

SENATE BILL NO. 86

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/31/05

Referred: Community and Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the liability of the state and municipalities for attorney fees in**
2 **certain civil actions and appeals; and providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

7 (1) awards of enhanced attorney fees to adverse parties that are significantly
8 beyond those ordinarily granted under the state's tradition of awarding a partial recovery of
9 attorney fees to a prevailing party impose a substantial cost on the state and municipalities at a
10 time of fiscal scarcity; and

11 (2) except if provided by a specific statute, if needed to preserve the courts'
12 authority to sanction litigants, or if there is an exercise of eminent domain, there is no public
13 policy that sufficiently supports such enhanced awards to justify their fiscal impact.

14 (b) The purpose of sec. 2 of this Act is to reduce the impact of the matters in the

1 findings made in (a) of this section on the state fisc, under art. II, sec. 21, of the Constitution
 2 of Alaska and the doctrine of sovereign immunity, and on the fisc of municipalities, through
 3 the legislature's power to confer immunity upon the state and municipalities.

4 (c) This Act does not preclude the enactment of, nor create an implied repeal of,
 5 specific statutes authorizing awards of costs or fees in particular situations, such as in
 6 AS 45.50.537.

7 * **Sec. 2.** AS 09.65 is amended by adding a new section to read:

8 **Sec. 09.65.065. Liability of the state and municipalities for attorney fees.**

9 (a) Except as otherwise provided by statute or awarded by a court as a sanction, in a
 10 civil action or appeal the state or a municipality is not liable to pay an attorney fee
 11 award exceeding the following:

12 (1) in a civil action or appeal in which a money judgment is recovered,
 13 20 percent of the money judgment recovered;

14 (2) in a civil action in which the prevailing party recovers no money
 15 judgment and

16 (A) that civil action goes to trial, 30 percent of the prevailing
 17 party's reasonable actual attorney fees that were necessarily incurred in
 18 litigating issues upon which the party prevailed; or

19 (B) that civil action is resolved without trial, 20 percent of the
 20 prevailing party's reasonable actual attorney fees that were necessarily incurred
 21 in litigating issues upon which the party prevailed;

22 (3) in an appeal in which the prevailing party recovered no money
 23 judgment, 20 percent of the prevailing party's reasonable actual attorney fees that were
 24 necessarily incurred in litigating issues upon which the party prevailed.

25 (b) The provisions of (a) of this section do not apply to a civil action or appeal
 26 relating to condemnation of property under the power of eminent domain.

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

29 **APPLICABILITY.** Section 2 of this Act applies to all civil actions and appeals filed
 30 on or after the effective date of this Act.

31 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).