HB

176

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 22, 1999 **FURTHER REFERRALS:**

Date of Committee Action: 4/27/99

The FINANCE Committee considered: **HB 176**

HOUSE BILL NO. 176 **PUBLIC INTEREST LITIGANTS**

"An Act relating to attorney fees and costs and the granting of public interest litigant status in proceedings related to administrative actions and inactions; and amending Rules 79 and 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."

recommends it be replaced with the following committee substitute _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____ [X] zero fiscal note(s) HJud 4/22/99

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Therriault			X	
Mulder	/			
Bunde			✓	
Kohring	X			
Davies		X		
Grussendorf			X	
Davis			X	
Williams			X	

CHAIR'S SIGNATURE Therriault Mulder

No: 1

FISCAL NOTE

Bill Version: HB 176
(H) Publish Date: 4/22/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to Attorney fees..."
Sponsor: Rep. Green
Requester: House Judiciary

Dept. Affected None
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by House Judiciary Committee
by Cory Grinchell Judiciary Aide
Pete Kott, Chairman
House Judiciary Committee

Phone 465-4990
Phone
Date April 21, 1999

COMMITTEE COPY

Alaska State Legislature

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BUDGET SUBCOMMITTEES
ALASKA COURT SYSTEM
DEPT. OF ENVIRONMENTAL CONSERVATION
DEPT. OF REVENUE

Representative Joe Green

District 10
House Majority Leader

Sponsor Statement

HB 176 – Attorney fees for public interest litigants

The Alaska Supreme Court has established a unique and creative doctrine, known as the Public Interest Litigant Doctrine (PILD), which is not codified in any law or set out in any procedure, but has evolved through the court's decisions. PILD was established by the court to allow private plaintiffs to advocate for issues in the public interest.

PILD provides an exception to Civil Rule 82. Rule 82 sets out a formula for the reimbursement of attorney fees to be collected by a prevailing party in a legal action. The prevailing party is entitled to 30% of actual, reasonable attorney fees if the case goes to trial, and 20% if it does not. It is interesting to note that Alaska is the only state in the union that utilizes this system. In all other states, the party that files or defends a legal action is responsible for their own expenses.

If the court grants a party in a legal action "public interest litigant"status that party is allowed to collect ***full***, reasonable, actual attorney fees if they prevail. If they lose, the public interest litigant pays none of the prevailing party's attorney fees.

I believe that PILD has developed into an encouragement, an incentive for litigation causing valuable state assets to be used to fund plaintiffs' law firms. Over the past several years these organizations have challenged the state in our effort to develop our resources.

Representative Joe Green
Sponsor Statement
HB 176

HB 176 does not *in any way* hinder these groups from filing legal challenges to administrative decisions, but it does require them to pay for their own lawsuits, to the extent that other Alaskans do. The state employees responsible for utilizing our natural resources are conscientious public servants. Guided by our constitution, statutes and regulations, they practice due diligence in determining that the disposal of our hydrocarbons, minerals, timber, fish, water, and land, are in the best interests of Alaskans. Not surprisingly, this public process never seems to be good enough for the people who profit from filing lawsuits. HB 176 doesn't prevent these people from challenging the process, but it does make then do it at their own expense.

Abuse of the broad definition of who can be a public interest litigant, and an even broader definition of "prevailing party" has occurred. HB 176 establishes some limits in the public interest litigant doctrine.

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Representative Joe Green

District 10
House Majority Leader

Sectional Description

HB 176 – Public Interest Litigant

Section 1 amends 09.60.010, which grants to the Supreme Court the authority to allocate court costs for a civil action. Beginning at page 1, line 13, HB 176 prohibits the court from awarding "public interest litigant" status to a party in a civil action against the executive branch of the state, and states that a prevailing party is entitled to recover costs according to Civil Rule 82.

Section 2 adds language to prohibits the court from awarding public interest litigant status to a person challenging a regulation under 44.62.300, the section that allows a person to challenge a state regulation in superior court.

Section 3 adds language to prohibit the court from awarding public interest litigant status to a person challenging a final administrative order under 44.62.560, the section that allows a person to challenge an administrative order in superior court.

