

Introduced: 4/24/85  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY MARROU

2

HOUSE BILL NO. 399

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

10 \* Section 1. The legislature finds that individual citizens and small  
11 businesses are deterred from challenging or defending against unreasonable  
12 state actions by the expense of vindicating their rights. The legislature  
13 further finds that because of the great legal and financial resources of  
14 the state, the standard for the award of attorney's fees and costs against  
15 the state should differ from the standard that applies to other litigants.  
16 A purpose of this Act is to allow individual citizens and eligible small  
17 businesses to recover costs and actual attorney's fees from the state in  
18 certain civil actions and agency proceedings. A further purpose of this  
19 Act is to encourage reasonable regulatory and enforcement activities by the  
20 state.

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

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

1 from the state until after execution has issued for the costs against  
2 that person and has been returned unsatisfied in whole or in part.

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

4 (b) Except as provided in (c) of this section, a court shall  
5 award costs and actual attorney's fees to an individual citizen or to  
6 a small business that prevails in

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

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

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

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

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

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

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

1 (e) In this section,

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

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

8 (3) "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 (4) "small business" means any commercial or business  
12 entity, including a sole proprietorship or a partnership, with a net  
13 worth of less than \$1,000,000 and fewer than 150 employees at the time  
14 the case at issue is filed; it does not include an entity that is a  
15 subsidiary or affiliate of another entity that is not a small busi-  
16 ness.

17 \* Sec. 4. AS 44.62.500 is amended by adding new subsections to read:

18 (d) If an individual citizen or a small business prevails in an  
19 agency adjudication related to a regulatory or tax function of the  
20 state other than one that establishes or fixes a rate, or involves  
21 eminent domain or condemnation, the decision shall include an award to  
22 the prevailing party of costs and actual attorney's fees incurred in  
23 connection with the adjudication. The award may be reduced or denied  
24 if it is found that

25 (1) the litigation position of the state was reasonable in  
26 law and in fact;

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

29 (3) the state was joined in the action only because the

1 state's connection with the subject matter of the action is such that  
2 the action would be procedurally defective if the state were not  
3 joined.

4 (e) In this section,

5 (1) "actual attorney's fees" means the total charged a  
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7 those services computed at the prevailing market rate for services of  
8 like quality, whichever is less;

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

11 (3) "litigation position of the state" includes an action  
12 or policy of the state that resulted in litigation of the case at  
13 issue;

14 (4) "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 150 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. 5. AS 44.62.560 is amended by adding a new subsection to read:

21 (f) An appeal that includes the issue of entitlement to attor-  
22 ney's fees and costs under AS 44.62.500(d) or concerns only that issue  
23 may be taken by a party under this section.

24 \* Sec. 6. AS 44.80 is amended by adding a new section to read:

25 Sec. 44.80.015. PAYMENT OF AWARDS. (a) An award of costs and  
26 attorney's fees to an individual citizen or a small business under  
27 AS 09.60.050(b) or AS 44.62.500(d) against an agency of the state  
28 shall be paid by the agency from its regular operating budget. In the  
29 event the agency lacks sufficient funds to make timely payment of the

1 award, payment shall be made from subsequent appropriations to the  
2 agency with interest at the rate provided in AS 43.05.225.

3 (b) If an agency has been found liable for an award payable  
4 under (a) of this section, or has not paid all awards due under (a) of  
5 this section during the previous calendar year, the agency shall file  
6 a written report with the legislature on or before January 31 of the  
7 succeeding year that includes

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

10 (2) the nature and amount of all awards that remain unpaid;  
11 and

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

14 \* Sec. 7. Rule 82(a), Alaska Rules of Civil Procedure, is amended by  
15 adding a new paragraph to read:

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

18 \* Sec. 8. Section 7 amends Rule 82(a) of the Alaska Rules of Civil  
19 Procedure by incorporating statutory requirements for the award of attor-  
20 ney's fees against the state under certain circumstances.

21 \* Sec. 9. This Act takes effect immediately in accordance with AS 01.-  
22 10.070(c).