

**SB**

**183**





Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### SPONSOR STATEMENT

#### SENATE BILL 183

**“An Act relating to public interest litigants and attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure”**

SB 183 makes public interest litigants subject to Court Civil Rule 82 regarding judgments for attorneys' fees, thus adopting a uniform standard for all litigants. Courts would continue to have the authority to award higher or full attorney fees when a court felt exceptional circumstances justified a higher award.

Through Alaska Supreme Court decisions, a doctrine known as the *Public Interest Litigant Doctrine* (PILD) has been established. This doctrine is not codified in law or set out in any court procedure. The courts apparently created the PILD as social policy to encourage private plaintiffs to advocate for issues that are deemed by the court to be “in the public interest.”

Civil Rule 82 sets out a formula for the reimbursement of attorney fees to be collected by a prevailing party in a legal action. Court Civil Rule 82 limits attorney's fees recovery by prevailing litigants to 20 percent of the litigant's reasonable actual attorney's fees incurred on a case resolved without trial and 30 percent for those cases that go to trial.

PILD creates an exception to Civil Rule 82 by allowing the courts to classify a party as a “public interest litigant”, thus allowing said party to collect **full**, reasonable, actual attorney fees if they prevail. And if they lose, the public interest litigant pays **none** of the prevailing party's attorney fees. Not even the innocent victims of violent crime who bring subsequent civil suit against criminals are allowed such generous attorney fees.

Additionally, SB 183 prevents legal fees being awarded to a litigant for claims on which they did not prevail. Such awards serve to promote spurious lawsuits, since plaintiffs know they will receive compensation for all costs even if they only win on one of several points. This problem was created by the recent Alaska Supreme Court Decision *Dansereau v. Ulmer* 955 P.2d 916 1998. Prior to *Dansereau v. Ulmer* lawyer fees for public interest litigants were only awarded for issues on which they prevailed. *Dansereau v. Ulmer* sets a precedent that allows courts to award the lawyer fees for all contested points even if the public interest litigants only prevailed on one point.

SB 183 includes a provision that gives the courts the flexibility to continue to follow the *Dansereau* case and/or award higher or full attorney fees when the court finds exceptional circumstances to justify a higher award.

SB 183 seeks to prevent awards of lawyer fees of \$150 or more an hour to special interest litigating organizations that have staff attorney's on salary for \$30 - \$40 per hour. When organizations are awarded such unnecessarily high lawyer fees they are able to utilize the embellished award to not only pay their in house lawyers but to also finance political and advocacy operations. It is wrong that the current system is being exploited in this way.

The Senate Finance Committee introduced SB 183 to make "public interest litigants" equally accountable for their lawsuits and to protect the state from having to pay excessive lawyer fees for frivolous public litigant cases. Based on claims paid in recent years this legislation could save the state hundreds of thousands of dollars annually.

A similar bill passed the State Senate in 2000. However, the legislation, sponsored by the Senate Finance Committee, failed to get a hearing in the House of Representatives.



Official Business

# Alaska State Senate

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Mail Stop 3100  
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### Sectional Analysis

#### SB 183

**Section 1.** Amends AS 09.60.010 by providing that attorney fees may only be awarded to or against a public interest litigant as provided in Rule 82(g), Alaska Rules of Civil Procedure, as that rule reads on the effective date of this Act.

**Section 2.** Adds a new paragraph to Rule 82(b), A.R.C.P., that if the court chooses to vary an award of attorney fees beyond the amounts provided for in (b)(1) or (2), then the court is required to apportion attorney fees only on an issue that the party prevailed upon. However, if the court finds exceptional circumstances to be present, an increased award of attorney fees can be made without apportionment by issue.

**Section 3.** Adds a new subsection that awards attorney fees for or against a public interest litigant in the same manner as a non public interest litigant.

**Section 4.** Provides that section 1 only takes effect if sections 2 and 3 receive a two-thirds majority vote as required for court rule changes under article IV, section 15 of the Constitution for the State of Alaska.

DD/bc

**Provided By Senator Donley's Office**

**Additional Information on SB 183**

**"An Act relating to public interest litigants and attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure"**

**Definition of statute is included for clarity purposes**

**AS 09.17.900. Definition.**

In this chapter, "fault" includes acts or omissions that are in any measure negligent, reckless, or intentional toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

**Provided By Senator Donley's Office**

**Additional Information on SB 183**

**Alaska Rules of Civil Procedure**

**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, if awarded, Prejudgment Interest	Contested With Trial	Contested Without Contested Trial	Non- Contested Trial
First	\$ 25,000	20%	18%	10%
Next	\$ 75,000	10%	08%	03%
Next	\$400,000	10%	06%	02%
Over	\$500,000	10%	02%	01%

(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).

(c) Motions for Attorney's Fees. A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) Determination of Award. Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) Equitable Apportionment Under AS 09.17.080. In a case in which damages are apportioned among the parties under AS 09.17.080, the fees awarded to the plaintiff under (b)(1) of this rule must also be apportioned among the parties according to their respective percentages of fault. If the plaintiff did not assert a direct claim against a third-party defendant brought into the action under Civil Rule 14(c), then

(1) the plaintiff is not entitled to recover the portion of the fee award apportioned to that party; and

(2) the court shall award attorney's fees between the third-party plaintiff and the third-party defendant as follows:

(A) if no fault was apportioned to the third-party defendant, the third-party defendant is entitled to recover attorney's fees calculated under (b)(2) of this rule;

(B) if fault was apportioned to the third-party defendant, the third-party plaintiff is entitled to recover under (b)(2) of this rule 30 or 20 percent of that party's actual attorney's fees incurred in asserting the claim against the third-party defendant.

(f) Effect of Rule. The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

**Provided By Senator Donley's Office**

**Additional Information for SB 183**

**ALASKA CONSTITUTION  
Article IV**

The Judiciary

**SECTION 1. JUDICIAL POWER AND JURISDICTION.** The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

**SECTION 2. SUPREME COURT.**

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

**SECTION 3. SUPERIOR COURT.** The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

**SECTION 4. QUALIFICATIONS OF JUSTICES AND JUDGES.** Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

**SECTION 5. NOMINATION AND APPOINTMENT.** The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

**SECTION 6. APPROVAL OR REJECTION.** Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

**SECTION 7. VACANCY.** The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

**SECTION 8. JUDICIAL COUNCIL.** The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area

representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

**SECTION 9. ADDITIONAL DUTIES.** The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

**SECTION 10. COMMISSION ON JUDICIAL CONDUCT.** The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

**SECTION 11. RETIREMENT.** Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

**SECTION 12. IMPEACHMENT.** Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

**SECTION 13. COMPENSATION.** Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

**SECTION 14. RESTRICTIONS.** Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

**SECTION 15. RULE-MAKING POWER.** The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

**SECTION 16. COURT ADMINISTRATION.** The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.



**SENATOR DAVE DONLEY**  
 ALASKA STATE LEGISLATURE

**MEMORANDUM**

**TO:** Senator Dave Donley  
**FROM:** Bill Church *Bill*  
 Legislative Aide  
**DATE:** March 19, 2001  
**RE:** Department of Law Public Interest Litigant Payments

The Department of Law has provided a six year history (FY 95-01) of general funds used to pay attorney fees in PIL cases.

