "erroneous court interpretation of amounts available for appropriation language." He remarked this would help restrain the current practice of a small group of legislators forcing increased spending, resulting in a "more fiscally responsible system that reasonably allows access" to the CBR in those years the legislature "exercises fiscal discipline" and does not spend more than in the previous year.

Co-Chair Kelly asked for clarification of how this resolution addresses the sweep provision.

Co-Chair Donley answered the provision is removed from the constitution thereby eliminating the necessity of a three-quarter vote to prevent "the sweep."

Senator Austerman understood the current system requires a three-quarter vote to draw from the CBR. He cited language deleted from the constitution shown on page 2, lines 5 and 6 of the committee substitute, "less than the amount appropriated for the previous fiscal year, an appropriation may be made". He asked if the amount were higher than the previous year, would the three-quarter vote still be necessary.

Co-Chair Donley responded if the legislature adopts a budget that spends more than the amount of general funds available for that fiscal year, a three-quarters vote would be required in order to withdraw the remaining amount from the CBR.

Senator Austerman asked for the section in the resolution that addresses the three-quarter vote.

Co-Chair Donley referred to the existing language in the constitution.

AT EASE 9:20 AM / 9:25 AM

Co-Chair Kelly understood the resolution allows the legislature to draw from the CBR without a three-quarter vote if the general fund spending is no more than that of the previous year. He continued that if the spending were higher, a three-quarter vote would be necessary. He explained funds could be withdrawn from the CBR, without a three-quarter vote, to pay the difference between the amount of general funds available and the total spending from the previous year. He commented that this would eliminate "the dance that we go through down here" to secure necessary votes for the CBR draw.

Co-Chair Kelly opined the sweep provision is "probably the most threatening" aspect of the CBR language currently in the constitution.

Senator Olson spoke to concerns that in a few years, the CBR would be exhausted. He asked how this resolution guarantees cost savings or increases the longevity of the fund.

Co-Chair Donley noted the CBR had been expected to decline in the past few years, but that it actually has grown to a projected \$3 billion at the end of the current fiscal year. He agreed the fund is still projected to decrease in the upcoming several years and remarked this resolution would protect the CBR in multiple ways and would "reverse the whole presumption of access to the CBR." He reiterated the current system "forces more spending" and larger

withdrawals from the CBR because "certain elements in the legislature" "blackmail" the majority until their spending items are included in the budget. Under the proposed constitutional amendment, he continued, this practice could only occur during years of increased general fund spending. He read language from page 2, lines 7 through 12 of the committee substitute to demonstrate: "However, the amount transferred from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total funding equal to the amount of appropriations made for the previous fiscal year." He stated spending could "fill in the gap" from the previous year but that a three-quarters vote would be required for any additional spending. This, he stressed, would "hold down" withdrawals from the CBR thus making the fund last longer.

Senator Wilken asked for clarification that the withdrawal from the CBR would be automatic, provided the amount of spending was no greater than in the previous year.

Co-Chair Donley specified a majority vote is required to pass the budget and would serve as approval to withdraw funds from the CBR.

Senator Green expressed that she hoped this resolution would provide an incentive to spend less.

Co-Chair Donley affirmed it would be by preventing "a very small number of legislators to force higher spending" than in the previous year by "utilizing the courts' misinterpretation of the original intent of the CBR language."

Co-Chair Kelly emphasized, "the beauty of it is that we are able to fight over just the increases," which he said was the original intent of the constitutional amendment.

Senator Green referred to page 2, lines 12 through 14 of the committee substitute, "For purposes of applying this subsection, amounts available for appropriation or appropriated from federal funds, income of the permanent fund, or this budget reserve fund may not be considered." She asked if this should include retained earnings, such as from the Alaska Housing Finance Corporation or the Alaska Development and Export Authority as exclusions. She noted the court excluded these earnings in Hickle vs. Halford and was concerned whether the court would reverse itself if the items were left out of the resolution if it was adopted.

Co-Chair Kelly recalled that the matter of corporate receipts was discussed in relationship to the spending limit during a previous meeting. Because of this, he wanted to merge this resolution with

SJR 23, Constitutional Amendment: Appropriation Limit, but that there were title restraints preventing this.

