

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 17, 2005

8:05 a.m.

MEMBERS PRESENT

Representative Kurt Olson, Co-Chair
Representative Bill Thomas, Co-Chair
Representative Gabrielle LeDoux
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

Representative Pete Kott
Representative Mark Neuman

COMMITTEE CALENDAR

OVERVIEW: AIDEA/AEA

- HEARD

HOUSE BILL NO. 117

"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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 117

SHORT TITLE: STATE/MUNI LIABILITY FOR ATTORNEY FEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/28/05	(H)	READ THE FIRST TIME - REFERRALS
01/28/05	(H)	CRA, JUD
02/07/05	(H)	STA REFERRAL ADDED AFTER CRA
02/17/05	(H)	CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

RON MILLER, Executive Director

Alaska Industrial Development and Export Authority (AIDEA)/
Alaska Energy Authority (AEA)
Department of Commerce, Community, & Economic Development
Anchorage, Alaska
POSITION STATEMENT: Presented an overview of AIDEA and AEA.

SARA FISHER-GOAD, Financial Analyst
AIDEA/AEA
Department of Commerce, Community, & Economic Development
(No address provided)
POSITION STATEMENT: Answered questions regarding AEA.

CHRISTOPHER KENNEDY, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Presented HB 117 on behalf of the governor.

MICHAEL MACLEOD-BALL, Executive Director
Alaska Civil Liberties Union (AkCLU)
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 117.

KAREN BRETZ, Attorney;
Secretary/Treasurer, Alaskans for Efficient Government
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 117.

UWE KALENKA, President
Alaskans for Efficient Government
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 117.

KEN JACOBUS, Attorney
Anchorage, Alaska
POSITION STATEMENT: Encouraged the committee not enact HB 117.

DALE BONDURANT
Alaska Constitutional Legal Defense Fund
(No address provided)
POSITION STATEMENT: Testified in opposition to HB 117.

KATHIE WASSERMAN
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 117, related the economic situation of the municipalities.

ACTION NARRATIVE

CO-CHAIR BILL THOMAS called the House Community and Regional Affairs Standing Committee meeting to order at [8:05:17 AM](#). Representatives Olson, Thomas, LeDoux, Cissna, and Salmon were present at the call to order.

OVERVIEW: AIDEA/AEA

CO-CHAIR THOMAS announced that the first order of business would be the presentation from the Alaska Industrial Development and Export Authority (AIDEA) and the Alaska Energy Authority (AEA).

[8:06:00 AM](#)

RON MILLER, Executive Director, Alaska Industrial Development and Export Authority (AIDEA) and the Alaska Energy Authority (AEA), Department of Commerce, Community, & Economic Development (DCCED), began with AIDEA, and informed the committee that AIDEA's mission [as specified in the PowerPoint presentation in the committee packet] is: "To provide means of financing to promote economic growth and diversification in Alaska." The aforementioned is accomplished by providing long-term commercial and development financing to Alaskan businesses at a reasonable cost. He related that AIDEA's role in economic development is to provide financial assistance to Alaskan businesses and a dividend to the state's general fund (GF). Since AIDEA's dividend program began in 1996, it has provided over \$178 million to the state's GF. He pointed out that AIDEA can provide the following types of financing: long term, low cost, mixed term, and tax exempt. He highlighted that AIDEA is involved with large and small projects in rural and urban areas, and these projects involve a variety of industries. He also highlighted that AIDEA doesn't compete with the private sector, originate loans, or provide grants.

MR. MILLER informed the committee that AIDEA's key programs are as follows: development finance, loan participation, loan guaranty and export assistance, and conduit revenue bonds. He related that AIDEA's objective under the development finance program is to finance necessary infrastructure to support Alaska business projects. Through the development finance program, AIDEA owns the project and is repaid through user fees, leases,

and other revenue sources. Examples of this type of program are the Red Dog port and road and the Federal Express maintenance facility at the Ted Stevens' Anchorage International Airport. He explained that a qualifying program has to be endorsed by the local government and be financially feasible. Such projects are listed on page 11 of the PowerPoint. One of those projects is the Delong Mountain Transportation System, which was critical to the opening of the Red Dog mine. The Red Dog mine, he explained, provided the tax base that led to the creation of the Northwest Arctic Borough. As of last summer, the Red Dog mine provided 510 jobs, of which approximately 57 percent are held by NANA Regional Corporation (NANA) shareholders. Those jobs at Red Dog mine represent over 30 percent of the private sector jobs in region.