The breakdown is as follows:

FY	Criminal Division	Civil Division	Number of PIL
95	\$82,047	\$1,231,439	20
96	\$147,717	\$146,392	11
97	\$85,958	\$144,483	11
98	\$53,922	\$215,611	9
99	\$56,734	\$603,859	8
00	\$51,018	\$37,724	3
01	<u>\$209,415</u>	<u>\$211,320</u>	<u>8</u>
	\$686,811	\$2,590,828	70

This represents a total of \$3,277,639 in public interest litigant attorney fees for the entire seven-year period. This is an average cost to the state of \$468,234 per year. If the legislation were to become law and the amount paid out in PIL attorney fees was cut by 25 percent, the state could save approximately \$117,058 per year.

**Co-Chair: Senate Finance Committee**  
**Vice-Chair: Senate Judiciary Committee**  
**Member: Legislative Budget and Audit Committee • Legislative Council**



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## MEMORANDUM

**TO:** Senator Dave Donley

**FROM:** Bill Church *Bill*  
Legislative Aide

**DATE:** April 30, 2001

**RE:** Department of Law Public Interest Litigant Payments (Revision)

The Department of Law has provided a six year history (FY 95-01) of general funds used to pay claims for plaintiff attorney fees in PIL cases. This memorandum represents a revision to the March 19, 2001 memorandum and includes amounts spent by the department to defend PIL cases.

The breakdown is as follows:

FY	Attorney Fees Paid	Costs for Defense	Number of PIL Cases
95	\$1,231,439	See Note 1	20
96	\$173,169	See Note 1	11
97	\$148,811	\$4,376*	11
98	\$215,611	\$35,161	9
99	\$603,859	\$195,130	8
00	\$37,724	\$24,985	3
01	<u>\$354,475</u>	<u>\$170,814</u>	<u>8</u>
	\$2,765,088	\$430,466	70

If SB 183 were to become law the amount paid out in plaintiff attorney fees for PIL lawsuits may decrease depending on the discretion allowed the courts under Rule 82 and the exceptional circumstances standard. If only a 25 percent reduction was obtained, the state could save approximately \$691,272 per year in plaintiff attorney fees and assuming a corresponding 25 percent decrease in Department of Law costs of \$107,616.

Note 1: The Department of Law instituted full timekeeping for all civil division attorneys and paralegals beginning with the third quarter of FY 96. As a consequence, an internal cost for the earliest years and/or cases is not available.

\*The Department of Law did not institute timekeeping for the civil division until the final quarter of 96 - thus data prior to October 1, 1996 is simply not available.

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# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 183  
 (S) Publish Date: 4/23/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to public interest litigants and to BRU Civil Division  
attorney fees; and amending Rule 82, ... Rules of Civil Procedure." Component Deputy Attorney General's Office  
 Sponsor Senate Finance Committee  
 Requester Senate Finance Committee Component No. 2205

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Under Rule 82, Alaska Rules of Civil Procedure, attorney's fees are awarded to the prevailing party. By rule, the attorney's fee awards are limited to a percentage of the actual fees depending on a number of factors, including whether the case is contested or goes to trial, and whether or not a money judgment is received. The complexity of the case and length of trial are among a list of other factors that may be used by the court to vary the size of the award. In contrast, under current Alaska case law public interest litigants may receive full attorney fees when they prevail, with no apportionment by issue, and are not liable for opposing party's fees when they lose their case.

SB 183 requires that attorney fee awards to or against a public interest litigant follow the same court rule as non-public interest litigants. The bill further requires that if a court increases the award from the percentages set out in (b)(1) or (b)(2) of the rule, it must apportion the attorney's fee by issue, and absent exceptional circumstances, can only award the increased fee for an issue the party prevailed upon.

Prepared by: Joan M. Kasson Phone 465-5370  
 Division Attorney General's Office Date/Time 4/17/01 11:00 AM  
 Approved by: Kathryn Daughetee for Bruce M. Botelho, Attorney General Date 4/17/01  
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

## FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. SB 183 #1

### ANALYSIS CONTINUATION

Passage of this legislation will have no impact on the Department of Law's operating budget. However, each year the department seeks supplemental funding to pay judgments and claims against the state, including public interest litigant attorney's fee awards. Total attorney's fee awards under the public interest litigant exception to Rule 82 included in judgments against the state for the last five years are as follows: FY96, \$143.1; FY97, \$134.3; FY98, \$186.4; FY99, \$413.9; FY00, \$34.7. (These numbers represent fees only, and do not include costs, pre-judgment or post-judgment interest.)

Passage of this legislation would lower, but not eliminate these awards in the future, thereby reducing the amount of supplemental requests. Public interest litigants would still be allowed to recover fees under Rule 82. Thus, the extent to which the fee awards would be reduced under this legislation would depend on the application of Rule 82 schedules to public interest litigation. In turn, this depends on the nature of the litigation and the extent to which the courts vary the award under the provisions Rule 82(b)(3).

Most public interest litigation does not involve recovery of a money judgment. When there is no money judgment, Rule 82 provides that the prevailing party can receive 30 percent of their reasonable attorney's fees if the case goes to trial, and 20 percent if it does not. This starting amount can be changed by the court after considering a list of eleven factors contained in Rule 82(b)(3), including case complexity, length of trial, reasonableness of the claims and defenses, relationship of the amount of work, the significance of the matters at stake, etc. The Judicial Council study noted in the following paragraph found that variances to the Rule 82 schedule were relatively rare for the types of civil cases the study examined. (See p. 61.) However, we have no way of knowing if the same would be true for public interest cases. At the most, assuming that all cases were non-monetary, did not go to trial, and contained no factors listed under Rule 82(b)(3), the awards would be reduced 80 percent from the amounts that would be granted under existing law. The actual reduction would almost certainly be less.