Co-Chair Donley responded the issue is addressed in language on page 2 lines 14 and 15 of the committee substitute, "For the purposes of this subsection, 'unrestricted general fund' shall be defined by law." This he explained, "leaves it to the legislature to, by statute, have the flexibility to define that question." He reminded that the legislature had passed a law providing this definition after the constitutional amendment was first adopted in 1990. He stated this law was consistent with the original intent of the amendment however the court overturned it and "adopted their own interpretation of the definition" of unrestricted general funds.

Senator Hoffman posed a scenario of an initial appropriation that is no greater than that of the previous year's spending until supplemental funds are appropriated thus raising the total amount above the limit. He asked if the supplemental budget would require a three-quarter vote in this situation.

Co-Chair Donley surmised a three-quarter vote would be required to access those CBR funds because the spending occurs within the same fiscal year and exceeds that of the previous year. He noted if the original budget were low enough to allow for a supplemental appropriation, the three-quarter vote would not be required.

Co-Chair Kelly shared that he wished the resolution to continue.

Co-Chair Donley offered a motion to move SJR 24 from Committee with a zero fiscal note from the Office of the Governor, Division of Elections.

There was no objection and the bill MOVED from Committee.

#SB183

SENATE BILL NO. 183

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Donley shared that identical legislation had passed the Senate the previous legislature. He testified the legislation broadens Civil Rule 82 to include public interest litigants, with

special provisions added for more flexibility.

Co-Chair Donley told the Committee the Alaska courts have the authority to adopt rules that regulate how the courts operate. Civil Rule 82, he said, establishes that prevailing parties are compensated for their court costs and attorney fees in a lawsuit. He pointed out Alaska is the only state with such a provision, and that the federal government does not have such a provision either.

Co-Chair Donley detailed the provisions of Civil Rule 82, which establishes a percentage schedule for compensation. This schedule, he stated, is based upon the amount of paperwork involved and whether or not the case goes to trial. He noted that the full attorney fees are not provided under this rule, but again stressed that all other courts provide no compensation. He suggested prevailing parties "have other ways of making up that difference" between the amount compensated and the actual cost.

Co-Chair Donley remarked that the public policy is to fairly and fully compensate "people who are damaged," with recovery of attorney fees providing this compensation. He stressed the Civil Rules are adopted by the court rather than by a vote of the people or by elected representatives.

Co-Chair Donley continued that over time, the court adopted an additional public policy, based on court decisions called the Public Interest Litigants Doctrine. This policy, he said, indicates that when the court feels a party brought a lawsuit on a matter that the court considers to be in the public interest, the court could order compensation in an amount greater than what would be awarded under Civil Rule 82. He stated the reasoning is that public interest litigants were providing a public service by bringing a lawsuit in instances of misinterpretation of a law or a constitutional provision and that litigant should be "rewarded" by not having to pay for the cost of bringing forth the lawsuit.

Co-Chair Donley noted that the court ruled the calculated attorney fees should be "reasonable." He asserted this is because "some rather active groups", such as the "radical environmental community", have attorneys on staff earning \$20 to \$40 per hour on salary, and that the group, upon winning a case, presents an invoice claiming fees of \$200 per hour. He said this is because outside counsel would have charged the higher rate if the group chose that route in obtaining legal representation. As a result, he said, some courts try to control public interest litigant's fees so the compensation is no more than the actual cost of bringing the lawsuit. However, he asserted, other courts, including those in Alaska, "have been prone to award what it might have cost" if the

attorneys were in the private sector. This, he said has led public interest litigation to become "a growth industry for attorneys and for certain professional public interest litigant groups" because a profit is made off of the compensation system. He charged this is "undermining the whole public policy involved in the first place."

Co-Chair Donley continued that until the past few years, courts would apportion the attorney fees based only on those portions of the lawsuit where the plaintiff prevailed. He cited this as a mitigating factor against "abuses in this process." He gave a scenario of a lawsuit brought by a public interest litigant containing ten claims, of which nine were dismissed or defeated, and one prevailed. He explained in this instance the court would only award attorney fees and costs apportioned on the one prevailing claim.