MR. MILLER turned attention to the Federal Express maintenance facility at the Ted Stevens' Anchorage International Airport. The aforementioned project created 20 permanent, high-skill jobs and brought a pilot base that significantly adds to the income of Southcentral Alaska. Moreover, the Federal Express maintenance facility improved the basic services for air carriers, and therefore strengthens Alaska's role as an [international] air crossroads. He moved on to the Alaska Seafood International (ASI) project, which wasn't very successful. At this point, AIDEA is in the process of signing a purchase sales agreement for the [ASI] property. The agreement, he related, will allow a mix of uses at the facility. Furthermore, AIDEA expects 300 new jobs will be created.

MR. MILLER continued with page 18 of the PowerPoint, which discusses the Snettisham Hydroelectric Project. The aforementioned project provides 80 percent of the Juneau-Douglas area's electrical energy. He informed the committee that AIDEA has a long-term power sales agreement with Alaska Electric Light & Power (AEL&P) for the purchase of all electricity produced by Snettisham. He then moved on to the Ketchikan shipyard, which AIDEA is looking to expand. He reminded the committee that AIDEA purchased title [of the Ketchikan shipyard] in 1997. An Economic Development Agency (EDA) grant was received to put in a second ship lift, and construction is expected to start soon. A long-term operating agreement has been negotiated with Alaska Ship and Dry Dock. However, AIDEA is waiting for the completion of a long-term memorandum of understanding with the Ketchikan city and borough regarding tax considerations.

MR. MILLER informed the committee that the loan participation program is probably the most active program at this point.

Because the legislature expanded that program two years ago, AIDEA can purchase up to 90 percent of a loan that was originated by a commercial lending institution with the total participation not to exceed \$20 million. He related that between 1992 and the end of fiscal year 2004, the loan participation program created nearly 4,500 construction jobs and 4,700 permanent jobs.

MR. MILLER highlighted that page 24 specifies AIDEA's loan portfolio diversification by industry. As the chart indicates, AIDEA is involved in most of the major segments of the Alaska economy through [the loan portfolio diversification] program. As of December 2004, AIDEA's outstanding loan portfolio was \$304 million. He pointed out that page 25 specifies AIDEA's loan portfolio delinquency, .44 percent, as of December 31, 2004. He also pointed out that AIDEA is well below the delinquency rate of 2.10 percent of Alaska's banks.

[8:16:17 AM](#)

CO-CHAIR THOMAS asked if the [loan portfolio delinquency] included [ASI].

MR. MILLER clarified that [ASI] was a development finance project, which is different than the loan participation program. However, he recalled that there are some current fisheries loans [within the AIDEA loan portfolio]. One of the aforementioned is the Alaska Glacier Seafoods.

[8:16:56 AM](#)

MR. MILLER informed the committee that page 26 of the PowerPoint specifies the geographic distribution of AIDEA's loan portfolio. He noted that AIDEA uses the same geographical classifications that the Department of Labor & Workforce Development (DLWD) uses. He further informed the committee that AIDEA also has the loan guaranty and export assistance. He explained that AIDEA can guarantee up to 80 percent of a loan, but not exceed \$1 million on the principal of the loan. Moreover, AIDEA can provide guarantees for export transactions in the same amount. Mr. Miller stated that AIDEA is a city-state partnership with the U.S. Export-Import Bank.

[8:17:59 AM](#)

REPRESENTATIVE LEDOUX returned attention to page 25 regarding AIDEA's delinquency rate being less than that of commercial

loans. She asked if AIDEA takes risks that commercial lenders won't take.

MR. MILLER replied no. He reminded the committee that AIDEA's loans are originated by a commercial bank and after doing its underwriting, the loan is brought to AIDEA. He highlighted that there are sometimes two to three levels of credit review and underwriting. If AIDEA agrees to review the loan, AIDEA's internal credit committee reviews it. If the loan is over \$3 million, then it's forwarded to AIDEA's board of directors for review. Therefore, AIDEA's risk profile is a bit lower than commercial organizations due to the aforementioned reviews.