The Alaska Judicial Council, in its October 1995 report, *Alaska's English Rule: Attorney's Fee Shifting in Civil Cases*, discusses the development in Alaska of Rule 82 and the public interest exception. (<http://www.ajc.state.ak.us/Reports/alyfee.pdf>) The cases cited in the report indicate the Supreme Court intended to encourage public interest litigation by making it more financially feasible for people to litigate questions of general public concern through full reimbursement of their legal costs if they win, and by not making them pay any of the prevailing party's legal costs if they lose. (See pp. 73-77.) We have been unable to find objective data to indicate whether or not the public interest exception is a primary motivation for parties to litigate public interest issues. However, anecdotal evidence found in the Judicial Council report (pp. 129-131) suggests that the public interest exception has the effect of encouraging public interest litigation, and thus there may be fewer public interest litigation cases in the future if SB 183 passes.

934 P.2d 759 FAIRBANKS FIRE FIGHTERS ASS'N, LOCAL 1324 V. CITY OF  
FAIRBANKS (S. Ct. 1997) 1997 Alas. Lexis 49

"A prevailing public interest plaintiff is normally entitled to full reasonable attorney's fees." **Hickel v. Southeast Conference**, 868 P.2d 919, 923 (Alaska 1994)(citations omitted). To qualify as a public interest litigant, a party must satisfy four criteria:

- (1) Is the case designed to effectuate strong public policies?
- (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
- (3) Can only a private party have been expected to bring the suit?
- (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

**Anchorage Daily News v. Anchorage Sch. Dist.**, 803 P.2d 402, 404 (Alaska 1990).

The superior court denied FFFA public interest litigant status on the ground that FFFA did not satisfy the fourth criterion, lack of economic incentive.<sup>10</sup> We review the superior court's denial of public interest status for an abuse of discretion. **Stein v. Kelso**, 846 P.2d 123, 127 (Alaska 1993) (miners who claimed they were deprived of a property interest without just compensation were not public interest litigants).

A public interest litigant may have some minimal or indirect personal interest in the outcome of an action, so long as that party's interest is insufficient to provide an incentive to litigate in the absence of public interest concerns. **Anchorage Daily News**, 803 P.2d at 404 (newspaper which brought an action to force disclosure of information required to be public by law was a public interest litigant despite its minor commercial interest in the disclosure of newsworthy information). In **Municipality of Anchorage v. Citizens For Representative Governance**, 880 P.2d 1058 (Alaska 1994), officials challenging a petition to recall them were public interest litigants despite the fact that their offices carried monthly stipends. **Id.** at 1062 (while salary is usually sufficient incentive to prompt suit, normal compensation of elective office does not bar public interest status, due to "strong public interest in fair and honest elections"). Similarly, in **Kodiak Seafood Processors Ass'n v. State**, 900 P.2d 1191 (Alaska 1995), a party challenging a permit allowing "exploratory" scallop fishing in an area closed to commercial fishing was a public interest litigant because it sought only injunctive relief, its members stood to collect nothing if they prevailed in the action, and the litigation would have no impact on that party's ability to fish in the closed area. **Id.** at 1199. Conversely, if a party has an economic interest which would be sufficient in and of itself to inspire litigation, that party cannot qualify as a public interest litigant. In **Abbott v. Kodiak Island Borough Assembly**, 899 P.2d 922 (Alaska

1995), homeowners who argued that a rezoning scheme would "amount to a taking without just compensation . . . 'had sufficient economic incentives to proceed with the litigation without the issues that were also shared by others'" and thus were not public interest litigants. *Id.* at 924. Similarly, in *Acevedo v. City of North Pole*, 672 P.2d 130, 137 (Alaska 1983), a police officer seeking reinstatement had sufficient economic incentive in regaining his job to disqualify him as a public interest litigant.

FFFA's litigation was motivated at least in part by safety concerns. The City conceded that the staffing cuts adversely affected fire safety in Fairbanks. The superior court also noted that the fire fighters themselves faced increased risk as a result of the staff reduction. Moreover, restored overtime funding, the relief which FFFA sought, would address both problems squarely.

However, FFFA's solution to those safety problems would result in increased overtime payments from the City directly to members of FFFA.<sup>11</sup> Indeed, FFFA argued that if the City truly lacked sufficient funding to make such payments, the suit would be meaningless. If the usefulness of the suit was contingent on the ability of the City to make payments to FFFA's members, then FFFA was not economically "disinterested" in the litigation. Here, as in *Abbott*, the would-be public interest litigant's attempt to serve a public purpose directly furthered that party's financial interests. In the same way that the plaintiff in *Acevedo* had an economic incentive to regain his job, FFFA's members had an economic incentive to regain overtime payments. While FFFA can argue that such payments were required to address the safety concerns which prompted the action, the members of FFFA clearly had a direct economic stake in the action which exceeded the indirect interests of the litigants in *Kodiak Seafood Processors* and *Anchorage Daily News*.<sup>12</sup>

Since the relief FFFA seeks is direct payment of substantial funds to its members, FFFA would have "sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance." *Anchorage Daily News*, 803 P.2d at 404. Accordingly, there is ample evidence to support the superior court's finding that FFFA does not qualify as a public interest litigant even though its financial interest in this case is closely intertwined with safety concerns. We will overturn the superior court's determination only if the court abused its discretion. *Stein*, 846 P.2d at 127. We are unpersuaded that it did so.

#### IV. CONCLUSION

The decision of the superior court is AFFIRMED.

935 P.2d 816 KACHEMAK BAY WATCH, INC. V. NOAH (S. Ct. 1997) 1997 Alas.  
Lexis 50

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### E. Public Interest Litigant Status

We have articulated four criteria for determining whether a party qualifies as a public interest litigant: (1) is the case designed to effectuate strong public policies?; (2) if the plaintiff succeeds will numerous people receive benefits from the lawsuit?; (3) can only a private party have been expected to bring the suit?; and (4) would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance? *McAlpine*, 810 at 171 (citing *Anchorage Daily News v. Anchorage School Dist.*, 803 P.2d 402, 404 (Alaska 1990)). The party claiming public interest litigant status carries the burden of satisfying all four criteria. *Id.*

The superior court ruled that KBW was not a public interest litigant because "its principals had a substantial personal economic interest in the outcome of the litigation. This interest, and not the interests of the public at large, was the motivation for [KBW's] action."

