

HOUSE FINANCE COMMITTEE  
May 09, 2003  
2:10 PM

TAPE HFC 03 - 86, Side A  
TAPE HFC 03 - 86, Side B  
TAPE HFC 03 - 87, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:10 PM.

MEMBERS PRESENT

Representative John Harris, Co-Chair  
Representative Bill Williams, Co-Chair  
Representative Kevin Meyer, Vice-Chair  
Representative Ethan Berkowitz  
Representative Mike Chenault  
Representative Richard Foster  
Representative Mike Hawker  
Representative Beth Kerttula  
Representative Carl Moses  
Representative Bill Stoltze  
Representative Jim Whitaker

MEMBERS ABSENT

Representative Eric Croft  
Representative Reggie Joule

ALSO PRESENT

Senator Gene Therriault; Representative Nancy Dahlstrom; Representative Vic Kohring; Gary Carlson, Marathon Oil; John Greely, Staff, Representative Reggie Joule; Ben Brown, Alaska State Chamber of Commerce; Rex Shattuck, Staff, Representative Nancy Dahlstrom; Zach Warmwick, Staff, Senator Gene Therriault; Ben Brown, Alaska State Chamber of Commerce; Robert Briggs, Staff Attorney, Disability Law Center, Juneau.

PRESENT VIA TELECONFERENCE

Mark Meyers, Director, Division of Oil and Gas, Department of Natural Resources; Chris Kennedy, Assistant Attorney General, Department of Law; Eugene Rutland, Mechanical Contractors, Fairbanks; Colin Maynard, APDC, Anchorage; Tadd Owens, Resource Development; Dorin Hawxhurst, Anchorage; Steve Borrell, Alaska Miners Association, Anchorage; Karl Hanneman, Fairbanks Chamber of Commerce, Fairbanks; Chris Kennedy, Assistant Attorney General, Department of Law.

SUMMARY

HB 145 "An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

CS HB 145 (FIN) was heard and HELD in Committee for further consideration.

HB 269 "An Act establishing the Safety Code Task Force; and providing for an effective date."

CSHB 269 (FIN) was REPORTED out of Committee with individual recommendations and three zero fiscal notes: #1 from Department of Community and Economic Development, and two new zero fiscal notes, one from the Department of the Legislature and one from the Department of Public Safety.

HCR 5 Establishing a task force to make recommendations regarding a new design for the official seal of the State of Alaska.

CS HCR 5 (FIN) was REPORTED out of Committee with a "do pass" recommendation and one, amended fiscal note from the Department of Legislature.

#hcr5

HOUSE CONCURRENT RESOLUTION NO. 5

Establishing a task force to make recommendations regarding a new design for the official seal of the State of Alaska.

JOHN GREELY, STAFF, REPRESENTATIVE REGGIE JOULE provided information on the bill. He explained that the oldest symbol in the state of Alaska was the official seal, created in 1910, before the state legislature was in existence. He referred to written testimony written by Representative Joule, outlining the history of the seal's creation and its symbolism. He noted that twelve other sponsors, along with Representative Joule, sponsored the bill. A task force would be formed to create a new design, which would ultimately be voted upon by the legislature. He pointed out that this was the second seal of the state of Alaska, the first one included native and natural symbols, which was then supplanted by the one created in 1910. He discussed cities and industries that are part of modern Alaska and not included in the seal. He pointed out that Governor Clark had dropped Alaska Natives from the seal in 1910. He suggested that the seal provided a learning opportunity for people of all ages, as well as symbolizing our dream for the future of the state of Alaska.

Co-Chair Williams noted discussions regarding seeking funding for the \$52 thousand fiscal note. Mr. Greely noted that Representative Joule had contacted a number of businesses to seek financial contributions for the cost of a task force, and noted that they had received good feedback. He pointed out that investors were hesitant until the wishes of the legislature are known. He explained that the task force would be a body of the legislature, although administered by the Office of the Lieutenant Governor. The task force includes members of the Alaska Historical Commission, as the Lieutenant Governor is the Chairman of this Commission. He concluded that the cost of the process might be offset, but maintained that the legislature should demonstrate their commitment to the project.

Representative Berkowitz referred to the Alaska Humanities Forum and asked why they were no longer included. Mr. Greely noted that the Forum had asked to be excused from the actual task force due to other commitments, but offered ideas for grants to support the project.