Section 4 clarifies that bill sections 1, 2, and 3 amend Rules 79 and 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure.

Section 5 is an enactment clause, which clarifies that since bill sections 1, 2, and 3 amend Alaska Rules of Court, final passage will require a two-thirds majority of each house.

Trustees for ALASKA

Trustees for Alaska is a public interest environmental law firm that has provided legal services in Alaska since 1974. Our advocacy work and legal cases deal with oil and gas development, mining, hazardous waste management, air pollution, water pollution, wetlands management, land use management, and protection of marine ecosystems. Our successes have set significant legal precedent in environmental law on a state and national level. We have initiated hundreds of administrative actions and legal cases on behalf of a broad constituency, including local and national environmental groups, Alaska Native villages and nonprofit organizations, community groups, commercial fishermen, and individuals committed to protection and wise management of Alaska's natural resources. While we have a number of cases pending in state and federal courts, we view litigation as a tool of last resort for achieving effective and lasting resolution of resource management conflicts. Where appropriate, we encourage and assist our clients in working to achieve desired protection through negotiation and consensus.

Why do we exist?

To provide no-cost legal services relating to environmental and natural resource policy matters to individuals and groups whose concerns would be unrepresented if forced to pay for private representation.

What have we accomplished?

Over the last twenty years, Trustees has instituted a number of important legal actions and initiatives:

- Helped prevent oil and gas drilling in the Arctic National Wildlife Refuge.
- Fought forestry and marine development projects that threatened traditional Native Alaskan values and practices.
- Forced the US Environmental Protection Agency to set nationwide standards to reduce mining industry pollution to rivers and streams.
- Prevented offshore oil and gas development in fragile marine ecosystems off Alaska's coasts.
- Halted illegal and shortsighted road development in some of Alaska's most pristine and natural areas.
- Worked to reduce the waste and pollution from industrial high seas fishing fleets in the North Pacific.

How do you help people in my community?

Many of our legal victories are far-reaching, setting precedent nationwide for environmental protection. These precedents are part of the body of laws ensuring clean air and water, and the wise development of natural resources in your community.

Why do we need your support?

Trustees has been providing legal counsel to environmental groups, Native villages and nonprofit organizations, rural communities, fishers, hunters and other conservationists who have asked for our help in defending the rich natural resource heritage that makes Alaska unique. Throughout this time, **Trustees for Alaska** has been willing and able to respond to these requests.

As doors to achieving environmental protection are being slammed in Congress and the Alaska Legislature, they are also being quietly closed in state and federal agencies. This trend leaves the court system as the only effective avenue for achieving environmental protection. Consequently, we have been deluged with requests for advice and assistance.

How can I be sure that you will use my money wisely and won't waste it?

Your pledge will help us in answering the many requests for help that await our immediate attention, and will aid us in launching an "all fronts" effort to use our current, strong environmental laws to defend Alaska's natural treasures. We apply your contribution directly toward our legal defense of the fish, wildlife, recreation and scenic values we all cherish. We know that if we don't maintain a "lean and mean" organization, you won't support our work, and the requests we receive for legal representation will go unanswered.

Can I volunteer? How?

We supplement our legal work witht he help of volunteer attorneys, we also accept law student interns throughout the year. If you have technical or computer experience, we may be able to use your help.

Visit Our Sister Web Site	Now Accepting Your Donations over the Internet!
Click here to visit our sister web site. View updates and alerts on current issues and read copies of our past newsletters!	**Trustees for Alaska** depends upon public support to continue its work. Through an alliance with CharitiesUSA, you can donate to Trustees via a **secure server.** Click the Give Button to make a contribution. All gifts are tax-deductible.

Contact Us!

Trustees for Alaska
725 Christensen Drive, Suite 4

SCLDF

Sierra Club Legal Defense Fund

Contents

What is SCLDF?