REPRESENTATIVE LEDOUX asked if bad loans are merely written off.

MR. MILLER specified that the bad loans are in the over 90 days category [on the list on page 25 of the PowerPoint]. He emphasized that AIDEA writes off very few loans. He reminded the committee that ASI was not a loan, but rather AIDEA built the building and leased it to ASI.

[8:20:18 AM](#)

MR. MILLER continued with his presentation and addressed the conduit revenue bond program. He explained that under the conduit revenue bond program, AIDEA can provide financing and act as a conduit for the issuance of taxable or tax exempt bonds. The aforementioned can be done without risk to the assets or credit of AIDEA. He then explained how a business enterprise can qualify for a conduit revenue bond. From the program's inception in 1978 thru last year, AIDEA has issued approximately \$929 million in conduit revenue bonds for [over] 303 projects throughout the state. These projects have ranged over various industries, he stated. He informed the committee that within the conduit revenue bond program, a new program has been created. This new program tries to make transaction documents uniform in order to lower costs, which will allow some of the smaller nonprofit corporations in the state to access the program for tax-exempt financing with low transaction fees.

[8:23:23 AM](#)

REPRESENTATIVE CISSNA highlighted the measurements used in the various loans of AIDEA. She inquired as what other information AIDEA accumulates [regarding communities in Alaska].

MR. MILLER explained that for any project AIDEA reviews the jobs created and retained under the construction and permanent category. Through AIDEA's loan portfolio, a close eye is kept on the delinquency rate, which can provide an idea of what's happening throughout the state. Through the development finance program, the match from the business project is reviewed; AIDEA tries to have a 2:1 match. Furthermore, AIDEA tries to maintain contact with the financial community throughout the state. This year, he related, AIDEA will probably perform an extensive survey throughout Alaska's business community in order to ascertain what Alaska's business community thinks of the state's current economic conditions; what it thinks of AIDEA; and what it thinks AIDEA should do. He offered to provide that information to all legislators once it's accumulated.

[8:26:18 AM](#)

REPRESENTATIVE CISSNA turned attention to the issue of climate change. She inquired as to the maintenance or replacement of [equipment] that is related to the changing climate. She opined that the rural areas are more sensitive to this than the urban areas. She asked if AIDEA monitors any of that information.

MR. MILLER responded that such is being reviewed on a project-by-project basis. He informed the committee that AIDEA is "keeping an eye" on the DeLong Mountain Transportation System because AIDEA owns 52 miles of the road. Therefore, there are constant reports on the conditions of the road and its maintenance requirements. There have been no new developments with regard to climate change as applied to that road.

[8:27:46 AM](#)

MR. MILLER continued his presentation by turning attention to the Alaska Energy Authority (AEA). He informed the committee that AIDEA provides staffing for AEA. Like AIDEA, AEA is a corporation organized under DCCED for administrative purposes. He specified, "AEA's mission is to reduce the cost of energy in Alaska." Mr. Miller explained that AEA operates and maintains state-owned power projects; partners with the Denali Commission and the private sector to provide safe and reliable power to Alaskans; and trains Alaskans to build and maintain code-compliant and [appropriately] sized energy systems.

[8:28:31 AM](#)

CO-CHAIR THOMAS related his understanding that construction of a nuclear power plant in Galena is occurring.

MR. MILLER related that AEA had been approached regarding involvement in the aforementioned project. However, AEA statute precludes AEA's involvement in a nuclear power project. The definition of a power project specifically excludes nuclear power. In response to Representative LeDoux, Mr. Miller said that the rationale behind the statutory exclusion was that nuclear power was considered to be too risky at the time.

[8:29:47 AM](#)

REPRESENTATIVE SALMON informed the committee that the military has a nuclear power plant north of Fort Yukon, which has been working for the last 10 years.