In deciding whether a party's interest in a suit can be characterized as economic, the determinative question is "whether the [litigant] is motivated primarily by private as opposed to public interests." *Sisters of Providence v. Dep't of Health & Social Servs.*, 648 P.2d 970, 979 n.27 (Alaska 1982). We have said that the fourth criterion in the analysis

may be expressed as whether the litigant claiming public interest status would have had sufficient economic incentive to bring the lawsuit even if it involved only narrow issues lacking general public importance. Such a litigant is less apt than a party lacking this incentive to be deterred from bringing a good faith claim by the prospect of an adverse award of attorney's fees.

*Id.* at 979-80 (citation omitted). A court must weigh the individual facts of the case to determine if the litigant's primary motivation for filing suit was economic. *Eyak Traditional Elders Council v. Sherstone, Inc.*, 904 P.2d 420, 426 (Alaska 1995).

KBW argues that it meets the fourth criterion because a successful suit would not have resulted in a monetary recovery for the corporation or its individual members, and the litigation was not motivated by an economic incentive. KBW contends that it seeks to invalidate the aquatic farm permits because they would interfere with traditional uses of the bay by local residents, set netters, commercial fishermen and tour operators. KBW is a non-profit corporation, with Articles of Incorporation that identify its broad policy concerns as preventing detrimental environmental impact from aquatic farming in the Kachemak Area.

To succeed on appeal, KBW must show that the superior court abused its discretion in making its public interest litigant determination. *McAlpine*, 810 P.2d at 171. Evidence was presented that three KBW directors had sufficient economic incentive to bring the lawsuit. Two directors owned property in the area and expressed concern that property values would decrease as a result of DNR's actions. The third director operates a commercial kayak guiding and fishing

charter and acknowledged that aquatic farming in the area could interfere with his business.

KBW did not provide the superior court with detailed information about its membership and their interests. KBW bore the burden of providing evidence sufficient for the court to determine its public interest litigant status. It failed to meet this burden. The superior court reasonably based its decision on the economic incentives of the KBW members about whom it had more detailed information. See *Municipality of Anchorage v. Citizens for Representative Governance*, 880 P.2d 1058, 1061 (Alaska 1994) ("When a group does not reveal the identity of its members, a court may not be able to determine the group's public interest status.").

We therefore hold that the superior court did not abuse its discretion in ruling that KBW is not a public interest litigant.

#### IV. CONCLUSION

DNR failed to properly identify districts for aquatic farming, in violation of AS 38.05.855. We REVERSE on this ground.<sup>10</sup> We therefore invalidate DNR's decision to accept applications for aquatic farming throughout Southeast and Southcentral Alaska and remand this case for implementation of AS 38.05.855 in conformity with this opinion. We affirm the superior court's rulings that (1) the APA does not govern the district identification process; (2) DNR's permitting regulations are sufficient; and (3) KBW is not a public interest litigant.

#### DISPOSITION

Reversed in part, affirmed in part and remanded.

#### OPINION FOOTNOTES

<sup>1</sup> The advisory group included representatives of conservation organizations, commercial fishermen, state and federal agencies, and the public.

<sup>2</sup> A Natural Resource Manager for DNR affied that the advisory group also did not "favor[] a blanket prohibition of aquatic farming in any district or any component part being considered."

<sup>3</sup> DNR created an informal commission and appropriately solicited public and expert responses to the creation of aquatic farm districts. It received recommendations to leave over 400 sites closed to farming, yet the Director decided to open all areas, testifying by affidavit that no reason existed for the closure of any area. The record provides no explanation of how he reached this conclusion despite the nominations for closure of 79 areas in the Southcentral Region and 369 areas in the Southeast Region. DNR and Gustafson indicate that the decision to leave both regions entirely open was based on administrative efficiency.

<sup>4</sup> "Where, as here, the question is as to the merits of agency action on matters committed to agency discretion, our scope of review is limited to whether the decision was arbitrary, unreasonable or an abuse of discretion." *North Slope Borough v. LeResche*, 581 P.2d 1112, 1115 (Alaska 1978). Where an agency fails to consider an important factor, its decision is regarded as arbitrary. *Southeast Alaska Conservation Council v. State*, 665 P.2d 544, 548-49 (Alaska 1983).

In *Southeast Alaska Conservation*, this court stated:

## Appendix E

### Attorney's Fees in Alaska Public Interest Litigation

Public Interest Litigation Resulting in Judgments Against the State of Alaska Total Costs, Fees, and Interest, FY'89-FY'93*						
	FY'89	FY'90	FY'91	FY'92	FY'93	Total
Carlson v. State			750.00			750.00
Anderson v. ADF&G				5,963.77		5,963.77
Dot Lake v. State			6,983.45			6,983.45
Finkelstein v. Elections	12,354.01					12,354.01
Carpenter v. Hammond	25,829.26					25,829.26
Chambers v. State		34,269.79				34,269.79
Newman v. State			36,663.98			36,663.98
AK/Environment v. DNR				42,242.02		42,242.02
Kenai Pen. Borough v. State	54,586.31					54,586.31
McDowell v. State		13,350.79	3,250.52	100,094.64		116,695.95
Cleary v. Smith	34,695.81	48,065.93	59,358.32	25,667.71		167,807.77
Kate John v. State				195,928.61		195,928.61
Bobby v. State			196,681.64			196,681.64
Trustees/AK v. State	69,124.57	41,045.38		63,307.51	67,401.58	239,979.04
Kanaitza Indian Tribe v. State				334,281.75		334,281.75
FY'93 Reapport					43,159.50	43,159.50
Demientieff					130,251.22	130,251.22
AK Democratic					189,488.69	189,488.69
BE Conference					173,290.30	173,290.30
Mat-Su					137,632.06	137,632.06
Leavitt						
<b>Total</b>	<b>196,609.96</b>	<b>136,731.89</b>	<b>303,687.91</b>	<b>767,506.01</b>	<b>731,223.35</b>	<b>2,135,759.12</b>

\* Data provided by Alaska Department of Law. Table prepared by Alaska Judicial Council, 4/94.