Co-Chair Donley informed that this practice changed with the 1998 Supreme Court ruling on Dansereau vs. Ulmer in which the court ruled that damages would not be apportioned, but rather attorney fees would be awarded for all claims brought in a lawsuit whether they prevailed or not. He called this "a bizarre twist of legal analysis" that "escalated" the costs to the state by awarding compensation to the public interest litigants "astronomically". He alleged this has resulted in multiple baseless claims being added to a lawsuit containing one meritorious claim for the purpose of obtaining greater compensation. He compared this to a lottery since victory for one claim provides compensation for all of the claims. He asserted this is a "bonanza in the making" for lawyers and "radical special interest groups" and is a "terrible, terrible public policy call by the state Supreme Court." "It's just plain dumb. It encourages people to file frivolous claims or claims that aren't very meritorious," he stressed. This, he said, costs the state money both in defending against the unmeritorious claims and paying the public litigant interest to bring forth those same claims.

Co-Chair Donley remarked this is the reason for the Senate Finance Committee sponsoring this legislation to return the compensation procedure to that exercised prior to the Dansereau case. He explained the resolution dictates that attorney fees pertaining to public interest litigants are "generally" governed under Civil Rule 82.

Co-Chair Donley pointed out that while the court has decided that a prevailing public litigant is entitled to 100 percent compensation, a prevailing party who is the innocent victim of a violent crime only receives a portion of court fees incurred in bringing a lawsuit against the perpetrator of that crime, as stipulated under

Civil Rule 82. He asked, "Why in the world would a court ever do that? Why would you discriminate against innocent Alaskan victims of violent crimes in favor of special political interests, and to do so in such an unreasonable way."

Co-Chair Donley stated the answer is found in statements contained in the Dansereau decision indicating the court wants parties to bring public interest litigation to allow the court to "inject their legal views onto the system because they bemoan the fact that 'gosh if somebody doesn't bring a lawsuit, we don't get to say what we think is right.'" He continued, "It's the only logical possible reason a court would create such a bizarre legal interpretation and bizarre justification" for the disparity in compensation formulas.

Co-Chair Donley returned to explaining the resolution. He showed that it allows the court to award higher compensation of attorney fees in instances where the court finds the circumstances "exceptional". This, he surmised, adopts a public policy dictating, "We shouldn't discriminate in favor of special political interests to the expense of injured Alaskans and innocent victims." He noted the intent that the court should apportion compensation only for those claims the public interest litigant won, but that it could award compensation for claims lost, if the court finds exceptional circumstances.

Co-Chair Donley anticipated testimony that will allege apportioning compensation only to the prevailing claims in a lawsuit would be difficult and therefore should not be required of the court. He countered, "courts have been doing that [apportioning compensation] for a hundred years" and that Alaska courts have been doing this for the period between the inception of Rule 82 and the Dansereau ruling. He pointed out that the safety clause is added for those instances where the court is unable to discern costs of the prevailing claims from the non-prevailing claims.

Co-Chair Donley concluded, "the Dansereau case is simply indefensible from a public policy point of view, a basic fairness point of view, and from a fiscal responsibility point of view and needs to be overturned," which this legislation would do. He reiterated the Dansereau decision is "that terrible opinion by our Supreme Court that's an abrogation of law in the United States of America."

Co-Chair Kelly commented that Co-Chair Donley's explanation of this legislation was the best he has heard given for any legislation.

Co-Chair Kelly asked if the court, citing a case as "under exceptional circumstances," awards actual costs or if the court

could determine an arbitrary amount.

Co-Chair Donley replied the legislation stipulates Civil Rule 82 as the standard for determining compensation awards. He qualified that the courts "have allowed themselves to deviate from Rule 82 on their own also," and the courts would retain that flexibility under this resolution when it found justifiable circumstances. As an example, he noted that organizations with in-house attorneys and subsequent lower attorney costs could still be compensated in the amount that outside counsel would have cost.

Senator Wilken thanked Co-Chair Donley for explaining the legislation. He looked forward to hearing the other side of the argument, saying that Co-Chair Donley's was concise in his analysis.

Senator Wilken referenced a March 19, 2001 memorandum to Co-Chair Donley from his staff, Bill Church regarding Department of Law Public Interest Litigant Payments, [Copy on file] citing the average annual cost to the state for public interest litigation as \$468,234. He asked if this figure includes the Department of Law costs of defending the state against the lawsuits.

Co-Chair Donley replied it does not and explained that the figures shown in the memorandum are only for attorney fees and costs to the litigants as ordered by the court.