Co-Chair Harris observed that the task force included two members from the Department of Education and Early Development. Mr. Greely confirmed, in addition to two from the Alaska Historical Commission and two from the Alaska Heritage Center, there would be two from DEED. He explained that the Department of Education and Early Development would be brought into the process due to its potential benefit to school children. He pointed out the opportunity to involve children in the process, and to educate them on Alaska's history. He suggested a web site that children could access and submit their ideas. They believe the educational process is a vital component.

Co-Chair Harris asked if the Pioneers of Alaska could take the two positions vacated by the Humanities Forum. Mr. Greely responded that this was a possibility if they were interested in participating.

Representative Chenault pointed out an inconsistency in the language of the fiscal note, referring to the number of members on the task force. Mr. Greely explained that the task force had six members, without the two positions from the Humanities Forum.

Co-Chair Williams suggested that seeking sponsorship might lower the fiscal note, while the state should retain some responsibility. Co-Chair Harris observed that some of the fiscal note pertained to staff and travel. He suggested that they change the Range 21 position to Range 18, and change the term to three months.

Co-Chair Williams noted that in discussions with Representative Joule, the Sponsor had stated he'd like to

achieve the entire \$52 thousand. Mr. Greely acknowledged that lowering the fiscal note would set a parameter, and that \$33 thousand might be achievable.

Representative Hawker expressed his respect for the Sponsor and intention of the bill. He also noted his concern over adding even a small expenditure in a time when services were being cut. He suggested that finding an alternate funding mechanism would increase his support of the bill. He suggested that since it was an opportunity to recognize the Native community, regional corporations might be approached for funding.

Mr. Greely confirmed that a major Native corporation expressed an interest in helping, and the First Alaskans Institute had committed help. The question is how much and when. He suggested that if the legislature approved the project with a minimum start up funding, it could more easily garner private funds.

Co-Chair Williams reiterated that the fiscal note might read \$33 thousand in general funds, and then specify "other funds" to meet the total. Mr. Greely noted that in order to pass the bill, Legislative Council staff time was added over and above the budget.

Co-Chair Harris recommended that in order to acknowledge private funding the fiscal note be reconfigured.

Co-Chair Williams stated he'd like to lower the general fund commitment to \$33 thousand, with \$20 thousand of "other funding", and work with the Department to adjust the fiscal note accordingly before taking action on the bill.

Representative Berkowitz MOVED to Amend the bill to delete the Alaska Humanities Forum. There being NO OBJECTION, the Amendment was ADOPTED.

Co-Chair Harris MOVED to Amend to add One Position for the Pioneers of Alaska to the task force. There being NO OBJECTION, the Amendment PASSED.

Representative Foster MOVED to report CS HCR 5 (FIN) out of Committee with the accompanying AMENDED CONCEPTUAL fiscal note.

There being NO OBJECTION, it was so ordered.

CS HCR 5 (FIN) was REPORTED out of Committee with a "do pass" recommendation and one, amended fiscal note from the Department of Legislature.

#hb269

HOUSE BILL NO. 269

"An Act establishing the Safety Code Task Force; and providing for an effective date."

REPRESENTATIVE NANCY DAHLSTROM, SPONSOR provided information about the bill. She read from the sponsor statement as follows:

There are five primary safety codes dealing with construction in Alaska, all of which are under the jurisdiction of two different Departments. The Fire, Building and Mechanical Codes are under the jurisdiction of the Fire Marshall at the Department of Public Safety. The Plumbing and Electrical Codes are governed by the Department of Labor. Each department is responsible for adopting a family of codes that bring uniformity and consistency to the construction industry. However, the current delegation of authority to the respective departments has caused a set of conflicts and discrepancies.

The mission of the Safety Code Task Force is to suggest options for consolidation of our code administration function. The Task Force will be charged with presenting recommendations to the legislature by the first day of the Second Regular Session of the Twenty-Third Alaska State Legislature.