## G. Public Interest Litigation

### 1. Different Standards for Public Interest Cases

Fee shifting in public interest cases occurs in many jurisdictions through statute.<sup>382</sup> One commentator suggests that in the broadest sense, all enforcement of statutes is in the public interest,<sup>383</sup> and that the American rule, by requiring each party to bear its own costs, creates the need for other means of enforcing legislation.<sup>384</sup> An opponent of legislatively created enforcement mechanisms that rely on fee shifting argues that public interest exceptions to the American rule create unnecessary litigation, burden the courts, and require courts to "make important policy choices."<sup>385</sup>

Courts in American rule jurisdictions also have interpreted statutory provisions for fee awards to public interest litigants as evincing legislative intent to create an exception to the American rule that fees are not awarded except in cases of bad faith or vexatious conduct. The Supreme Court arrived at this conclusion in the context of the Civil Rights Act of 1964.<sup>386</sup> In Alaska, the supreme court created a public interest

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<sup>382</sup> Note, *State Attorney Fee Shifting Statutes*, *supra* note 46, at 343. The authors surveyed fee-shifting statutes in all fifty states and the District of Columbia. They found that "80.5% of all public interest attorney fee shifting statutes have been enacted since 1960. . . [and] the percentage of public interest statutes as compared to the other statutes is growing." *Id.*

<sup>383</sup> Zemans, *supra* note 39, at 197. Zemans says that "it could be argued equally persuasively that the American rule is indefensible on enforcement grounds for all statutory law. . . . [W]henver a legislative body passes a law, it does so for public policy purposes. . . . [and] there is always a public argument to be made for encouraging its enforcement." *Id.* She adds that many features of the American legal system are legislative responses to citizen demands for ability to enforce laws, including small claims court, the contingent fee, class actions, and the creation of regulatory agencies. *Id.* at 200.

<sup>384</sup> *Id.* at 201.

<sup>385</sup> Fein, *Citizen Suit Attorney Fee Shifting Awards: A Critical Examination of Government-Subsidized Litigation*, 47 *LAW & CONTEMP. PROBS.* 211, 214 (1984). Fein says that "no rule is more deeply embedded in our jurisprudence than the principle that each party is responsible for its own attorney fees" (cite omitted). *Id.* at 213.

<sup>386</sup> See *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 88 S.Ct. 964 (1968). In *Newman*, the Supreme Court held that Title II's provision of "a reasonable attorney's fee" to the prevailing party should not be limited to circumstances in which the losing party's "defenses had been advanced for purposes of delay and not in good faith." The Court directed the trial court on remand to include "reasonable counsel fees as part of the costs to be assessed" against the losing party. The Supreme Court's rationale was to further Congress' intent to encourage individuals injured by racial discrimination to seek judicial relief under Title II. Similarly, in *Alaska Pipeline Co. v. Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court majority opinion stated that by enacting fee shifting statutes, "Congress has opted to rely heavily on private enforcement to implement public policy and to allow counsel fees so as to encourage private litigation." *Id.* at 263.

Alaska's English Rule: Attorney's Fee Shifting in Civil Cases

case exception to the normal operation of Rule 82 in the absence of legislative intent to encourage public interest lawsuits.<sup>387</sup> The Alaska Supreme Court also has created its own definition of public interest litigants, which it applies on a case-by-case basis.<sup>388</sup>

Alaska's supreme court first explicitly acknowledged a public interest exception to Rule 82 in 1974 in *Gilbert v. State*.<sup>389</sup> In that case, the court announced the rule that attorney's fees will not be awarded against "a losing party who has in good faith raised a question of genuine public interest before the courts."<sup>390</sup> In *Gilbert*, the plaintiff lost his case challenging the state's requirements of residency for election to legislative office. On appeal, he argued that Rule 82 would deter citizens from litigating questions

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<sup>387</sup> See *Hickel*, 868 P.2d at 923. The court stated that "While Alaska Civil Rule 82 has been construed as providing only for partial fees, this court has used its authority to create an exception for public interest litigants." *Id.*

<sup>388</sup> Alaska's legislature also has created public interest fee-shifting provisions that resemble those in many other state and federal statutes.

<sup>389</sup> 526 P.2d 1131 (Alaska 1974).

<sup>390</sup> *Id.* at 1136. The court said, "We have previously intimated that denial of attorneys' fees might be appropriate in a proper case where the public interest is involved." *Id.* Tracing the cases back, in *Jefferson v. City of Anchorage*, 513 P.2d 1099 (Alaska 1973), the appellants complained of having to pay \$2,000 in attorney's fees because "this is a case in which a question of public interest was litigated." *Id.* at 1102. The court said the public interest was not "served by forcing a municipality to defend against specious attacks on the propriety of its actions. . . . Suffice it to say that this court has previously sustained an award of attorney's fee (sic) to a municipality in a case presenting a public question. *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790, 793 (Alaska 1968)." *Id.* at 1102-1103. In *Dale*, the appellant had asked for a declaration that an election was illegal. The court found the election legal, and an award of \$700 against the appellant appropriate, without any discussion of public interest or the fact that the prevailing party was a governmental body. *Dale*, 439 P.2d at 793.

The other case mentioned in *Gilbert* as a predecessor was *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92 (Alaska 1974). In that case, the appellant specifically asked the court to "declare the award [of Rule 82 attorney's fees] in this case to be an abuse of discretion as a matter of law because the public interest is involved." *Id.* at 104. Mobil's argument relied on "the premise that fear of incurring this expense will deter a citizen from litigating questions of general interest to the community." *Id.* at 104. The court disagreed, saying that "the sums at stake in this controversy are large enough to prompt a suit without consideration of the public interest, [and] the superior court could have concluded that the property owners were acting in their private interests and not in behalf of the public." *Id.*

In all of these cases, the court upheld an award of partial attorney's fees under Rule 82 from a private party appellant to a prevailing party which was a governmental body. In *Jefferson*, the court found that the losing appellant had not helped the public interest, and in *Mobil* the court found that the losing appellant had enough private interest at stake that it could have brought the suit without considering the public interest. These differences distinguish the predecessor cases from *Gilbert*, in which the court found that the losing appellant had brought a suit of public interest in good faith. In none of the cases or discussion does the court refer to any statutory basis or other grounds for defining or finding public interest.

of general public concern for fear of having to pay the other party's attorney's fees.<sup>391</sup> The court agreed, reiterating its holding in *Malvo*<sup>392</sup> that the purpose of Rule 82 is not to penalize a party for litigating a good faith claim.<sup>393</sup>

In the 1977 case of *Anchorage v. McCabe*,<sup>394</sup> the court established the second prong of the public interest exception: that prevailing public interest plaintiffs are entitled to full reasonable attorney's fees. In *McCabe*, homeowner plaintiffs prevailed in a suit against the Municipality of Anchorage and received full fees under Rule 82.<sup>395</sup> Before reaching the full fee issue, the supreme court first rejected the Municipality of Anchorage's contention that under *Gilbert* no fees should be awarded in public interest cases.<sup>396</sup> The court made it clear that the *Gilbert* policy of "encouraging public interest litigants" supported an award of attorney's fees to the prevailing plaintiffs in "this and all other public interest cases."<sup>397</sup> It also restated the policy behind shielding public interest plaintiffs from adverse fee awards.<sup>398</sup>

The court in *McCabe* refused to overturn the trial court's award of full fees.<sup>399</sup> The court reasoned that a full fee award was necessary to ensure that the public interest

<sup>391</sup> *Gilbert*, 526 P.2d at 1136.