WEV SHEA, Attorney, testified via teleconference from Anchorage about practicing law in Alaska since 1977 and prior to that serving in the US Navy as a pilot for five years. He stated he is the attorney that Co-Chair Donley spoke of with regard to the Dansereau case. He took issue with Co-Chair Kelly remarks on the quality of explanation given for this resolution and Senator Wilken's commendation on the explanation of the law. Mr. Shea asserted that Co-Chair Donley is not a trial lawyer and is idealistic.

Mr. Shea explained Civil Rule 82 saying it normally awards a portion of attorney fees to the prevailing party in litigation but not costs, which are addressed in Civil Rule 79. He responded to Co-Chair Donley's statement that Alaska has the only courts in the country with such a rule and that the federal courts have no such rule. Mr. Shea informed that he served as US Attorney for the District of Alaska from 1990-1993 and that there are "numerous" federal rules that "not only award total attorney fees," but award damages in civil litigation as well.

Mr. Shea gave the history of the Dansereau lawsuit he brought on behalf of ten voters challenging the 1994 gubernatorial election.

He charged the practices in this election were "corrupt". He shared that current law requires legal challenges to an election must be brought forth within ten days of an election's certification. He spoke to the complexity of the suit, detailing the three components of the case, the first being inconsistencies at the polling places and in special voting locations, such as in Prudhoe Bay. The second component he recounted was the mailing to 10,000 Doyon Native Corporation shareholders offering a chance to win \$10,000 for those members who vote for Democratic Candidate Tony Knowles. He stated the Fairbanks Native Association, Tanana Chiefs Conference, and Doyon, Limited sponsored this contest. He related the third component regarding the North Slope Borough giving ten gallons of gasoline, worth \$27, to everyone in that borough who voted.

Mr. Shea told the Committee that when the Supreme Court ruled on this litigation, Justice Eastaugh, on behalf of the court determined that only the contest mailing cause of the three causes of action was viable. Therefore, he said, the plaintiffs only prevailed on one cause of action.

Co-Chair Kelly requested the witness speak to the legislation before the Committee.

Mr. Shea agreed he would do so after explaining the case in question as he deemed it pertains to the resolution.

Mr. Shea stated, "Contrary to Senator Donley, I know of no cases where, if the work is done by an attorney at 20 or 40 bucks an hour, and he submits that bill to the court, that the court somehow allows him to bill out at \$200 an hour. It just doesn't happen." He qualified that he works solely on litigation and that he is not trying to defend any lawyer who brings frivolous lawsuits but stressed that an election contest suit is expensive. He stated that he expended approximately \$250,000 worth of services and \$50,000 in costs to the aforementioned case over two and one-half years before the case was settled. He said this was because of the importance of the issue of an improper election.

Mr. Shea expressed there should be a lot of interest in challenging improper elections, although he surmised this bill is intended to address environmental concerns. He warned that this is "destroying the ability of the public to take action when the attorney general refuses to take action."

Mr. Shea pointed out that of the \$275,000 in costs and time he invested in the Dansereau case, he received only \$101,000 in compensation. He noted the Department of Law had ten to 14 attorneys and four paralegals working in defense of the lawsuit.

Mr. Shea remarked the Dansereau case resulted in a change in Alaska law making it "parallel" to federal law.

Mr. Shea challenged Co-Chair Donley's comparison of compensation for paraplegic patients and characterization of all public interest litigants as people only interested in getting money. Mr. Shea admitted this could be true and should therefore be focused on. He asked how it could be expected that attorneys would take on election challenges cases without the ability to recover "a high percentage of the fee."

Mr. Shea stated there is "strict criteria" used in determining a public interest litigant, stressing that if the attorney has a financial interest in the outcome of the lawsuit, that attorney does not qualify. He suggested this addresses Co-Chair Donley's concerns about the involvement of political action groups. He explained that any political group that brings an action does have an interest in the result, "monetary or otherwise".

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Mr. Shea asserted, "I am as conservative as anyone on this Committee." He did not understand what this legislation was "trying to attack" other than "environmental fundamentalists or radicals", but warned that in the process "a basic fairness issue" is risked.

Mr. Shea expressed that Co-Chair Donley's "attack" on the Alaska Supreme Court and Justice Eastaugh for writing the Dansereau decision is "bizarre and unprofessional as counsel."

Senator Leman asked how much of the expended \$275,000 attorney fees and costs the witness would have recovered under the proposed legislation.