The Sierra Club Legal Defense Fund (SCLDF) is a public interest law firm (IRC 501(c)(3)), founded in 1971, that brings environmental litigation on behalf of the Sierra Club and other environmental organizations. Headquartered in San Francisco, with offices in Washington, D.C., Denver, Seattle, Honolulu, Juneau, Montana, Florida, New Orleans, and Tallahassee.

Using Law and the Courts To Protect the Land

It may be hard to believe now, but until the late 1960s there was no such thing as environmental law, at least in the way we understand it today.

Conservationists had tried rarely, and with little success, to pursue their goals through the legal system. Plaintiffs seeking to protect the environment lacked what most judges considered a prerequisite to a day in court: a financial interest in the outcome of the dispute. For all intents and purposes, the courthouse door was closed to those who would preserve mountains, meadows, forests, and streams, for recreation, wildlife, or for other uses that resource managers call "non-consumptive."

In the late 1960s, however, a profound change began in the courts, triggered by a lawsuit brought against the Federal Power Commission. At issue was a plan by a New York utility, Consolidated Edison, to build a hydroelectric plant at Storm King Mountain on the Hudson River. Lawyers for the Scenic Hudson Preservation Conference, the Sierra Club, and three nearby towns persuaded the federal Court of Appeals that the plaintiffs' "aesthetic, conservational, and recreational interest" in the area justified there being granted "standing" to sue. While this decision affected only disputes based on a limited area of the law regarding power development, conservationists were given hope that courts throughout the nation might soon grant them standing to file suit.

New initiatives within the Sierra Club also contributed to the genesis of environmental law. For many years, the Club's legal program served mainly to help with contracts and other internal matters. But in the late 1960s, newly appointed Sierra Club Legal Committee Chair Phil Berry and Conservation Director Michael McCloskey began to urge using the courts to pursue conservation objectives. Two San Francisco

attorneys, Don Harris and Fred Fisher, joined the fledgling campaign and helped recruit other lawyers to the cause.

Soon, volunteer attorneys were battling government agencies over timber sales and other matters, and in 1970 Harris argued the first case brought under the National Environmental Policy Act. With Earth Day fresh in mind, Congress was swiftly enacting new environmental statutes, and such suites were vital to ensuring enforcement and clarifying lawmakers' intentions. It soon became evident that a volunteer organization was inadequate to realize the potential of environmental law.

The Sierra Club Legal Defense Fund was formed to realize that potential. Established in 1971 with the aid of a generous grant from the Ford Foundation, and supported by The Sierra Club Foundation, the Legal Defense Fund was created legally and financially distinct from the Sierra Club. This allows the organization to solicit and accept tax-deductible contributions, and to represent clients other than the Sierra Club itself.

Mineral King

It didn't take long for the young Legal Defense Fund to break new ground in environmental law. A suit over a place called Mineral King, first filed in 1969 by attorneys hired by the Club and taken on by the Legal Defense Fund two years later, became one of the organization's most important victories when the U.S. Supreme Court used the case to broaden the principle of standing from the Storm King litigation.

Mineral King is a small valley about 7,000 feet high in the southern Sierra Nevada. The flat valley floor, a fraction of the size of Yosemite Valley, is ringed by magnificent 12,000-foot peaks. In 1926 an early Sierra Club campaign to establish Sequoia National Park brought protection to an area that surrounded Mineral King, but the valley itself remained under Forest Service jurisdiction, subject to the Service's multiple-use management.

In 1965 the Forest Service invited private companies to propose winter-sports resorts in Mineral King. Walt Disney Enterprises won the agency's approval for a plan that would have jammed Mineral King with as many as 27 chair lifts, an ersatz alpine village, a huge underground parking garage, restaurants, and more: a total installation that the Disney master plan called the equivalent of six Squaw Valleys. The plan envisioned more tan two million visitors to Mineral King each year, a level of use that makes the far larger Yosemite Valley desperately overcrowded.