[8:30:41 AM](#)

MR. MILLER told the committee that AEA owns the following projects: Bradley Lake Hydro; Larsen Bay Hydro; Alaska Intertie; and small rural interties. The AEA administers the following programs: power cost equalization (PCE); alternative energy and energy efficiency programs, bulk fuel loan programs and power project loan programs; bulk fuel and rural power system upgrades; circuit rider and emergency response program; and a training program. The AEA works with Alaska communities to lower consumer energy costs while [developing] safe, reliable, and efficient energy systems. The AEA also works with Alaska communities to build sustainable and environmentally sound power systems throughout Alaska.

[8:31:49 AM](#)

REPRESENTATIVE SALMON questioned how the President cutting the budget, including the Denali Commission, would impact AEA's programs.

MR. MILLER said that AEA is monitoring [national budget decisions] closely because reductions to the Denali Commission will result in reductions in the number of projects AEA can do.

[8:32:24 AM](#)

MR. MILLER returned to PCE, which provides financial assistance to rural utilities with kilowatt-hour (kWh) rates greater than \$0.12. He explained that residential customers are eligible for

PCE credit up to 500 kWh per month per customer. However, community facilities, as a group, can receive PCE credit for up to 70 kWh per month multiplied by the number of residents in a community.

[8:32:53 AM](#)

CO-CHAIR THOMAS inquired as to who manages the PCE money.

MR. MILLER explained that the PCE endowment is managed by the Department of Revenue. The PCE endowment is a separate account from the permanent fund. In further response to Co-Chair Thomas, Mr. Miller pointed out that the PCE statute provides strict parameters regarding return. The program assumes a 7 percent return to the endowment, which he recalls being problematic in the past.

[8:34:14 AM](#)

SARA FISHER-GOAD, Financial Analyst, AIDEA/AEA, Department of Commerce, Community, & Economic Development (DCCED), explained that the PCE endowment was established to earn 7 percent over time. She noted that the Department of Revenue uses an investment policy that includes equity investments, which is about the only [policy] that would produce 7 percent over time. Ms. Fisher-Goad informed the committee that the endowment was originally created in 2000 and although it posted losses in the first years similar to losses experienced with any investments during that time, now the endowment is earning 7 percent over time.

[8:35:01 AM](#)

CO-CHAIR THOMAS inquired as to how the PCE endowment compared to the permanent fund.

MS. FISHER-GOAD offered to provide that information to the committee and reiterated that the PCE endowment fund is earning what's expected to earn 7 percent for fiscal year 2005.

[8:35:27 AM](#)

MR. MILLER pointed out that page 9, of the AEA PowerPoint presentation specifies some of the basics of the PCE Endowment Fund. He then turned attention to AEA's alternative energy programs, which focus on small hydroelectric projects, wind, geothermal, and bio-energy. The AEA also participates in the

Rebuild America Conservation Program and energy cost reduction program. Mr. Miller highlighted that AEA has two loan programs. The Bulk Fuel Revolving Loan Fund provides short-term, low interest loans allowing rural communities with a population of less than 2,000 to make bulk fuel purchases in a cost effective manner. The first loan a community receives under the bulk fuel revolving loan fund has a 0 percent interest rate, after which the loans have a 5 percent interest rate.

[8:36:36 AM](#)

CO-CHAIR THOMAS recalled complaints with regard to the bulk fuel revolving loans.

MR. MILLER said that staff working with the bulk fuel revolving loan program work very hard to get loans out in enough time to allow for purchases. He related that last year the loans were made, but some of the communities didn't make the 10 percent down payment. Furthermore, some communities faced low water situations, which resulted in the inability for the fuel to be delivered. Also, other communities waited [to purchase the fuel] until late in the year, when the price of fuel had increased significantly, and therefore the amount needed to borrow increased as well.

[8:37:55 AM](#)

MR. MILLER continued with AEA's power project fund, which provides loans to local utilities, local governments, or independent power producers for the development or upgrade of electric power facilities. He noted that the power project fund includes conservation, bulk fuel storage, waste energy conservation, or potable water supply projects.

[8:38:18 AM](#)

CO-CHAIR OLSON inquired as to the [delinquency rates] of [the bulk fuel revolving loan and power project funds].

MR. MILLER answered that the funds are in fairly good shape, and offered to provide [the committee] the delinquency rates for those two funds.