<sup>392</sup> 512 P.2d 575, 587.

<sup>393</sup> *Gilbert*, 526 P.2d at 1136. In one later case, the court carried the public interest exception even further, to award fees to a nonprevailing public interest plaintiff. See *Thomas v. Croft*, 614 P.2d 795 (Alaska 1980). The court reiterated its policy that "Plaintiffs who in good faith seek to vindicate the strong public policy . . . should not be penalized by an assessment of attorney's fees unless the suit is frivolous." *Id.* at 798. The court's decision did not rely on Rule 82, but rather on "the inherent equitable power of the court to award attorney's fees when the interests of justice so require." *Id.* at 799. It noted that although the state prevailed, it had been responsible for the conduct of the election in question, and the award of Croft's partial attorney's fees against the state reflected "an exceptional case in which the court rules as to costs and fees did not adequately protect the interests of justice." *Id.*

<sup>394</sup> 568 P.2d 986 (Alaska 1977).

<sup>395</sup> *Id.* at 993.

<sup>396</sup> *Id.* at 991.

<sup>397</sup> *Id.*

<sup>398</sup> The policy is "to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit." *Id.* at 990.

<sup>399</sup> *Id.* at 994. Subsequent full-fee award public interest cases include: *Hickel*, 868 P.2d at 923; *Hunsicker v. Thompson*, 717 P.2d 358, 359 (Alaska 1986); and *Anchorage Daily News v. School District*, 803 P.2d 402, 404 (Alaska 1990) (Having qualified as a public interest litigant, the Daily News is entitled to the full amount of its attorney's fees, to the extent that they are otherwise reasonable). But see also TOMKINS & WILLINGO, *supra* note 11, at 36 n.135, in which the authors cite Alaska cases where the court upheld awards of only partial attorney's fees to prevailing plaintiffs in public interest cases.

*Alaska's English Rule: Attorney's Fee Shifting in Civil Cases*

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plaintiff, acting as "a private attorney general," not be "penalized by Rule 82 by failing to receive full compensation for the costs of litigating issues of public importance."<sup>400</sup> In a later case, the court added that full fee awards encourage meritorious claims which might otherwise not be brought."<sup>401</sup>

While the trial court retains the discretion to award less than all fees requested, the court may not reduce the award in order to discourage public interest litigation or penalize a plaintiff acting as a private attorney general.<sup>402</sup> The court held in 1980 that it was "appropriate to award full attorney's fees on appeal to a successful public interest litigant."<sup>403</sup>

## 2. Criteria for Public Interest Status

A litigant must satisfy four criteria to qualify for the public interest attorney fee exception.<sup>404</sup> First, the case must be designed to effectuate strong public policies; second, numerous people are expected to benefit if the plaintiff succeeds; third, only a private party would be expected to bring the suit; and fourth, was there sufficient economic incentive for the purported public interest litigant to file the suit (i.e., would the purported public interest litigant have sufficient economic incentive to file suit

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<sup>400</sup> *McCabe*, 568 P.2d at 994.

<sup>401</sup> *Hickel*, 868 P.2d at 924 (citations omitted).

<sup>402</sup> *Hunsicker*, 717 P.2d at 359. The court may reduce the award as unreasonable if, for example, it finds the hourly rate to be excessive or the total hours unreasonable. *Id.* The trial judge had found that the defendant, the Matanuska-Susitna Borough, had litigated in good faith; the supreme court said that Mat-Su's good faith could not be considered. *Id.* at 360.

<sup>403</sup> *Thomas v. Bailey*, 611 P.2d 536, 539 (Alaska 1980). In *Hickel*, 868 P.2d, the court said "the rule was not intended to give such litigants carte blanche to litigate post-trial with the knowledge that they can recover fees regardless of whether they prevail." *Id.* at 926. It noted that its decision modified *Thomas* by holding that "a public interest litigant's general prevailing party status does not mean the litigant should recover fees incurred in bringing or defending petitions for review in which that party does not prevail." *Id.* at 932.

<sup>404</sup> The court articulated the first three points in *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977), citing a Ninth Circuit case *La Raza Unida v. Volpe*, 57 F.R. D. 94 (N.D. Cal. 1972): "(1) the effectuation of strong public policies; (2) the fact that numerous people received benefits from plaintiffs' litigation success; (3) the fact that only a private party could have been expected to bring this action." (cites omitted). The court added the fourth point in 1982, in *Kenai Lumber Co., Inc. v. LeResche*, 646 P.2d 215, 223 (Alaska 1982), when the court said "the fourth criterion may be expressed as whether the litigant claiming public interest status would have had sufficient economic incentive to bring the lawsuit even if it involved only narrow issues lacking general importance. Such a litigant is less apt than a party lacking this incentive to be deterred from bringing a good faith claim by the prospect of an adverse award of attorney's fees." *Id.* See also, *Murphy v. City of Wrangell*, 763 P.2d 229, 233 (Alaska 1988).

even if the action involved only narrow issues lacking general importance?).<sup>405</sup> With regard to the fourth prong of the test, the court is unwilling to award public interest status to litigants who are acting in their private interests and not on behalf of the public.<sup>406</sup> However, a plaintiff's "comparatively minor" economic interest in a matter will not preclude public interest status where the other three criteria have been met.<sup>407</sup>

## H. Appellate Review of Fee Awards

The Alaska Supreme Court deals with attorney's fees in two contexts: it reviews all aspects of fee awards at the trial court level, and it awards attorney's fees to successful appellate litigants. The court has published scores of opinions on Rule 82, giving trial judges a comprehensive body of case law from which to draw while at the same time adopting a fairly relaxed standard of review.

### 1. Appellate Review of Trial Court Awards

The Alaska Supreme Court reviews attorney's fee awards for abuse of the trial court's discretion.<sup>408</sup> The court expects that the trial court will decide a reasonable fee award,<sup>409</sup> and state its basis for the award.<sup>410</sup> Only when a trial court's exercise of discretion results in an award that is "manifestly unreasonable" will the supreme court reverse for abuse of discretion.<sup>411</sup> Although the trial court has broad discretion, it cannot deny a proper motion for attorney's fees from improper motive, or for arbitrary

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<sup>405</sup> *Anch. Daily News*, 803 P.2d at 404.

