

SENATE JOURNAL
ALASKA STATE LEGISLATURE
TWENTY-FOURTH LEGISLATURE
FIRST SESSION

Juneau, Alaska

Monday

January 31, 2005

Twenty-second Day

Pursuant to adjournment the Senate was called to order by President Stevens at 11:02 a.m.

The roll showed sixteen members present. Senators Davis, Dyson, Guess, Seekins were excused from a call of the Senate.

The prayer was offered by the Chaplain, Pastor Robert Sherwood of the Church of the Nazarene. Senator Hoffman moved and asked unanimous consent that the prayer be spread. Without objection, it was so ordered.

Thank You for the precious gift You have given these senators and this staff. Thank You for the precious and fragile gift of life and the gift of consciousness.

We might stand in this chamber and address the speaker and find ourselves cut down by a stroke in mid-sentence, not able to speak again. Or we might pass out the doors of this chamber, feel a tremendous pressure in our chest and collapse in the hallway, the victim of a massive heart attack.

How will we be remembered? Will our lives reflect the words of the prophet: "He has showed you, O man, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God." (Micah 6:8)

Or will we appear like Peppermint Patty when she presented her teacher with a vase of good intentions, with our pockets full of round-to-its.

Give vases of deep red or yellow roses to those you love and appreciate while you can. Give the gift of kindness while you may. Let us realize afresh that it is in giving that we receive. And with Augustine, that it is in dying that we are born to eternal life. This may be the only day, the only season you are given.

With respect to all faiths, in the resurrected name of Jesus.
Amen.

Senator French led the Senate in the Pledge of Allegiance.

Certification

Senator Gary Stevens moved and asked unanimous consent that the journals for the eighteenth through twenty-first legislative days be approved as certified by the Secretary. Without objection, it was so ordered.

Messages from the House

Message dated January 28 was read, stating the House passed and transmitted for consideration:

First Reading and Reference of House Resolutions

HJR 4

CS FOR HOUSE JOINT RESOLUTION NO. 4(RES) am by REPRESENTATIVES HAWKER, Samuels, Ramras, Holm, Stoltze, Lynn, McGuire, Seaton, Chenault, Kelly, Anderson, Wilson, Dahlstrom, Kohring, LeDoux, Rokeberg, Harris, Meyer, Gardner, Olson, Croft, Gruenberg,

Urging the United States Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

was read the first time and referred to the Rules Committee.

Communications

The following reports are on file in the Office of the Secretary of the Senate:

Special Report to the State of Alaska Legislature and Administration,
January 2005
from Patrick Gamble, President and CEO, Alaska Railroad
Corporation

Annual State Loan Report (notification of availability)
from Edgar Blatchford, Commissioner, Department of Commerce,
Community and Economic Development
in accordance with AS 37.05.035 and AS 16.10.350(b)

2004 Annual Report of Fisheries Enhancement Loan Extensions
from Edgar Blatchford, Commissioner, Department of Commerce,
Community and Economic Development
in accordance with AS 16.10.510(11)

Report of the 2005 Alaska Minerals Commission
from Irene Anderson, Chair, Alaska Minerals Commission,
Department of Commerce, Community, and Economic Development
in accordance with AS 44.33.431

Standing Committee Reports

SB 42

The Labor and Commerce Committee considered SENATE BILL NO. 42 "An Act extending the reporting date for and the termination date of the Task Force on Naturopathic Scope of Practice; and providing for an effective date." Signing do pass: Senator Bunde, Chair; Senators Seekins, Ben Stevens. Signing no recommendation: Senator Ellis.

The following fiscal information was published today:

Fiscal Note No. 1, zero, Department of Commerce, Community and Economic Development

President Stevens removed the Finance Committee referral on the bill.

The bill was referred to the Rules Committee.

Introduction and Reference of Senate Bills

SB 85

SENATE BILL NO. 85 BY SENATOR SEEKINS, entitled:

"An Act repealing the ban on the use of certain off-road vehicles within five miles of the right-of-way of the James Dalton Highway; and providing for an effective date."

was read the first time and referred to the Transportation and Resources Committees.

SB 86

SENATE BILL NO. 86 BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR, entitled:

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

was read the first time and referred to the Community and Regional Affairs and Judiciary Committees.

The following fiscal information was published today:

Fiscal Note No. 1, zero, Department of Administration
Fiscal Note No. 2, zero, Department of Law

Governor's transmittal letter dated January 27:

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to, as a matter of sovereign immunity, limit the award of attorney's fees against the state and municipalities.

Since territorial days, Alaska has had a statutory policy of requiring the losing party in most litigation to pay a portion of the prevailing party's attorney fees. In recent years, this policy has been embodied primarily in Alaska Rule of Civil Procedure 82, which the Alaska Supreme Court adopted in response to a legislative delegation, made immediately following statehood, in AS 09.60.010. In most cases, the prevailing party receives a partial fee award, equal to no more than 20 percent of a money judgment or 20 percent of actual fees in a non-monetary case.