In the 1940s the Sierra Club had approved in principle a modest ski resort in Mineral King. Such resorts were smaller then, and the Club was trying to find suitable sites for a fast-growing ski industry. Twenty years later, however, the Club found many features of the Disney plan objectionable. First, it was too big. Second, it required upgrading the only road into the valley, a road that passes through Sequoia National Park. Third, it seemed a dubious proposition to devote so much public land to the profit of private enterprise. And fourth, Mineral King was designated a game refuge, and a giant resort was incompatible with the idea of preserving wildlife. While the Club mounted a campaign to preserve the valley through legislative action, it also sought ways to halt the proposed development.

The Club asked the Forest Service to estimate the environmental effects of the project; when the agency refused, the Club then asked the National Park Service to deny permission to improve the road through the park, again without success. Having run out of options, the Club filed suit. The district court issued an injunction that halted further work on the resort. The Forest Service's subsequent response was to ask the Court of Appeals to dismiss the case on grounds that the Club lacked standing to sue; losing that legal round, the Club appealed to the Supreme Court.

Setting ground rules for future environmental litigation, the Supreme Court handed the Sierra Club what might be called a friendly defeat: while the court rejected the Club's complaint as failing to show the organization's standing to sue, Legal Defense Fund attorneys were allowed to rewrite it to address a new, broadened rule of standing defined by the court. This rule stated that while a party must be injured to file suit, the injury can be to recreational interests, rather than only to financial interests. This new rule entered into the "common law" and opened the courts to environmental plaintiffs across the country. The door that had been slightly opened in the Storm King case under a particular statue was now thrown wide open. The Club's amended complaint detailed members' recreational use of Mineral King and the harm they would suffer without court action.

By the time attorneys filed the amended complaint, the National Environmental Policy Act had become law, and the Club asked the court to order the Forest Service to prepare an environmental impact statement on the project. This process, which involves public hearings and scientific studies, increased the public's interest in the dispute. Sensing a profound change in the public's mood, Disney dropped its proposal, and in 1978 the grassroots legislative campaign bore fruit when Congress and President Carter added Mineral King to Sequoia National Park.

In those early days the Legal Defense Fund represented the Sierra Club almost exclusively. But as the organization grew and its attorneys branched out, they took on new clients from other corners of the environmental community. While the Sierra Club remains a major client, Legal Defense Fund attorneys now represent dozens of other groups.

Over the years, the Legal Defense Fund has been involved in many of the classic cases in environmental law, both setting legal precedents that can be followed across the nation, and complementing legislative and grassroots campaigns to preserve valuable areas. Among the most important cases are these:

Admiralty Island, Alaska

The object of Sierra Club and Legal Defense Fund efforts that continue to this day, Admiralty Island is a million-acre paradise in the Pacific west of Juneau known to the native Tlingit as *Kootz-noowoo* the Fortress of the Bears. A part of the nation's largest national forest, the Tongass, the heavily forested island supports the world's densest concentrations of Alaskan brown bears and bald eagles, and vast numbers of salmon, otters, trout, and other creatures.

But the Forest Service had long been determined to see Admiralty's hemlock and spruce clearcut, despite the destruction this would wreak upon the majestic island's wildlife and Native peoples. When the Service ignored pleas from conservationists to halt an unprecedented 50-year timber harvest lease that would have left much of Admiralty roaded and barren, the Sierra Club launched what eventually became a number of incredibly complex series of lawsuits and appeals. As in the Mineral King case, the Admiralty litigation was begun by an attorney working directly for the Club (in this case Warren Matthews, now an Alaska Supreme Court Justice) and was later assumed by the Legal Defense Fund.

Also like the Mineral King case, litigation helped persuade the corporation holding the lease to abandon the project. This bought time while the Sierra Club and other groups waged a dramatic and long-running legislative campaign to protect Alaskan wild areas, including Admiralty. That campaign succeeded in 1980 with the passage of the Alaska National Interest Land Conservation Act, which granted wilderness status to almost all of the island; left out was Angoon, Admiralty's only settlement, and a controversial 23,040-acre

area comprised of three of the island's most valuable watersheds. Legal Defense Fund attorneys continue battling to protect portions of that area from clearcutting by the Shree Atika logging corporation.