The Safety Code Task force will consist of 9 members representing parties affected by the adoption of Safety Codes in the state. The makeup of the task force is as follows:

- A Senator (Co-Chair) appointed by the Senate President,
- A Representative (Co-Chair) appointed by the Speaker of the House
- A member of administration appointed by the Governor

The following members are to be appointed jointly by the Senate President and the Speaker of the House:

- Representative of the construction design community
- Representative of the construction engineering community
- Representative for general contractors
- Representative for mechanical contractors
- Representative for electrical contractors
- Representative for plumbing contractors

Additionally, the Governor will appoint an advisory panel. The makeup of the panel will include individuals from industry, organizations, and

Government. The purpose of this group is to advise the Task Force on the effect of any changes in code to their respective community.

Representative Dahlstrom pointed out that the advisory panel would include representation from various state agencies. She maintained that it was her intention to represent a broad coalition.

Representative Foster observed that the representatives on the task force did not include someone from the Bush area. He explained that this area had different needs and timeframes than urban areas. Representative Dahlstrom maintained that the task force would be charged with developing the uniform codes, and not actually performing the inspections. Representative Foster reiterated that the codes needed to be adapted for the entire state. Co-Chair Williams maintained that the task force would address the kinds of problems raised by Representative Foster.

ZACH WARWICK, STAFF, SENATOR GENE THERIAULT, stated that an intention for the Task Force was achieving consistent code requirements. He noted that the transition from the uniform to the international code was not yet completed. He pointed out that statute specified that an inspector must be trained in the uniform code, yet contractors are being told to operate under international code. He noted that there were a variety of problems regarding administering codes in statute and that a goal for the task force was to devise a working document to address those problems.

Representative Berkowitz asked if, given existing statutory confusion, the Task Force would then identify the points of inconsistency in statute and communicate this with the legislature. Mr. Warwick confirmed that this was one of the three goals, in addition to suggesting a set of common codes to adopt, and a method for administering them. Representative Berkowitz suggested that legal research was needed rather than a task force and that this might reduce the cost of the project. Mr. Warwick speculated that the statutory conflicts were so extensive as to require legal advice.

Representative Stoltze voiced concern with cost issues. He observed that many of the representatives had existing state travel budgets, and that others have financial interest in a solution. He suggested that private citizens be asked to pay for their own expenses to participate, rather than be subsidized by the legislature.

Co-Chair Williams noted that Co-Chair Harris was reviewing the fiscal notes for possible revisions.

Representative Hawker asked whether this was an essential service and a way to recover the investment. Representative Dahlstrom stated that she would entertain an amendment to the fiscal note allowing those parties to finance their own travel costs.

Vice-Chair Meyer asked if Section (h), page 3, would need to be amended, if the fiscal note were changed to zero, since it states that task force members were entitled to per diem and travel expenses.

Representative Kerttula noted that some of the municipalities believe that there should be municipal members on the task force, in particular a fire prevention official. She asked if this might be acceptable.

Representative Dahlstrom noted that there had been discussion on that concern and that it would be acceptable. The fire official would need to be specified as a fire code official. She also noted that having a municipal building inspector would be a good addition.

Co-Chair Harris commented that under the advisory panel there were a number of individuals, including fire code and building inspectors, who would suggest recommendations. He noted that he had carried this bill during other legislatures, and observed that it was a difficult task to resolve. He pointed out that both Anchorage and Fairbanks had voted to accept particular codes, and emphasized the confusion over how to implement the various codes.

Representative Stoltze referred to Title 29 and asked whether the term "municipal" was too restricting, preventing smaller areas from using this tool. He recommended using the term "local" government instead.

Representative Dahlstrom commented that representation from around the State was vital, and concurred that the term "municipality" might be restrictive.

HB 269 was HEARD and HELD for further consideration.

#hb145

HOUSE BILL NO. 145

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

SENATOR GENE THERRIault, SPONSOR discussed the changes contained in the Committee Substitute. He noted that his staff worked to change language in response to testimony heard in the Senate Resources Committee. The testimony indicated that in some cases, the reforms suggested by the bill were too broad. The Committee Substitute effectively

nullifies current doctrine, and recreates it in statute in areas supported by public testimony.

Co-Chair Harris MOVED to ADOPT Committee Substitute 23-GH1064\H, Luckhaupt, 5/8/03 as the version of the bill before the Committee. Representative Berkowitz OBJECTED for the purpose of discussion.