[8:38:41 AM](#)

MR. MILLER continued the AEA presentation, and turned to bulk fuel upgrades. Bulk fuel upgrade participants are utilities,

schools, government entities, and the private sector. He explained that under this program, AEA rehabilitates or constructs new bulk fuel tank farms to meet state and federal codes. He pointed out that page 13 of AEA's PowerPoint presentation shows before and after photographs from the Pedro Bay bulk fuel storage project. He highlighted two of the photographs that show local residents who were hired for the Pedro Bay project. He noted that one of [AEA's] goals is to have as much local hire as possible.

MR. MILLER moved on to the rural power system upgrades, which, through the Denali Commission, rebuilds or replaces worn-out diesel generator units and old, hazardous distribution systems. Under the rural power upgrades new power generation systems meeting state and federal codes are constructed. When possible the new power generation systems include waste heat recovery systems. Mr. Miller then turned to the circuit rider and emergency response program that assists village electric utilities with preventative maintenance, on-site operator training, consultation, technical assistance, and emergency response. In conjunction with Alaska Vocational Technical Center (AVTEC) and other partners, AEA has very active training programs. He informed the committee that AEA has a very active training program for PCE clerks, and to date over 120 PCE clerks have been trained throughout rural Alaska. Furthermore, AEA is working on distance delivery for that training program. Mr. Miller specified that AEA state-owned energy assets are Bradley Lake Hydroelectric Project, Alaska Intertie, and Larsen Bay Hydroelectric Project.

[8:41:30 AM](#)

CO-CHAIR THOMAS inquired as to how AEA ended up with the Bradley Lake project.

MR. MILLER explained that the Bradley Lake project was funded, in part, by state appropriation as well as by bonds. The Railbelt utilities have a long-term power sales agreement with AEA. In fact, [the Railbelt utilities] are paying \$12 million a year, which goes toward the debt service on the bonds. In further response to Co-Chair Thomas, Mr. Miller clarified that the Bradley Lake project provides power to the Railbelt, from Homer to Fairbanks and Delta Junction. The power sales agreement is approximately \$0.06 per kWh.

CO-CHAIR THOMAS informed the committee that PCE was established because [in the areas] where dams were built [the cost of energy

was much lower] that in other areas. Co-Chair Thomas related that [rural energy costs] vary from \$0.34 to \$0.53 [per kWh], and even with PCE those areas still don't come close to reaching \$0.06 [per kWh].

MR. MILLER clarified that the earlier mentioned \$0.06 is the wholesale rate to the utilities from the Bradley Lake project.

[8:43:51 AM](#)

REPRESENTATIVE SALMON said he appreciated Co-Chair Thomas' comments regarding the history of PCE. He mentioned the Four Dam Pool project.

MR. MILLER clarified that the Four Dam Pool project includes the following communities: Kodiak, Southeast Alaska, and Copper Valley. The Four Dam project was built with state and federal money and sold to the Four Dam Pool agency. The sale of those assets created the basis for the PCE endowment.

[8:45:17 AM](#)

MR. MILLER moved on to discuss the Larsen Bay Hydroelectric project, which is a small 475-kilowatt project. The Larsen Bay Hydroelectric project went into commercial operation in 1991 and produces electricity for the City of Larsen Bay. The project replaced the City of Larsen Bay's old water supply system and provides a better source of water and electrical [energy]. The City of Larsen Bay operates the project. Mr. Miller then turned to the Alaska Intertie, which is owned by AEA on behalf of the state. The Alaska Intertie is a 170-mile transmission line from Willow to Healy that connects the power distribution systems of Anchorage and Fairbanks. The goal of the Alaska Intertie project was to improve reliability and economic energy delivery to the Railbelt. He informed the committee that the Alaska Intertie was built in 1985 with \$124 million and allows Fairbanks to purchase lower cost electricity produced with natural gas and hydroelectric power produced from Southcentral Alaska.

[8:46:24 AM](#)

CO-CHAIR THOMAS related his impression that the area burned coal to generate electricity.

MR. MILLER stated that Golden Valley has a coal power plant in Healy and purchases electricity from the Bradley Lake [project] and Chugach Electric as well as Municipal Light & Power.

[8:46:59 AM](#)

MR. MILLER informed the committee that a couple of years ago the legislature appropriated \$20.3 million to AEA to extend and upgrade the Alaska Intertie to the Tongass Land Management Plan (TLMP) in the Mat-Su Valley.