<sup>406</sup> *See Mobil Oil v. Local Boundary Comm'n*, 518 P.2d 92, 104 (Alaska 1974).

<sup>407</sup> *See Anch. Daily News*, 803 P.2d at 404.

<sup>408</sup> *Preferred General Agency v. Raffetto*, 391 P.2d at 954. The court said "We limit our review in matters of this kind to the question of whether the court exceeded the bounds of the broad discretion vested in it." *Id.* *See also Palfy v. Rice*, 473 P.2d 606, 613 (Alaska 1970).

<sup>409</sup> TOMKINS & WILLGING, *supra* note 11, at 36 discuss appellate review standards, and note that the court "has directed trial judges to consider the same types of factors that have been developed to guide an attorney in setting a fee with a client" (cites omitted).

<sup>410</sup> *Id.* at 38 n.142.

<sup>411</sup> *See, e.g., Alaska Placer*, 553 P.2d at 63; *Western Airlines v. Lathrop*, 535 P.2d 1209, 1217 (Alaska 1975); *Adoption of V.M.C.*, 528 P.2d at 795.

April 30, 2001

James T. Brennan  
1006 "G" Street  
Anchorage, Alaska 99501

Via Facsimile No.: 907-465-2040

Honorable Norman Rokeberg  
House Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska 99801

Re: SB 183: Attorneys Fees of Public Interest Litigants

Dear Representative Rokeberg:

I am an attorney in civil practice in Anchorage, and have from time to time represented parties in litigation who were determined by the court to be public interest litigants for purposes of award of costs and attorneys fees, for or against the party. I strongly urge you to vote against SB 183, which would gut the existing public interest litigant rule.

As the rule has been developed by the Alaska Supreme Court, a party does not qualify as a public interest litigant unless he or she lacks sufficient economic motivation to pursue the action. Given the heavy burden of a party's own attorneys fees, coupled with the potential requirement of paying a part of the other side's attorneys fees, there would be a strong *disincentive* to bringing cases which are in the public interest unless the public interest litigant rule is maintained. This disincentive was made even stronger by 1997 amendments to AS 09.30.065 regarding offers of judgment, which will frequently require a losing party to pay 75% of the other side's actual attorneys fees. This threat is so great that many public interest issues will never be raised, if the public interest litigant rule is abandoned.

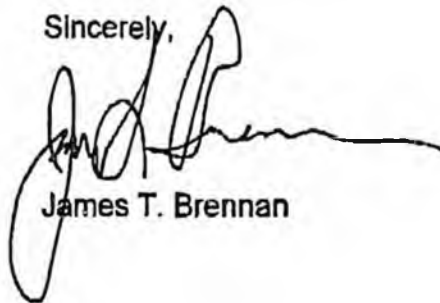
Where a public interest litigant prevails, the decision, by definition, is in the "public interest." The law should encourage, rather than discourage outcomes which serve the public interest.

The public interest litigant category is not reserved to one political persuasion, nor to one end of the development vs. conservation spectrum. For example, a challenger to the handling of the gubernatorial election of Tony Knowles in the North Slope Borough was awarded actual attorneys fees under the public interest litigant rule. Anti-abortion litigants potentially qualify under the rule.

April 30, 2001  
Honorable Member, House of Representatives  
Page 2

The private costs of litigation are already too large a deterrent that often prevents parties from seeking judicial vindication of otherwise justifiable claim or assertions. If SB 183 passes, and the public interest litigant rule is thus jettisoned, numerous and legitimate issues of concern to all Alaskans will never see their day in court.

Sincerely,

A handwritten signature in black ink, appearing to read "James T. Brennan". The signature is fluid and cursive, with a large initial "J" and "B".

James T. Brennan

JTB:dp

Jtbgen\Legislature Ltr

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 183  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to public interest litigants and to BRU Civil Division  
attorney fees; and amending Rule 82, ... Rules of Civil Procedure." Component Deputy Attorney General's Office  
 Sponsor Senate Finance Committee  
 Requester House Judiciary Committee Component No. 2205

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 Under Rule 82, Alaska Rules of Civil Procedure, attorney's fees are awarded to the prevailing party. By rule, the attorney's fee awards are limited to a percentage of the actual fees depending on a number of factors, including whether the case is contested or goes to trial, and whether or not a money judgment is received. The complexity of the case and length of trial are among a list of other factors that may be used by the court to vary the size of the award. In contrast, under current Alaska case law public interest litigants may receive full attorney fees when they prevail, with no apportionment by issue, and are not liable for opposing party's fees when they lose their case.  
  
 SB 183 requires that attorney fee awards to or against a public interest litigant follow the same court rule as non-public interest litigants. The bill further requires that if a court increases the award from the percentages set out in (b)(1) or (b)(2) of the rule, it must apportion the attorney's fee by issue, and absent exceptional circumstances, can only award the increased fee for an issue the party prevailed upon.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division Attorney General's Office Date/Time 2/1/02 10:29 AM  
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/1/2002  
 Agency Department of Law

## FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. SB 183

### ANALYSIS CONTINUATION

Passage of this legislation will have no impact on the Department of Law's operating budget. However, each year the department seeks supplemental funding to pay judgments and claims against the state, including public interest litigant attorney's fee awards. Total attorney's fee awards under the public interest litigant exception to Rule 82 included in judgments against the state for the last five years are as follows: FY07, \$134.3; FY98, \$186.4; FY99, \$413.9; FY00, \$34.7; FY01 \$298.4. (These numbers represent fees only, and do not include costs, pre-judgment or post-judgment interest.)

Passage of this legislation would lower, but not eliminate these awards in the future, thereby reducing the amount of supplemental requests. Public interest litigants would still be allowed to recover fees under Rule 82. Thus, the extent to which the fee awards would be reduced under this legislation would depend on the application of Rule 82 schedules to public interest litigation. In turn, this depends on the nature of the litigation and the extent to which the courts vary the award under the provisions Rule 82(b)(3).