Senator Therriault referred to Section 1, pertaining to Alaska court cases, which had lead to the establishment of a doctrine. He noted that Section 2, (b) amends the language, not allowing the court to discriminate in the awarding of attorney fees "except as otherwise provided by statute". Subsection (c) allows for some differentiation to be made, allowing the doctrine to remain in force, in cases "concerning the establishment, protection, or enforcement of a right under the United State Constitution or the Constitution of the state of Alaska". He explained that Subsections (d) and (e) outline the award process.

Senator Therriault added that Section 3 (c) clarified that litigants may not be excused for stays or interlocutory relief. He observed that the language in Subsection (h) clearly delineated what issue can and cannot be placed in public interest litigant status. He noted that public interest doctrine was not listed anywhere in adopted, printed court rulings. He stated that the Administration supports the language changes.

Representative Berkowitz emphasized that the new Committee Substitute had been brought forward late [in the legislative session] and wondered why there had not been prior notice, since the new version contained such substantive changes. Senator Therriault responded that the work had been finalized in the early morning hours and that time was limited.

Representative Berkowitz WITHDREW his OBJECTION. There being NO OBJECTION, Committee Substitute 23-GH1064\H, Luckhaupt, 5/8/03, was ADOPTED.

Co-Chair Harris asked if a public interest litigant would liable for the legal fees on both sides of the case should they lose a case. Senator Therriault observed that currently litigants could enter suit in the hope that even a portion of the suit would be found valid, and have the potential of having attorneys fees paid. He maintained that there was no "down side". He asserted that people use the court system as a potential means of raising revenue. He stated that other types of cases bore other risks.

Representative Berkowitz referred to legislative research on public interest litigation in Alaska. He emphasized that there was no personal gain to be arrived at by a public

interest litigant. He asked for the Sponsor's definition of public interest litigant. Senator Therriault responded that it was a class of litigants recognized by the court as receiving special provisions that provide for the possibility of having attorney fees covered if the case is successful.

Representative Berkowitz observed that in order to achieve that status, a litigant must satisfy certain requirements. Senator Therriault noted that the bill proposed to restrict those criteria to constitutional issues.

Representative Kerttula asked for clarification on which cases would no longer be considered public interest litigation. Senator Therriault observed that any cases involving the denial of due process could apply for and receive public interest litigant status, since this was a constitutional right. In response to a question by Representative Kerttula, Senator Therriault explained that cases that made no constitutional claim could no longer be considered for public interest litigant status.

Representative Berkowitz asked about the types of cases that would be disallowed. Senator Therriault stated that a list of specific cases had not been compiled.

**TAPE HFC 03 - 86, Side B**

Representative Berkowitz asked for a list of the kinds of cases that might be included or disallowed under the bill.

CS HB 145 (FIN) was heard and HELD in Committee for further consideration.

#hb269

HOUSE BILL NO. 269

"An Act establishing the Safety Code Task Force; and providing for an effective date."

EUGENE RUTLAND, MECHANICAL CONTRACTORS, FAIRBANKS, testified via teleconference in support of the bill. He maintained that regulations needed to be reviewed and revised. He suggested that the task force would ensure that recommendations and the code adoption process would have the broad support of the construction community.

COLIN MAYNARD, APDC, ANCHORAGE, testified via teleconference in support of the bill. He reviewed the history of the current national building codes, which were written in 1991 and resulted in a uniform code. He noted that in 2000, international codes were adopted. He pointed out that the mechanical contractors organization jointly wrote the uniform mechanical code, and continue to write this code. In 2000, the state fire marshal adopted the building fire

mechanical code. The mechanical contractors would prefer to have the uniform mechanical code written by their organization and have been trying to overturn the fire marshal's decision. They have joined forces with the national fire protection association to write a building code to compete with the international codes, for a total of two national codes. He concluded that the reason for the task force was to examine these two codes and decide which aspects are most appropriate for the state of Alaska. He noted that Anchorage and Fairbanks adopted the same code to align with the state of Alaska. He pointed out that the makeup of the task force had changed from what had been recommended. He maintained that not having a building official on the task force did not provide enough compliance information, since contractors did not have the oversight of the code.

Co-Chair Harris asked if there needed to be a municipal official or if it could simply be a licensed inspector. Mr. Maynard maintained that an inspector would not provide the needed perspective. He contended that a municipal building official was needed.