Air Quality and the Colorado Plateau

The parks and wildlands of the Colorado Plateau--Grand Canyon, Zion, Canyonlands, and other areas--are famous for their expansive views. At the same time, developers have sought to build stripmines, coal-fired powerplants, uranium mines, and other projects that would spoil views and sully air quality across the entire region, parks and wildlands included.

Passage of the first Air Quality Act in 1967 committed the federal government to "protect and enhance" the nation's air. To implement the act, the National Air Pollution Control Administration (NAPCA, an agency then within the Department of Health, Education, and Welfare) decreed that in areas where the air was still relatively clean, like the Colorado Plateau, the federal government must undertake to "prevent significant deterioration" of air quality. This important provision of the regulations is abbreviated "PSD."

In 1970, however, NAPCA was transferred to the new Environmental Protection Agency, and when the Clean Air Act was enacted by Congress that year, there was no explicit reference to PSD. The EPA's regulations to implement the new Clean Air Act included provisions that would have allowed the dirtying of clean air in most of the country. On the Colorado Plateau, that would have meant polluted skies from stripmines, powerplants, and other projects, approval for which had been blocked in part by the PSD standards.

The Legal Defense Fund sued, arguing that the "protect and enhance" language in both clean air laws strongly implied the PSD requirement. A district court agreed, and so did the Court of Appeals and the Supreme Court (although neither wrote an opinion). When the Clean Air Act was amended in 1977, Congress added PSD as an explicit provision of the law. The PSD lawsuit helped protect air quality over the Colorado Plateau's parks and wildlands, while it aided in blocking developments that would have fouled land, water, and air throughout the region.

These are just two of the cases in which the Sierra Club Legal Defense Fund has made a difference. There have been hundreds of such lawsuits in the years since the organization hung out its shingle, and there will be many more.

Sierra Club members and other conservationists usually turn to litigation when all other remedies are exhausted. Upon being contacted by officers of a Club chapter considering a suit, Legal Defense Fund attorneys review the dispute to determine its prospects for success in court, whether it could set a precedent useful elsewhere, and if a victory could be sustained politically. When a good case cannot be accepted owing to workload, the Legal Defense Fund attempts to find volunteer or reduced-fee lawyers to help the chapter with its case.


Back to Affiliated Sierra Club Organizations.

 Back to Sierra Club home page.

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Sierra Club, 85 Second St., Second Floor, San Francisco, CA 94105-3441, USA. Telephone (415) 977-5500 (voice), (415) 977-5799 (FAX). Text written by Tom Turner, 1989. Last updated 12 March 1996.

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ALASKA STATE CHAMBER OF COMMERCE

Position 99 - 25

Public Interest Litigants

WHEREAS, Alaska court doctrine recognizes a party status known as "public interest litigant";

WHEREAS, the four-part test to qualify as a "public interest litigant" established by the Alaska Supreme Court in *Anchorage Daily News v. Anchorage School District*, 803 P.2d 402, 404 (Alaska 1990), requires that:

(1) the case pursued by the party must be designed to effectuate strong public policies;
(2) if the party prevails, numerous people will receive benefits from the litigation;
(3) the challenge must be one that only a private party could have been expected to initiate; and
(4) the purported public interest litigant would not have sufficient economic incentive to file suit;

WHEREAS, some groups routinely challenge state resource development decisions and are granted "public interest litigant" status by the courts;

WHEREAS, these groups are often special interest groups posing as public trusts as well as public interests litigants;

WHEREAS, these challenges typically allege as many as 15 to 20 specific deficiencies in the state's administrative finding;

WHEREAS, when groups challenging resource development decisions prevail, they generally prevail on only one or two issues;

WHEREAS, even though the groups only prevail on one or two issues, they are typically awarded full costs and attorneys fees;

NOW, THEREFORE BE IT RESOLVED, that the Alaska State Chamber supports legislation to amend state law to direct the Alaska courts to apportion the same percentage of costs and fees paid to a public interest litigant as the percentage of issues raised on which the litigant prevailed.

ADOPTED

March 2, 1999

BY Pamela La Bolle
Pamela La Bolle
President

BY
Peter Leathard
Chairman