

Introduced: 4/3/85
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY SHULTZ

2

HOUSE BILL NO. 349

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to adjudication expense awards and
amending Rule 82(a) of the Alaska Rules of Civil
Procedure; and providing for an effective date."

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

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* Section 1. The legislature finds that small businesses are deterred
from challenging or defending against unreasonable state actions by the
expense of vindicating their rights. The legislature further finds that
because of the great legal and financial resources of the state, the stan-
dard for the award of attorney's fees and costs against the state should
differ from the standard that applies to other litigants. A purpose of
this Act is to allow eligible small businesses to recover costs and actual
attorney's fees from the state in certain civil actions and agency proceed-
ings. A further purpose of this Act is to encourage reasonable regulatory
and enforcement activities by the state.

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* Sec. 2. AS 09.60.050 is amended to read:

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Sec. 09.60.050. COSTS AWARDED AGAINST STATE, BOROUGH, CITY OR
OTHER PUBLIC AGENCIES. Except as provided in (b) of this section,
when [WHEN] the state or a borough, city, or other public agency or
entity or an officer thereof in an official capacity is a party, costs
shall be awarded against it on the same basis as against any other
natural person or party. However, when the action is brought upon the
information of a natural person, that person shall be liable for costs
awarded against the state. The costs may [SHALL] not be recovered
from the state until after execution has issued for the costs against

1 that person and has been returned unsatisfied in whole or in part.

2 * Sec. 3. AS 09.60.050 is amended by adding new subsections to read:

3 (b) Except as provided in (c) of this section, a court shall
4 award costs and actual attorney's fees to a small business that is the
5 prevailing party in

6 (1) a civil action against the state that involves a busi-
7 ness regulatory or tax function of the state other than one that
8 establishes or fixes a rate, or involves eminent domain or condemna-
9 tion; or

10 (2) an appeal from an order in an administrative action
11 that involves a business regulatory or tax function of the state other
12 than one that establishes or fixes a rate, or involves eminent domain
13 or condemnation.

14 (c) A court may deny or reduce an award of costs and attorney's
15 fees against the state under (b) of this section if it finds that

16 (1) the litigation position of the state was reasonable in
17 law and in fact;

18 (2) the prevailing party unreasonably protracted the final
19 resolution of the matter; or

20 (3) the state was joined in the action only because the
21 state's connection with the subject matter of the action is such that
22 the action would be procedurally defective if the state were not
23 joined.

24 (d) If the state shares liability for costs and attorney's fees
25 with a third party, costs and attorney's fees assessed under (b) of
26 this section shall be paid by the state to the extent they exceed the
27 amount for which the parties are otherwise jointly liable under court
28 rule.

29 (e) In this section,

1 (1) "actual attorney's fees" means the total charged a
2 party for legal services provided in the case at issue or the value of
3 those services computed at the prevailing market rate for services of
4 like quality, whichever is less;

5 (2) "costs" has the meaning given in Rule 79, Alaska Rules
6 of Civil Procedure;

7 (3) "litigation position of the state" includes an action
8 or policy of the state that resulted in litigation of the case at
9 issue;

10 (4) "prevailing party" means the party that successfully
11 prosecutes or defends against an action, is successful on the main
12 issue of the action, and in whose favor the decision or verdict is
13 rendered and judgment entered;

14 (5) "small business" means any commercial or business
15 entity, including a sole proprietorship or a partnership, with a net
16 worth of less than \$1,000,000 and fewer than 100 employees at the time
17 the case at issue is filed. It does not include an entity that is a
18 subsidiary or affiliate of another entity that is not a small busi-
19 ness.

20 * Sec. 4. AS 44.80 is amended by adding a new section to read:

21 Sec. 44.80.015. COST AWARD FOR SMALL BUSINESS. (a) If a small
22 business prevails in an agency adjudication related to a business
23 regulatory or tax function of the state other than one that estab-
24 lishes or fixes a rate, or involves eminent domain or condemnation,
25 the decision shall include an award to the prevailing party of costs
26 and actual attorney's fees incurred in connection with the adjudica-
27 tion. The award may be reduced or denied if it is found that

28 (1) the litigation position of the state was reasonable in
29 law and in fact;

1 (2) the prevailing party unreasonably protracted the final
2 resolution of the matter; or

3 (3) the state was joined in the action only because the
4 state's connection with the subject matter of the action is such that
5 the action would be procedurally defective if the state were not
6 joined.

7 (b) An appeal that includes the issue of entitlement to attor-
8 ney's fees and costs under this section or concerns only that issue
9 may be taken by a party under AS 44.62.560.

10 (c) An award of costs and attorney's fees to a small business
11 under AS 09.60.050(b) or under this section against an agency of the
12 state shall be paid by the agency from its regular operating budget.
13 In the event the agency lacks sufficient funds to make timely payment
14 of the award, payment shall be made from subsequent appropriations to
15 the agency with interest at the rate provided in AS 43.05.225.

16 (d) If an agency has been found liable for an award payable
17 under (c) of this section, or has not paid all awards due under (c) of
18 this section during the previous calendar year, the agency shall file
19 a written report with the legislature on or before January 31 of the
20 succeeding year that includes

21 (1) the nature and amount of an award assessed during the
22 previous year and a description of the underlying claim;

23 (2) the nature and amount of all awards that remain unpaid;
24 and

25 (3) any other information that may aid the legislature in
26 evaluating the effect of awards upon the agency.

27 (e) In this section,

28 (1) "actual attorney's fees" means the total charged a
29 party for legal services provided in the case at issue or the value of

1 those services computed at the prevailing market rate for services of
2 like quality, whichever is less;

3 (2) "agency adjudication" means a proceeding before an
4 administrative agency in which the rights and duties of a party are
5 determined after notice and an opportunity to be heard;

6 (3) "costs" has the meaning given in Rule 79, Alaska Rules
7 of Civil Procedure;

8 (4) "litigation position of the state" includes an action
9 or policy of the state that resulted in litigation of the case at
10 issue;

11 (5) "prevailing party" means the party that successfully
12 prosecutes or defends against an action, is successful on the main
13 issue of the action, and in whose favor the decision is rendered and
14 judgment entered;

15 (6) "small business" means any commercial or business
16 entity, including a sole proprietorship or a partnership, with a net
17 worth of less than \$1,000,000 and fewer than 100 employees at the time
18 the case at issue is filed. It does not include an entity that is a
19 subsidiary or affiliate of another entity that is not a small busi-
20 ness.

21 * Sec. 5. Rule 82(a), Alaska Rules of Civil Procedure, is amended by
22 adding a new paragraph to read:

23 (5) If a motion for attorney's fees is brought under
24 AS 09.60.050, that section is controlling.

25 * Sec. 6. Section 5 amends Rule 82(a) of the Alaska Rules of Civil
26 Procedure by incorporating statutory requirements for the award of attor-
27 ney's fees against the state under certain circumstances.

28 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
29 10.070(c).