Co-Chair Harris asked if these officials would have a bias. Mr. Maynard conceded that this might be the case.

ZACH WARMWICK, STAFF, SENATOR GENE THERRIAULT, noted that municipal building inspectors were part of the body that created the international code. He noted that the six member task force would be appointed by the Senate President and the Speaker of the House, and pointed out that the effort was to create a task force which was as non biased as possible.

Representative Kerttula observed that if there were only eight people in the state that filled the criteria for being a municipal building inspector, and asked if it could be differently termed, since some areas were not municipalities. Mr. Maynard pointed out that only eight areas performed the planning that designated a building official. He noted that smaller areas were under the jurisdiction of the state fire marshal's office.

Public Testimony concluded.

Representative Kerttula MOVED Amendment #1.

Page 1, after line 6:  
Delete "nine"  
Insert "eleven"

Page 2, line 3:  
Delete "and"

Page 2, line 4:  
Delete "."  
Insert ", "

Page 2, after line 4:  
Insert "(G) a municipal building official; and  
(H) a municipal fire prevention official."

Page 2, lines 18 & 19:  
Delete all text

Co-Chair Harris OBJECTED.

Representative Kerttula MOVED TO AMEND the language: change "municipal" to "local".

Co-Chair Harris OBJECTED, and MOVED to Amend the AMENDMENT to read "local building inspector" and "local fire code official".

Representative Kerttula agreed that this language might be more specific.

Vice-Chair Meyer questioned whether or not to enlarge the task force. Representative Dahlstrom confirmed that they originally included this number and stated that she would like the list to remain the same.

Representative Stoltze raised concern about the restrictive nature of the language in the amendment. Co-Chair Harris pointed out that he was not in favor of the amendment.

Representative Kerttula disagreed with Co-Chair Harris amendment to the amendment regarding "local building inspector", based on earlier testimony.

Co-Chair Harris WITHDREW "local building inspector" from his amendment to the amendment.

Co-Chair Williams OBJECTED to Amendment #1, as amended.

Representative Whitaker expressed support for the amendment. He referenced his experience on the Fairbanks City Council. He noted it was cumbersome not to have significant cooperation between two sides of an issue. He expressed concern that future problems would occur by not including all parties on the task force.

Representative Kerttula acknowledged that it would be helpful to involve building officials in the process.

Representative Dahlstrom reiterated that it was her preference to keep the original wording in the bill. She stated, however, that they could work with the amendment.

Co-Chair Williams spoke about his experience with the Fish Task Force, and noted that eleven members was a large task force.

Representative Whitaker proposed that the question was not the number of members, but who was included. He maintained that the building officials were the ones who would have to implement the results of the task force ultimately. He suggested that membership might be restricted to nine if they included the building officials.

Co-Chair Williams asked where one might remove two members. Co-Chair Harris suggested that the list would be overbalanced. He noted that an official who had legal authority would offset the balance of the task force. He pointed out that the task force was not creating statute, but proposing solutions. He noted that the legislature would ultimately create the law, advised by the task force.

Representative Stoltze proposed that the amendment be withdrawn since it had been amended extensively. He suggested that another amendment be created.

There being NO OBJECTION, to the amendment to the amendment it was so ordered. A roll call vote was taken on the motion to adopt the amendment as adopted.

IN FAVOR: Berkowitz; Moses; Whitaker; Kerttula  
OPPOSED: Hawker; Meyer; Stoltze; Chenault; Foster;  
Williams; Harris

The MOTION FAILED (4-8).

Co-Chair Harris referred to the three fiscal notes. Co-Chair Harris MOVED to zero out Fiscal Note #3 from the Department of Public Safety. He also MOVED that language allowing funding for task force travel and per diem be AMENDED on Page 3, lines 11-13. There being NO OBJECTION, it was so ordered.

Representative Foster MOVED to report CS HB 269 (FIN) out of Committee with the accompanying amended fiscal notes.

Representative Berkowitz asked whether it was necessary to point out that members of the task force were not eligible for compensation. After some discussion, it was clarified that it was not necessary to delete the section previously referenced.

Co-Chair Harris clarified his AMENDMENT on the bill to only remove the language "but are entitled to per diem and travel . . . .AS.39.20.180".

