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Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

To: Representative Pete Kott
Chairman, House Judiciary Committee

From: Senator John Torgerson 

Re: Hearing Request for CSSB 123(FIN), "Relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

Date: March 20, 2000

I respectfully request that you schedule CSSB 123(FIN) for a hearing in the House Judiciary Committee. This bill is sponsored by the Senate Finance Committee and has recently been referred to your committee.

CSSB 123(FIN) amends Rule 82 in the Alaska Rules of Civil Procedure in reference to the apportionment of attorney's fees and attorney's fees for public interest litigants (PIL). Currently, the manner in which the courts award attorney's fees to a PIL is inequitable and not codified in statute or the rules of court. The courts receive their direction when dealing with these litigants from the Public Interest Litigant Doctrine, which is an exception to Rule 82 and a creation of the Alaska Supreme Court.

The bill before you would make public interest litigants subject to Court Rule 82 regarding judgements for attorney's fees and treat them equitably compared to other litigants. Additionally, CSSB 123(FIN) makes it mandatory for courts to apportion attorney's fees by issue in the event that a court finds exceptional circumstances exist to award enhanced attorney's fees above the provisions established in Rule 82(b).

I am prepared to provide you with additional information on this issue at your convenience. Thank you for your consideration of this request.



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CSSB 123(FIN) SPONSOR STATEMENT

CSSB 123(FIN) amends Rule 82 in the Alaska Rules of Civil Procedure in reference to the apportionment of attorney's fees and attorney's fees for public interest litigants (PIL). Currently, the manner in which the court awards attorney's fees to a PIL is inequitable. The court receives its direction when dealing with this class of litigant from the Public Interest Litigant Doctrine, which is an exception to Rule 82. This doctrine has been created by precedent set by the State Supreme Court and is not codified in statute or court rules.

The court bases PIL status on four criteria; 1) the lawsuit implements strong public policies, 2) numerous people would benefit from the lawsuit's success, 3) only a private party could be expected to bring a lawsuit, and 4) the plaintiff must not have a significant economic interest in the outcome. If the criteria are satisfied, a prevailing PIL is awarded 100% of attorney's fees (as opposed to 30% for a prevailing civil litigant that goes to trial and 20% if a case does not go to trial) and a losing PIL is immune from paying the prevailing party's attorneys fees (as opposed to civil litigants).

CSSB 123(FIN) puts public interest litigants on a level playing field with civil litigants. Under current Court Rule 82, the court must award attorney's fees according to a specific calculation. As previously mentioned, public interest litigants are not covered under Rule 82, so the courts have a lot of latitude when awarding their attorney's fees. This often results in exorbitant costs to the state. CSSB 123(FIN) attempts to correct this oversight by directing the courts to award attorney's fees to and against public interest litigants in a more equitable manner.

CSSB 123(FIN) makes an additional amendment to Court Rule 82. This change requires the court to apportion attorney's fees for all lawyers when the court decides to increase the award amount. Right now, Rule 82 allows the court to award additional or enhanced attorney's fees in exceptional circumstances (i.e., needed a lot of attorneys, exceptionally lengthy trial, bad faith conduct, etc). Currently, an attorney can prevail on one issue and the losing party must pay the enhanced attorney's fees for every single issue the plaintiff brought before the court. CSSB 123(FIN) directs the court to apportion enhanced attorney's fees by prevailing issue to make it fair for all parties.

In summary, CSSB 123(FIN) recognizes public interest litigants by codifying them in Court Rule 82. It prevents the courts from awarding unacceptably high attorney's fees under the guise of the public interest litigant doctrine. And finally, it requires the court to apportion enhanced attorney's fees by prevailing issue, resulting in increased accountability and reducing the likelihood of abuse.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSB 123(FIN)

Revision Date _____ Dept. Affected Alaska Court System
 Title Public Interest Litigants BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Finance Committee
 Requester Senate Finance Committee Component Serial No. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
Personal Services						
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	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 No fiscal impact anticipated.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 907-64-8265
 Agency: Alaska Court System Date/Time: 2/22/00 1:00 PM
 Approved by: Stephanie J. Cole, Administrative Director Date: 2/22/00
 Agency: Alaska Court System



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Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party. Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

	Judgment and, Contested	Contested	Non-
	if awarded, With	Without	Contested
	Prejudgment	Trial	Trial
	Interest		

First \$ 25,000	20%	18%	10%
Next \$ 75,000	10%	8%	3%
Next \$400,000	10%	6%	2%
Over \$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;
- (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
- (K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

interest, and by changing provisions relating to attorney fee awards. According to § 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.



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Last Modified 7/14/1999