The committee took a brief at-ease from 8:47 a.m. to 8:52 a.m.

HB 117-STATE/MUNI LIABILITY FOR ATTORNEY FEES

[8:52:30 AM](#)

CO-CHAIR THOMAS announced that the final order of business would be HOUSE BILL NO. 117, "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."

[8:52:52 AM](#)

CHRISTOPHER KENNEDY, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, explained that Alaska is unique in that winning litigants in civil lawsuits in Alaska receive a partial recovery of the attorney fees at the end of the case. Usually, the attorney fees are 20 percent of a money judgment or less or 20-30 percent of the actual attorney fees that were reasonably incurred by the other side. This legislation addresses a special circumstance by which Alaska courts have been awarding enhanced fees, that is full fee recovery, to public interest litigants. Public interest litigants are those people who, as the court determines subjectively, are in pursuit of strong public policies. Over the last 10 years, the amount paid under these enhanced attorney fees has averaged approximately \$600,000 annually. He clarified that the aforementioned amount of enhanced attorney fees is beyond the 20-30 percent that would normally be paid. The Supreme Court created this public interest litigant doctrine over time, beginning in the 1970s, and it was expanded in the late 1990s. The public interest litigant doctrine allows parties to recover full attorney fees from the state or municipality, even when they don't prevail in many of the claims brought. He cited the 1999 case of the American Civil Liberties Union v. State, relating to the 1996 campaign finance reform

law, as an example. The Department of Law feels that it successfully defended the campaign finance reform law in most respects and was able to preserve most of its provisions. However, the American Civil Liberties Union (ACLU) was successful in two provisions of the campaign finance reform law and was able to recover all of its fees for the entire challenge. The fees recovered amounted to \$131,000.

MR. KENNEDY pointed out that HB 117 creates a new provision capping attorney fees against governments in the state, and thus no enhanced awards would be available. This provision further provides that for civil actions or appeals in which a money judgment is recovered, the state municipalities wouldn't be liable to pay more than 20 percent of the amount of the money judgment as an attorney fee [award to the adverse party]. He opined that the aforementioned cap would rarely occur because it's unusual to receive enhanced attorney fees in a money case. The legislation also places a cap in civil actions with no money judgment. For example, the attorney fees awarded in a case about a regulatory decision that goes to trial would be capped at 30 percent of the party's reasonable and actual attorney fees. However, if the aforementioned case didn't go to trial, the award would be capped at 20 percent of the party's reasonable attorney fees. The same limit would be in place for appeals, he related. Mr. Kennedy noted that these limitations wouldn't apply when statutes specify otherwise or when the court determines there should be enhanced attorney fees as a sanction. For example, if there had been misconduct by the state, municipality, or the attorneys. The limitation also wouldn't apply in cases relating to eminent domain.

MR. KENNEDY related that the rationale behind the immunity is to protect the state and municipal treasuries. He characterized it as a money-saving measure. Furthermore, it returns to the legislature the authority to make the policy choices regarding what types of litigation to subsidize. He noted that the immunity can be waived by specific statute.

[9:01:44 AM](#)

CO-CHAIR THOMAS turned attention to the fiscal note, and related his understanding that a fiscal note specifying savings would show the savings in brackets. However, this fiscal note is a zero fiscal note.

MR. KENNEDY suggested that the \$600,000 could possibly not be a savings to the Department of Law because these cases are against various state agencies.

CO-CHAIR THOMAS, upon counsel from staff, related that usually these [awards] would be funded in supplemental appropriations.

[9:03:07 AM](#)

REPRESENTATIVE CISSNA pointed out that the legislature talks about accountability a lot. She opined that the legislature needs to be accountable. She said she would be reviewing the balance of powers and recourse to the public.

[9:04:16 AM](#)

MICHAEL MACLEOD-BALL, Executive Director, Alaska Civil Liberties Union (AkCLU), paraphrased from the following written testimony [original punctuation provided]:

We oppose HB 117 (SB 86) on the grounds that it will have a chilling effect on the ability of parties acting in the public interest to challenge the inappropriate exercise of governmental authority. Further, the bill will tend to widen the legal advantage currently held by governmental litigants over private individuals.