After further discussion from Representative Meyer regarding state compensation, Co-Chair Harris once again MOVED to delete lines 11 to 13 on page 3. There being NO OBJECTION, it was so ordered.

Representative Foster MOVED to report CSHB 269 (FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 269 (FIN) was REPORTED out of Committee with individual recommendations and three zero fiscal notes: #1 from Department of Community and Economic Development, and two new fiscal notes, one from the Legislature and one from the Department of Public Safety.

#hb145

HOUSE BILL NO. 145

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

TADD OWENS, RESOURCE DEVELOPMENT COUNCIL, testified via teleconference in support of the bill. He explained that his group is a non-profit trade association representing individuals and companies from the oil and gas, timber, mining, tourism and fisheries industries. He pointed out that Alaska must provide a business environment that encourages investment and suggested that the bill addressed the risk associated with potential litigation against companies. He maintained that Alaska did not currently provide a level playing field in this area as compared to other states. He suggested that the bill prevents discrimination in awarding fees, and prevents courts from waiving the bond requirements when an individual seeks to stop a development project. He noted that the bill still supports public interest litigation in constitutional matters.

Representative Berkowitz cited changing circumstances as the reason for enacting lasting court rules. He suggested that the ability to change rules was actually more supportive of development, and asked if the bill inhibits the ability of groups to try to change public rules. Mr. Owens maintained that the legislation does not amend a court rule, and suggested that the legislature was the proper place to enact public policy changes.

Representative Berkowitz proposed that the true problem from the private perspective was the prohibitive costs of delays in litigation. He asked if expedited hearings might better serve both parties. Mr. Owens concurred that there may be additional ways to continue reform of the process, but

reiterated that the legislation drew what they viewed as appropriate distinctions.

Representative Berkowitz persisted that it was the delays resulting from court cases that were prohibitive. He reiterated that the best approach was an expedited hearing process. Mr. Owens observed that the bill did not prevent litigants from bringing suits, but only changed the economic circumstances and possibility of state support.

DORIN HAWXHURST, ANCHORAGE testified via teleconference in opposition to the bill. She described a situation that occurred during her experience with Cordova District Fisherman United (CDFU), during which she participated with public interest litigants in the Prince Williams Sound Tanker Plan appeal. She stated that the issue was whether the Department of Environmental Conservation had implemented the law that the legislature enacted after the Exxon Valdez oil spill. She noted that the law required oil shippers to have additional equipment to ensure that oil spills like the Exxon Valdez spill would not occur again. She maintained that CDFU entered the process since the Department of Environmental Conservation ignored HB 567 under pressure from the oil shippers. She discussed the difficult nature of these proceedings, and noted that the administrative appeal was prohibitively expensive to continue. She stated that the city of Cordova could no longer participate in what they termed "an unbearably expensive process", and that later the Department of Environmental Conservation held hearings that were heavily attended by fishers. She urged the Committee to closely examine the case as a reason to continue public litigant proceedings in the state of Alaska. She explained that the individuals who brought these litigations could not afford lengthy legal processes. She asked the Committee not to pass the bill in protection of individuals.

**TAPE HFC 03 - 87, Side A**

STEVE BORRELL, ALASKA MINERS ASSOCIATION, ANCHORAGE testified in support of the bill. He stated that the bill provided needed streamlining of the permitting process. He maintained that it was essential to ensure that when permits were issued, there was no longer a financial incentive for third parties to challenge permits.

Representative Berkowitz asked how much attention had been given to find a way to expedite the process in order to cut costs incurred while waiting for disputes to be resolved. Mr. Borrell maintained that Alaska had a reputation as a bad place to do business and suggested that this legislation made the state more attractive to investors.

Representative Berkowitz contended that private suit litigation was not really the culprit in discouraging

business, but rather the length of the hearing process. He suggested that the best thing to attract business to Alaska was to streamline the litigation process.

KARL HANNEMAN, FAIRBANKS CHAMBER OF COMMERCE, FAIRBANKS testified via teleconference in support of the bill. He noted that many organizations had helped craft the language of the bill. He pointed out that the language was supported by the Administration. He noted the significance of the legislation to the Northern Interior, where projects had been delayed due to litigation, affecting the overall economy of Fairbanks.