Mr. Shea stated the existing scenario is what Co-Chair Donley referred to. He asserted, "I was the attorney in Dansereau and he was talking about how awful Dansereau was. Well, Senator Donley doesn't know the facts."

Co-Chair Kelly interjected to ask the witness to address the question.

Mr. Shea did not know the amount he would have recovered under the stipulation in the legislation to calculate compensation based on each claim in a lawsuit. He stated that it is difficult to divide

costs by the specific issues. He asserted that the majority of his focus addressed the Doyon Native Corporation's "vote for Tony Knowles, win \$1,000" mailing. He explained this was a priority because if affected 10,000 voters and "easily could have swung the election", which he reminded was won on 536 votes.

Mr. Shea compared this to the 2000 presidential election in Florida, noting the complexity of election-based litigation. He reiterated that challenges to an election must be filed within ten days of certification and this is not adequate time to create frivolous claims.

Co-Chair Kelly clarified that he did not hear Co-Chair Donley oppose the compensation outcome of the Dansereau case specifically, but rather the precedent it set for future cases.

Mr. Shea disagreed.

Senator Wilken referred to the witness' mention of Civil Rule 82 fees and costs and the methods other states employ to address this matter. Senator Wilken wanted to know if the witness found other methods that he could recommend as a model.

Mr. Shea did not know how other states handle public interest litigation. He cautioned, "you are in very difficult situation" explaining the courts have determined that a public interest litigant, in bringing an action, is essentially serving as a private attorney general. He again stressed the point that a public interest litigant could not have a financial interest in the outcome of that litigation. He remarked that Co-Chair Donley's comments focused on the assumption that the plaintiff has a financial interest in the result.

Mr. Shea expressed his experience that attorneys who bring a public interest suit do not do so to make money. He qualified that Co-Chair Donley could have greater knowledge than he of environmental groups that do have a vested interest in the outcome of the lawsuits they pursue.

Mr. Shea stated that he did not see the problem as one with public interest litigants bringing suit for profit. He said when he brought the election suit, he was not even aware that he could recoup fees. He suggested that if Co-Chair Donley did have such knowledge, as an attorney, he should bring the matter to the Alaska Bar Association.

AL SUNDQUIST, President, Alaska Chapter of Americans United for the Separation of Church and State, testified via teleconference from

Anchorage in opposition to the legislation. He explained the group's membership of thousands of churches and organizations across the county and its mission to support the establishment clause and the free exercise clause of the First Amendment of the United States Constitution. He qualified he has limited knowledge of the litigation process but that he opposed the placement of "economic obstacles to the use of the courts by Alaskan citizens."

Co-Chair Donley responded to Mr. Shea's testimony saying the witness misrepresented several things he had said. Co-Chair Donley agreed that the witness was correct that other specific statutes in both state and federal law address costs. He gave an example of a federal law that provides triple damages if someone cuts down a tree on another person's property.

Co-Chair Donley stated he was unaware that Mr. Shea was the attorney in the Dansereau case. Co-Chair Donley considered the claim that the plaintiff had only ten days to file a lawsuit challenging the 1994 election, could be considered exceptional circumstances, which this legislation provides special allowances. However, he did not think the precedent set forth should have become the public policy for all public interest litigant lawsuits.

Co-Chair Donley disagreed that there is a strict criteria for determining a public interest litigant. He pointed out the court found the Anchorage Daily News to be a public interest litigant in one case. He remarked the "problem has become so bad" in federal courts that the US Congress banned interest groups that receive federal funding, from collecting attorney fees under the public interest litigant doctrine. He noted this might have been recently overturned by the court, but stressed the perception of the situation was such that Congress did take action.

Co-Chair Donley stated Mr. Shea might not be aware of the problem but that he has studied the Department of Law budget and the number of court-ordered compensations by the state to political interest groups. He assessed this to be a major budget item.

Co-Chair Donley gave examples of public interest litigant cases in which the state was ordered to pay attorney fees, such as a suit challenging campaign finance reform. He shared that he agreed with the litigants in this case and disagreed with the Supreme Court ruling against the plaintiff on all but one point. However, he did not agree that the plaintiff should have been subsequently awarded full compensation on all attorney fees.