The typical plaintiff in a public interest lawsuit is an individual, a non-profit advocacy organization, or a charitable organization. The typical defendant in such a suit is a governmental entity - usually the federal or state government due to the nature of the issues commonly litigated. There can be no dispute that the typical suit pits a party with limited financial resources who needs to hire outside counsel against a governmental entity with access to substantially greater financial and legal resources. As often as not, the dispute is over principle and not over money.

Compare this to any other type of litigation. First, private suits almost always involve a fight over money or property interests. Typically, general civil litigation pits business against business or individual against individual. Certainly there are disparities in each party's ability to cope with the

costs of litigation - but it's a matter of happenstance.

The public interest litigant, therefore, is financially disadvantaged and typically does not have the prospective benefit of a money damages award. As a result, attorneys are not readily available to take on such cases without sizable retainers - it is not profitable for them to do so. Therefore, the public interest litigant is legally disadvantaged as well - because the governmental adversary will always have counsel on board from the start. In his letter of transmittal, the Governor complains that the public interest litigant is being subsidized by the current system of attorney fee reimbursement. But, bear in mind that the public interest litigant only receives reimbursement if a) he or she is acting in the public interest and b) he or she is successful in showing that the government acted wrongly. On the other hand, the government gets its subsidy from the taxpayers whether it wins or not. It's not as if the individual within the government who caused the government to violate the victim's rights is made to reimburse the taxpayers for the internal costs of running the government in a manner violative of the public interest. The key is to set up a system that doesn't reward improper behavior - and there will be no incentive for the government to stop inappropriate action if there is no one willing to speak out against such action through public interest legal action.

Who will this bill affect? It will affect those in our society least able to afford it - the poor, the uneducated, the minorities, the disabled, the elderly - all of whom have benefited from public interest litigation at one time or another - and many of whom would not have been able to bring such actions in their own right. It won't make a difference to the wealthy individual who funds a public interest lawsuit - for such individuals, attorney fee reimbursement is not a consideration. Rather, this law will discourage normal, everyday people from trying to make a difference when they see the government failing to do its job. If this bill becomes law, the state government will be able to rest easier that it can act against the public interest because it will be less likely to be held to account for its wrongful actions.

In short, this bill is presented as if the government is unfairly required to pay for a vengeful individual's lawsuit against the state. Nothing could be further from the truth. This bill will make it harder for someone acting in the public interest to force the government to comply with its legal obligations. We strongly urge you to reject this bill.

[9:08:33 AM](#)

CO-CHAIR THOMAS asked if the public interest litigant fully reimburses the state for its costs when the state wins the suit.

MR. MACLEOD-BALL deferred to the attorneys that would know better, but related his understanding that public interest litigants don't have to compensate the other side for attorney fees. However, he reminded the committee that there is a provision available for the courts to impose when a frivolous or egregious lawsuit is filed.

[9:09:30 AM](#)

KAREN BRETZ, Attorney; Secretary/Treasurer, Alaskans for Efficient Government, stated her opposition to HB 117. Ms. Bretz, speaking from her experience as an attorney, opined that many organizations and individuals that claim public interest litigant status lack the resources to pay for their own attorney fees in this type of litigation. By definition, the public interest litigant has no or little financial interest to bring the suit. However, the government bodies against which they bring suit have unlimited resources and the ability to prolong the litigation. "They have, in essence, the power to squeeze the public interest litigant to abandon the litigation or to not even bring it from the state," she stated. Attorneys take on public interest litigation cases with the understanding that if the client wins, then his/her fees will be reimbursed 100 percent. Therefore, without the public interest litigant rule, it's unlikely the attorney would recover his/her full fees because the public interest litigant doesn't have the resources to pay. Ms. Bretz opined that the current public interest litigant law places the public interest litigant on a more even playing field than the proposal in HB 117. She further opined that changing the current law will prevent many worthy lawsuits from being brought.

CO-CHAIR THOMAS restated his earlier question regarding whether the public interest litigant would pay the attorney fees when the governmental entity wins the case.