CHRIS KENNEDY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW testified via teleconference and provided information about the bill. He explained that the current Committee Substitute was an integral part of the Governor's legislative package to streamline the permitting process for resource development. He noted that it limits the application of a court doctrine in areas where it has encouraged exceptive and speculative litigation. He stated that the bill addressed public interest litigants, as defined by the Supreme Court, as one who: 1) defined public policy; 2) effect numerous people; 3) could only be brought by a private party; and 4) could not be a self appointed public advocate. He pointed out that currently litigants could have their attorney's fees paid even if they lost their case, if the changes they advocate are adopted by some other means. He maintained that a public interest law firm could make money if they won and gave such an example. He contended that the current statute provided an unintended subsidy for public interest litigants. He stated that those seeking to challenge or obstruct tort development were different from ordinary litigants, since they have an incentive to take the chance on doubtful claims as the downside risk is removed and the potential reward enhanced.

Mr. Kennedy gave an example of misuse of public interest litigation in a five-year suit against the Department of Environmental Conservation regarding the 1995 Prince Williams Sound Tanker Contingency plan. He recounted the story from earlier testimony from a different perspective, and noted that changes occurred during the lengthy hearing process to address fishers' concerns. He emphasized that CDFU was accommodated without litigation. However, following the process, an individual from Washington who was not satisfied led a massive court challenge containing 85 separate issues. Ultimately 54 issues were abandoned, 31 were briefed, and none prevailed. The case cost the State \$154 thousand dollars, with a possibly greater cost to private parties. The individual who brought the 85 unsuccessful challenges was immune from paying any Rule 82 fee awards to either the State or shippers. He conceded that HB 145 would not do away with that type of litigation

entirely. However, it will abolish public interest litigant doctrine in certain areas and, by evening out the risks and benefits of bringing claims, will force people opposed to permits or plans to more carefully evaluate whether they pursue more speculative challenges.

BEN BROWN, ALASKA STATE CHAMBER OF COMMERCE, testified in support of the legislation. He stated that their members want to promote Alaska's healthy economy by preventing misuse of the State's instrumentalities to impede resource development. He recommended the approach contained in the Committee Substitute. He clarified that the 4<sup>th</sup> party of the existing doctrine did not require that the public interest litigant have no economic incentive, but only that the economic incentive be less than the non-economic incentive. He also speculated that, regarding the Cordova case, given the requirement in the current doctrine for a non-governmental entity, the litigants might have actually benefited from the city of Cordova withdrawing from the case. He explained that the previous version of the bill addressed three specific State Departments, whereas the current bill version examines the nature of the claim being brought. He suggested that this was the most germane issue, given the importance of the claims. He suggested that under the legislation, important claims would still be brought, as well as lesser claims. He pointed out that Alaska still has Rule 82 that allows for parties to recover some, but not all, of their legal fees from another party when they prevail. He referred members to a study of the Alaska Judicial Council from 1995 giving the history of this Rule. He maintained that, because of Rule 82, the courthouse doors would not be "closed", but pointed out that litigants will still have to face the risk of having to pay the other party's fees if they do not prevail. He concluded that this creates a "level playing field" in the area of public interest litigation.

LARRY HOULE, THE SUPPORT INDUSTRY ALLIANCE, JUNEAU, testified in support of the bill. He read from prepared testimony (copy on file). He explained that they are a statewide trade association of union and non-union contractors. He read from prepared testimony, discussing the history of Alaska Civil Procedure allowances to allow a prevailing party in a civil lawsuit to recover a portion of their attorney's fees. He differentiated this from the Alaska Supreme Court Public Interest Litigant Doctrine enacted in 1968, which allows a prevailing public interest litigant to recover all of its attorney's fees. He contrasted this to oil, logging or trucking companies or labor unions that are consistently denied public interest litigation status on the ground that they had "sufficient economic incentive to bring a lawsuit". He concluded that the current doctrine results in certain groups receiving preferential treatment in the courts, which he claimed

reflected a "very marked and distinct anti-development, pro-preservationist political slant". He maintained that the bill would eliminate special treatment, and noted that Rule 82 of the civil rules of procedure would still permit a trial judge to adjust awards of attorney's fees based on a variety of factors for all litigants.