In cases brought against state or local governments, departures from the general rule of partial fee reimbursement have occurred with some regularity, with the governmental party required to reimburse all of the prevailing party's fees. Ordinarily, the basis for these enhanced fee awards has been the judicially created public interest litigant policy, wherein selected litigants bringing suits to advance ends deemed by the court to reflect strong public policies are granted full fees as a subsidy from the state treasury. The cost of this subsidy has been significant to the state in all recent fiscal years and, on a more irregular basis, has been significant to the municipalities targeted by such lawsuits.

There are instances where a Legislative policy sufficiently supports full attorney fee awards and the legislature has chosen to provide for them by statute. Full reimbursement is also important for eminent domain proceedings. Beyond these contexts, the Legislature has not identified a policy that would support a direct public subsidy to private litigants that goes beyond the traditional norm of partial fee awards. To ensure that public money is not disbursed as a subsidy to these litigants without an appropriate legislative authorization, this bill would provide, as a matter of sovereign immunity, that the state or a municipality would not be liable for an attorney fee award in excess of certain percentages of a money judgment or, if a money judgment is not recovered, certain percentages of the reasonable actual attorney fees the prevailing party incurred in litigating the issues upon which

the party prevailed. This would prevent enhanced fee awards against the state or municipalities that are not authorized by statute, but leave those governments open to the standard partial fee awards called for in the Civil Rule 82 fee schedule.

Section 1 of the bill describes the purposes of the Legislation. It notes the fiscal impact of enhanced fee awards, and specifically relies on the legislature's constitutional authorities in regulating this area. Section 1 states clearly that this bill, if enacted into law, would neither preclude nor repeal specific statutes authorizing the award of costs or fees in particular situations.

Section 2 of the bill would create a new provision in the chapter of AS 09 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the state and municipalities are not liable to pay more than 20 percent of the money judgment. In civil actions in which no money judgment is recovered, the liability of the state and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed, and 20 percent for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the state and municipalities for attorney fees is capped at 20 percent of reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed. These limits on liability are very similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party. These limitations do not apply if the statutes provide differently, if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Section 3 of the bill would make the bill, if enacted into law, applicable only to civil actions or appeals initiated after it takes effect.

I urge your prompt consideration and passage of this bill.

Sincerely yours,
/s/
Frank H. Murkowski
Governor

Unfinished Business

Senator Wilken moved and asked unanimous consent to be excused from the Senate, not subject to a call, from afternoon plane time, February 4 through morning plane time, February 7. Without objection, Senator Wilken was excused.

Senator Cowdery moved and asked unanimous consent to be excused from a call of the Senate from 1:00 pm, February 3 through plane time, February 6. Without objection, Senator Cowdery was excused.

Announcements

Announcements are at the end of the journal.

Adjournment

Senator Gary Stevens moved and asked unanimous consent that the Senate stand in adjournment until 11:00 a.m., February 2, 2005. Without objection, the Senate adjourned at 11:15 a.m.

Kirsten Waid
Secretary of the Senate

January 2005

Announcements

Americans with Disabilities Act Notice - Persons with disabilities who require special accommodation or alternative communication formats to access committee meetings may contact the appropriate committee office or the Legislative Information Office in their community. Reasonable advance notice is needed to accommodate the request. For further information, call the ADA Coordinator at 465-3854 Voice/465-4980 TDD.

STANDING COMMITTEES

+ indicates teleconference

= indicates bill previously heard/scheduled

COMMUNITY & REGIONAL AFFAIRS

Jan 31	Monday	Beltz 211	1:30 PM
+ = SB 14	MUNICIPAL ELECTIONS		
Feb 02	Wednesday	Beltz 211	1:30 PM
No Meeting Scheduled			
Feb 04	Friday	Beltz 211	1:30 PM
+ SB 77	AK REGIONAL ECONOMIC ASSISTANCE PROGRAM		

FINANCE

Jan 31	Monday	Senate Finance 532	9:00 AM
No Meeting Scheduled			
Feb 01	Tuesday	Senate Finance 532	9:00 AM
No Meeting Scheduled			
Feb 02	Wednesday	Senate Finance 532	9:00 AM
No Meeting Scheduled			
Feb 03	Thursday	Senate Finance 532	9:00 AM
-- Teleconference <Listen Only> --Joint w/(H) Finance			
University of Alaska Presentation			
Feb 04	Friday	Senate Finance 532	9:00 AM
No Meeting Scheduled			

HEALTH, EDUCATION & SOCIAL SERVICES

Jan 31	Monday	Butrovich 205	12:00 PM
Presentation: Adequate Yearly Progress (AYP) Portion of the No Child Left Behind School Accountability Act (NCLB), and the Reporting of Student Progress.			
		Commissioner Roger Sampson & Les Morse, Dept EED	
Jan 31	Monday	Butrovich 205	1:30 PM
	No Meeting Scheduled		
Feb 02	Wednesday	Butrovich 205	1:30 PM
+ SB 60	EXTEND SUICIDE PREVENTION COUNCIL		
+= SB 22	MEDICAID COVERAGE FOR BIRTHING CENTERS		
Feb 04	Friday	Butrovich 205	1:30 PM
+	Bills Previously Heard/Scheduled		