Co-Chair Kelly was concerned with the use of the courts for setting public policy. He expressed, "They have ruled in such a manner that

they think they are one of the arms of government to mold public policy and to create public policy rather than to just decide on it." He spoke of the lack of public participation in this method. He surmised there is "disdain in the courts for the legislative process."

Senator Olson asked Co-Chair Donley the Supreme Court vote on the Dansereau case and whether the decision was unanimous.

Co-Chair Donley was unsure and said he would provide that information.

Co-Chair Kelly asked how this legislation differs from the legislation from the previous session.

Co-Chair Donley answered it is identical.

Co-Chair Kelly reminded that all members, with the exception of Senator Olson, had heard this bill the previous session either in a committee hearing, or on the Senate floor.

Co-Chair Donley reiterated the importance of the "safety valve" giving the court discretion in exceptional circumstances.

Senator Ward offered a motion to move SB 183 from Committee with a Department of Law zero fiscal note.

The bill MOVED from Committee without objection.

#SB187

CS FOR SENATE BILL NO. 187(STA)

"An Act relating to absentee and special needs voting."

This was the first hearing for this bill in the Senate Finance Committee.

LORETTA BROWN, staff to Senator Ward, read the sponsor statement into the record as follows.

This legislation will require the director of elections to notify the voting public of all "absentee in person voting" locations at least 60 days prior to an election. It will also provide a uniform statewide opening date for absentee in person voting. Currently the location and opening periods for absentee voting stations is at the discretion of the director of the division of elections and requires no public notice.

This has led to some inconsistencies in opening dates and voting locations.

SB 187 requires that the director of the division of elections provide full public notice of the location of all absentee voting stations at least 60 days prior to each election. No new absentee voting stations sights may be added or opened after the 60-day notification period.

Absentee voting stations will be operated on or after the 15th day before a primary, general, or special election. Qualified voter may apply in person for an absentee ballot at the absentee voting station on or after the 15th day before an election up to and including the date of the election. Absentee voting stations can not be opened early.

Having a uniform state wide opening date and prior notification of all absentee voting in person locations will make for less confusion for the voters and a more even playing field for all concerned.

Amendment #1: This amendment changes the number of days required for notification of absentee voting station locations from 30 days to 45 days before each election.

Senator Ward moved for adoption.

Co-Chair Kelly objected for an explanation.

Senator Ward noted the Senate State Affairs Committee had changed the requirement from the originally proposed 60 days, to 30 days and this amendment would be a compromise.

Senator Ward spoke to the legislation itself. He shared that during the previous legislative election, he became aware of "unexplained radio and television advertisements" sponsored by his opposing candidate and candidates in other races. He then learned that absentee voting would begin at the Dimond Center sooner than originally scheduled. He noted the Division of Elections spent \$35,000 advertising the earlier opening. Speaking on behalf of himself and other candidates, who were now sitting on the Committee, he expressed, "This caught some of us flat footed." He questioned how the opposing candidates learned of the earlier opening sooner than he and other Republican candidates did.

Senator Ward remarked the reason for this legislation is to set the opening dates into law rather than at the discretion of the lieutenant governor and the director of the Division of Elections. He asserted that the process is already established in statute, but commented, "They violated that law."

Senator Ward stated that while 30 days is not adequate for notification purposes, 45 days is ample time for candidates to relay to voters when and where absentee voting is available.

Co-Chair Kelly removed his objection and the amendment was ADOPTED.

Senator Ward noted neither the Division of Elections nor the Administration opposed this legislation, to his understanding. He stated this legislation is "clean up language to put into writing what we all thought the rules were."

GAIL FENUMIAI, Election Program Specialist, Division of Elections, Office of the Governor, agreed that the division does not oppose the legislation. She clarified that the absentee voting stations for the 2000 general election were opened one week prior to the 15 days originally announced, or 22 days prior to Election Day. She stated this was done under statutory authority to open those voting locations early if the ballots are available and ready for distribution. She noted this was an unusual circumstance. She told of voters coming into the regional elections offices asking for ballots, citing travel plans and other reasons they would be unable to wait until the posted opening date. She stressed all political parties were notified by telephone of the earlier opening and that the division advertises the beginning of absentee voting in every election as part of normal procedures.

Senator Ward offered a motion to move from Committee, CS SB 187 (STA), with accompanying zero fiscal note from the Office of the Governor.

There was no objection and the bill MOVED from Committee.

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ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 10:31 AM