RICH HEIG, GREENS CREEK, AND COUNCIL OF ALASKA PRODUCERS testified in support of the Committee Substitute. He noted that the Council was an organization representing mining companies in Alaska. He noted that his industry underwent extensive permitting processes with the state, federal and local governments. He noted that the process included public hearing and comment opportunities and an administrative review process. He noted that the process could take several years to complete and pointed out that the process could be extended by legal challenges against the permits. He confirmed that a large part of the issue was the delay in the process. He stated that challenges could come from well-funded organizations, which were well versed in the permitting processes. He maintained that fees could be recovered from the organizations, especially if the litigation was successful. He acknowledged that Representative Berkowitz's comments regarding the length of the hearing process were correct, but pointed out that these issues were already being addressed by the resource industry.

ROBERT BRIGGS, STAFF ATTORNEY, DISABILITY LAW CENTER, JUNEAU testified in opposition to the Committee Substitute. He noted that every state receives federal monies in order to set up advocacy programs for the disabled that are independent from the State. He pointed out that many states followed the Alaskan model, which uses a non-profit organization to address litigation for the disabled. He explained that his organization served exclusively the disabled in Alaska. He noted that many of these individuals had suffered a range of abuses and neglect, and explained that the ultimate way for a citizen to address these complaints was to file suit. He stated that many of these individuals were very impoverished due to their conditions and thus were not able to pay for litigation. He described his history of law practice both in private and public practice and observed the power of the State.

Mr. Briggs stated that the Committee Substitute greatly expanded the impact of the bill, and pointed out that he did not testify against the original bill. He emphasized that any challenge brought by a citizen against any government action was now contained in this bill, and stated that the bill prevented the State from applying public interest litigation doctrine to any of these cases. He urged the Committee not to pass the bill, and to consider its broad

impact on public interest doctrine and on the applicable Court Rule.

Mr. Briggs expressed his opinion that the Supreme Court could issue a decision by any of three means: a codified rule, a Supreme Court Order, or announcing a rule through judicial opinion. He explained that public interest doctrine is comprised of a series of court rulings. He noted his successful experience in representing the disabled in litigation, and noted that the rates of disability in Alaska was high due to the nature of Alaskan industries. He speculated that the bill would drive plaintiffs in public interest litigation into federal court. He emphasized the negative effect on private individuals who stand to lose their entire life savings if they lose public interest suits. He noted that the Juneau School District employed the most expensive attorneys available, putting families at a disadvantage. He maintained that the legislation would prevent individuals from filing suit in state courts.

Mr. Briggs referred to Senate Concurrent Resolution #4, passed during the 18<sup>th</sup> Legislature, urging the Alaska Supreme Court to reexamine the wisdom of Civil Rule 82. He noted that the Alaska Supreme Court issued a ruling, which included an extensive study of the Rule. He noted that nowhere in the study was the conclusion that the Rule had an unfair effect. He pointed out that the majority of those benefiting from public interest litigations were not from environmental groups. He noted that the past testimony would indicate otherwise, in its emphasis on the effects of public interest doctrine on development of natural resources in the State. He clarified that roughly 16 percent of awards in state litigation have gone to environmental groups. He suggested that there was not a basis to overturn the Rule, which he maintained was the net effect of the bill. He noted that this was in relation to awarded monies, which were legitimate claims. He suggested that an entire doctrine should not be thrown out as a result of 16 percent of the litigation. He proposed that the original bill was a more defensible doctrine and suggested that the legislature consider this as an interpretation of a court rule.

Mr. Briggs read from a United States Supreme Court Case, Legal Services Corporation vs. Velaskes, "Interpretation of the law and the Constitution is the primary mission of the judiciary when it acts within the sphere of its authority to resolve a case of controversy. An informed, independent judiciary presumes an informed independent bar. Simply to prohibit the analysis of certain legal issues, and to truncate presentation to the courts, prohibits speech, an expression upon which the courts must depend for the proper exercise of judicial power. Congress cannot wrest the law from the Constitution which is its source." He urged

Members to adopt the original form of the bill as having fewer legal defects than the Committee Substitute.

Vice Chair Meyer clarified that the Disability Law Center preferred the Senate Judiciary version of the Bill.

Public Testimony on HB 145 was concluded.

CSHB 145 (FIN) was heard and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 4:42 PM