JUDICIARY

Feb 01	Tuesday	Butrovich 205	8:30 AM
No Meeting Scheduled			
Feb 02	Wednesday	Butrovich 205	8:30 AM
-- Meeting Canceled --			
+	Overview of the Department of Law (Continued from 1/26/05 Meeting)		
+	Bills Previously Heard/Scheduled		
Feb 03	Thursday	Butrovich 205	8:30 AM
+	Overview of Therapeutic Courts		
+	Bills Previously Heard/Scheduled		

LABOR & COMMERCE

Feb 01	Tuesday	Beltz 211	1:30 PM
-- Meeting Rescheduled to 2/08/05 --			
+ SB 52	OCCUPATIONS/CORPORATIONS/BANKS/SECURITIES		
+ SB 25	GENETICALLY MODIFIED FISH		

LABOR & COMMERCE (continued)

Feb 03	Thursday	Beltz 211	1:30 PM
No Meeting Scheduled			
Feb 08	Tuesday	Beltz 211	1:30 PM
Commissioner Greg O'Claray			
Department of Labor & Workforce			
Development: Update on Training Programs			
For Alaskans in Oil/Gas/Mining Industries			
+ = SB 52	OCCUPATIONS/CORPORATIONS/BANKS/SECURITIES		
<Bill Hearing Rescheduled from 2/01/05>			
+ = SB 25	GENETICALLY MODIFIED FISH		
<Bill Hearing Rescheduled from 2/01/05>			

RESOURCES

Jan 31	Monday	Butrovich 205	3:30 PM
-- Teleconference <Listen Only> --			
Bills Previously Heard/Scheduled			
= SB 69	APPROP: GRANT TO ARCTIC POWER FOR ANWR		
Overview - Division of Oil and Gas			
Director Mark Myers			
Feb 02	Wednesday	Senate Finance 532	12:00 PM
-- Time and Location Change --			
Joint w/(H) Resource			
Alaska Mining Industry Overview			
Work Session			
Noon - 1:30 Meeting Time			
Feb 02	Wednesday	Butrovich 205	3:30 PM
+ SB 55	AGRICULTURAL LAND		
Feb 04	Friday	Butrovich 205	3:30 PM
No Meeting Scheduled			

STATE AFFAIRS

Feb 01	Tuesday	Beltz 211	3:30 PM
+	Bills Previously Heard/Scheduled		

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STATE AFFAIRS (continued)

Feb 03	Thursday	Beltz 211	3:30 PM
+	Overview: Department of Administration - Hearings and Appeals		
+	Legislative Legal Services - Review Process of Department Proposed Regulations		
+	Bills Previously Heard/Scheduled		

TRANSPORTATION

Feb 01	Tuesday	Butrovich 205	1:30 PM
	No Meeting Scheduled		
Feb 03	Thursday	Butrovich 205	1:30 PM
SB 63	USE SEAT BELT ROAD SIGNS		
SB 40	KUSKOKWIM PORT AUTHORITY		

FINANCE SUBCOMMITTEES

CORRECTIONS

Feb 03	Thursday	Senate Finance 532	4:00 PM
	(For Corrections, Court System and H&SS)		
	Mental Health Trust Authority		
	Presentation		
	(Teleconferencing available upon request with 24-hour notice)		

COURT SYSTEM

Feb 03	Thursday	Senate Finance 532	4:00 PM
	(For Corrections, Court System and H&SS)		
	Mental Health Trust Authority		
	Presentation		
	(Teleconferencing available upon request with 24-hour notice)		

FINANCE SUBCOMMITTEES (continued)**HEALTH & SOCIAL SERVICES**

Feb 03 **Thursday** **Senate Finance 532** **4:00 PM**
(For Corrections, Court System and H&SS)
Mental Health Trust Authority Presentation
(Teleconferencing available upon
request with 24-hour notice)

JOINT COMMITTEES**ADMINISTRATIVE REGULATION REVIEW**

Feb 02 **Wednesday** **Capitol 17** **1:00 PM**
+ Committee Orientation and Regulatory
 Process Overview

LEGISLATIVE COUNCIL

Feb 03 **Thursday** **Senate Finance 532** **12:00 PM**
--Agenda to be Announced--

OTHER MEETINGS**CHILDREN'S CAUCUS**

Feb 08 **Tuesday** **Butrovich 205** **12:00 PM**
+ Alaska Children's Justice Act Task Force
 Reviewing Practice, Policy, and Laws on Child Abuse.

JOINT SESSION

Feb 23 **Wednesday** **House Chamber** **11:00 AM**
State of the Judiciary
Chief Justice Alexander O. Bryner

Feb 24 **Thursday** **House Chamber** **11:00 AM**
Address by U.S. Senator Ted Stevens