MR. BRETZ replied no. The public interest litigant is only responsible for the governmental entity's attorney fees if the court finds that the litigation is frivolous. In further response to Co-Chair Thomas, Ms. Bretz related her belief that it would be rare that the court finds public interest litigation cases to be frivolous because many attorneys won't take frivolous litigation. In response to Co-Chair Olson, Ms. Bretz said that to the best of her knowledge, the public interest litigant hasn't ever paid the governmental entity's attorney fees in public interest litigation.

[9:12:46 AM](#)

UWE KALENKA, President, Alaskans for Efficient Government, said that the previous witnesses have spoken well on this issue. He commented, "All I have to say is that \$600,000 a year spent on attorney fees is a small price to pay for justice. If you really need to save some money, let's start on the jet that cost \$1.4 million so we can finance this litigation for three years to help the underprivileged in our society." Mr. Kalenka stated his opposition to HB 117.

[9:13:52 AM](#)

KEN JACOBUS, Attorney, noted his agreement with other testimony [in opposition to HB 117]. He highlighted that in "our system" there are checks and balances such that the legislature and municipal assemblies enact the laws and the courts review the laws. He explained that the courts can't merely say a law is bad and review it, rather a plaintiff has to bring a case. He estimated that 99 percent of the [public interest litigants] are involved on the basis of principle. He noted that most of the people he represents don't have the money to carry forward the suit. The idea behind public interest litigation is to encourage the checks and balances. Therefore, the public interest litigant isn't placed at risk of losing a lot of money but rather is allowed the financial ability to take the case forward. He noted that most of the people he represents are initiative petitioners. The most recent initiative case was the Matanuska Valley tax cap. Mr. Jacobus opined that HB 117 harms the public interest litigants more than the previous bill that two superior courts held were constitutionally improper. Mr. Jacobus encouraged the committee not to enact HB 117 because it

creates further problems in an area that is already before the Alaska Supreme Court.

[9:17:38 AM](#)

DALE BONDURANT, Alaska Constitutional Legal Defense Fund, stated that the Alaska State Constitution is the best in the Union. He highlighted the following portion of Article 1, Section 1: "all persons have corresponding obligations to the people and to the State." Mr. Bondurant informed the committee that the Alaska Constitutional Legal Defense Fund has been a successful public interest litigant in all of its cases before the Alaska Supreme Court. He reviewed some of the [public interest litigant] decisions [with which he has been involved] such as: Peyton (ph); McDowell(ph); Gulkana River(ph); Totemoff(ph); Oshik(ph). Mr. Bondurant said that the 14th Amendment of the constitution says, "That those who are elected or selected ... support those who are willing to act responsible interest litigants." He went on to say, "We, therefore, request that those who are selected, including the governor ... and legislatures and the general public be supportive of Alaska's constitution and the 14th Amendment. We find that, in fact, proposing changes to both the Alaska Constitution and the US Constitution without proper citizenships' right to vote on such important issues are denied." Mr. Bondurant concluded by noting his opposition to HB 117.

[9:21:15 AM](#)

KATHIE WASSERMAN, Alaska Municipal League (AML), reminded the committee that municipalities are involved in these [public interest] suits. She recalled that two witnesses specified that municipalities have unlimited means to fight lawsuits. However, she estimated that two-thirds of the municipalities in the state don't even have attorneys or have the money to secure an attorney. Ms. Wasserman stated that any lawsuit would harm the public interest in the community.

[9:22:21 AM](#)

REPRESENTATIVE CISSNA inquired as to how many local governments have been sued as compared to the suits brought against the state government.

MS. WASSERMAN said that she didn't know.

[9:23:17 AM](#)

REPRESENTATIVE CISSNA requested information regarding the experience local governments have had with public interest litigant cases as compared to the state government.

MS. WASSERMAN clarified that she isn't advocating taking away the ability for the public to bring action against wrong doing, but merely wanted to be sure that everyone understands that municipalities could be devastated if they have to hire an attorney. Ms. Wasserman, in response to Co-Chair Olson, agreed to contact Mr. Tom Boedeker, the head of AML's legislative subcommittee. In response to Representative LeDoux, Ms. Wasserman agreed to provide information regarding the amount in enhanced attorney fees paid by municipalities that have lost [in public interest litigant cases] over the last five years.

[HB 117 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [9:25:51 AM](#).