

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/3/03

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

4 *** Section 1.** AS 09.60.010 is amended to read:

5 **Sec. 09.60.010. Costs and attorney fees allowed prevailing party.** The
6 supreme court shall determine by rule or order the costs, if any, that may be allowed a
7 prevailing party in a civil action. Unless specifically authorized by statute or by
8 agreement between the parties, attorney fees may not be awarded to a party in a civil
9 action for personal injury, death, or property damage related to or arising out of fault,
10 as defined in AS 09.17.900, unless the civil action is contested without trial, or fully
11 contested as determined by the court. **In a civil action contesting a decision of the**
12 **Department of Environmental Conservation, the Department of Fish and Game,**
13 **or the Department of Natural Resources making a coastal consistency**
14 **determination, adopting regulations, or for which there was an opportunity for**

1 the public to comment to the agency before the final agency decision and to seek
 2 administrative review before the agency following the initial agency decision,
 3 attorney's fees may only be awarded to or against a public interest litigant as
 4 provided in Rule 82(g), Alaska Rules of Civil Procedure, on the effective date of
 5 this Act.

6 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 7 read:

8 DIRECT COURT RULE AMENDMENT. Rule 82(b), Alaska Rules of Civil
 9 Procedure, is amended by adding a new paragraph to read:

10 (5) If the court chooses to vary an award of attorney's fees under (b)(3)
 11 of this rule by increasing the award beyond the amounts provided in (b)(1) or (2) of
 12 this rule, then the court shall apportion the attorney's fees by issue and may only award
 13 the increased fees for an issue the party prevailed upon unless the court finds
 14 exceptional circumstances to be present that require an increased award of fees
 15 without apportionment by issue.

16 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 82, Alaska Rules of Civil Procedure,
 19 is amended by adding a new subsection to read:

20 (g) **Attorney's Fees for Public Interest Litigants.** In a civil action
 21 contesting a decision of the Department of Environmental Conservation, the
 22 Department of Fish and Game, or the Department of Natural Resources making a
 23 coastal consistency determination, adopting regulations, or for which there was an
 24 opportunity for the public to comment to the agency before the final agency decision
 25 and to seek administrative review before the agency following the initial agency
 26 decision, attorney's fees may only be awarded to or against a public interest litigant in
 27 the same manner as attorney's fees may be awarded to or against a non-public interest
 28 litigant under (b) of this rule.

29 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 **CONDITIONAL EFFECT.** Section 1 of this Act takes effect only if secs. 2 and 3 of this Act

- 1 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
- 2 the State of Alaska.