Most public interest litigation does not involve recovery of a money judgment. When there is no money judgment, Rule 82 provides that the prevailing party can receive 30 percent of their reasonable attorney's fees if the case goes to trial, and 20 percent if it does not. This starting amount can be changed by the court after considering a list of eleven factors contained in Rule 82(b)(3), including case complexity, length of trial, reasonableness of the claims and defenses, relationship of the amount of work, the significance of the matters at stake, etc. The Judicial Council study noted in the following paragraph found that variances to the Rule 82 schedule were relatively rare for the types of civil cases the study examined. (See p. 61.) However, we have no way of knowing if the same would be true for public interest cases. At the most, assuming that all cases were non-monetary, did not go to trial, and contained no factors listed under Rule 82(b)(3), the awards would be reduced 80 percent from the amounts that would be granted under existing law. The actual reduction would almost certainly be less.

The Alaska Judicial Council, in its October 1995 report, *Alaska's English Rule: Attorney's Fee Shifting in Civil Cases*, discusses the development in Alaska of Rule 82 and the public interest exception. (<http://www.ajc.state.ak.us/Reports/atyfee.pdf>) The cases cited in the report indicate the Supreme Court intended to encourage public interest litigation by making it more financially feasible for people to litigate questions of general public concern through full reimbursement of their legal costs if they win, and by not making them pay any of the prevailing party's legal costs if they lose. (See pp. 73-77.) We have been unable to find objective data to indicate whether or not the public interest exception is a primary motivation for parties to litigate public interest issues. However, anecdotal evidence found in the Judicial Council report (pp. 129-131) suggests that the public interest exception has the effect of encouraging public interest litigation, and thus there may be fewer public interest litigation cases in the future if SB 183 passes.

**Subject:** [Fwd: Senate Bill 183]

**Date:** Mon, 11 Feb 2002 13:42:13 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Senate Bill 183

**Date:** Mon, 11 Feb 2002 11:57:17 -0900

**From:** Arthur Curtis <artcurtis@gci.net>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Hon. Norman Rokeberg, House Judiciary Committee Chair

Dear Mr. Rokeberg,

Senate Bill 183 is a very bad bill, inhibiting public interest groups of all political stripes from suing to protect the public interest, and inhibiting lawyers from helping them. Anyone who values democracy knows that the right to sue is an important citizen's right. I hope you vote down this bill in committee.

Sincerely yours,  
Arthur E. Curtis  
Anchorage

Sometimes my email application tells computers at the other end that my address is artcurtis@mail.gci.net instead of the correct address, artcurtis@gci.net  
PLEASE CHECK my address when you reply and eliminate "mail." if it is there.

[Fwd: Please stop SB183]

**Subject:** [Fwd: Please stop SB183]  
**Date:** Mon, 11 Feb 2002 07:22:03 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Please stop SB183  
**Date:** Sun, 10 Feb 2002 22:05:44 -0900  
**From:** Robin Smith <ericrobin@customcpu.com>  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Rep. Rokeberg,

I urge you to stop SB183 in your committee. This bill drastically lessens an individual's or group's capability to challenge government abuse.

The legislature has control of the budget and can spend at will any monies for legal challenges. (The government is Goliath and the citizen is David.) These court cases only recieve money when and if they win in court: upholding the constitution. This consequence may serve to encourage legislatures to write better laws.

We need to look to the future. Today republicans have control of the legislature. Tomorrow the democrats could have control. We do not want to diminish anyone's ability to challenge laws that he/she may feel infringes on their constitutional rights. Attorney Wev Shea, a strong conservative, has voiced his opposition to similar bills in the past.

Thankyou for your thoughtful consideration.

## POM for Representative Rokeberg



From: Ms. Carolyn F Nickles  
13116 Beach Cir

Telephone: 345-3224

Anchorage, AK 99515

NON Constituent

Registered Voter: V

Email:

Bill: SB 183 Title: ATTY FEES:APPORTIONMT/PUBLIC INT.LITIGANT  
Message:

I'm absolutely opposed to this bill. It is a bill that silences the public on government conduct and that is not democratic or what our government is based on. It is not in our public interest to support this bill.

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Distribution: 60

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Message 1 out of 3.

**Subject:** [Fwd: SB 183 Comments]

**Date:** Fri, 08 Feb 2002 08:44:36 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** SB 183 Comments

**Date:** Fri, 08 Feb 2002 06:49:28 -0900

**From:** Elyse Guttenberg <elyseg@mosquitonet.com>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Jeannette\_James@legis.state.ak.us,  
Representative\_Ethan\_Berkowitz@legis.state.ak.us,  
Representative\_John\_Coghill@legis.state.ak.us,  
Representative\_Albert\_Kookesh@legis.state.ak.us,  
Representative\_Kevin\_Meyer@legis.state.ak.us, Heather\_Nobregac@legis.state.ak.us,  
Representative\_Scott\_Ogan@legis.state.ak.us

I am opposed to the action that SB 183 would take against Alaskan citizens who are seeking judicial review as public litigants over government actions. I am requesting that you NOT pass this bill out of committee. In Alaskan law many milestones have been established by just such actions as public litigant lawsuits brought by citizens regardless of ability to pay attorney's fees.

FEB 11 2002

VIA E-MAIL ONLY  
A Different point of view regarding SB 183  
By Larry J. Houle

May 4, 2001

Dear Anchorage Daily News:

The Alaska Support Industry Alliance (The Alliance) expresses strong support for Senate Bill 183 - Attorney Fees: Apportionment and Public Interest Litigation. We applaud the Senate Finance Committee's efforts to curb the escalating misuse of "public interest litigation" against responsible resource development in Alaska.

The Alliance is a statewide nonprofit trade organization representing 400 member businesses that provide products and services to oil and gas companies in Alaska. We are oilfield service companies, transportation enterprises, technical experts, wholesalers and retailers, and private citizens who advocate the environmentally responsible development of Alaska's petroleum resources. As the voice for Alaska's support industry, we offer the following background for our position.

Since before statehood, Alaska Civil Procedure allowed a prevailing party in a civil lawsuit to recover a portion of its attorney's fees. If the prevailing party recovered a money judgment, the party could automatically recover approximately ten percent (10%) of that judgment as an additional recovery for attorney's fees incurred. If the prevailing party was the defendant, the defendant recovered a portion (now 20% - 30%) of its attorney's fees incurred. The purpose for the rule was, and is, to encourage settlement and to partially compensate parties who are forced to go to litigation to vindicate their rights or defenses.

Beginning in 1968, the Alaska Supreme Court developed what is now called the Public Interest Litigant Doctrine, which provided that if a prevailing party was considered a public interest litigant, the person recovered all of its attorney's fees. If the public interest litigant lost, it did not have to pay any of the other parties' attorney's fees.

When the over 100 cases that have applied this doctrine since 1968 are reviewed, it is clear that the Alaska Supreme Court has selected certain groups that it considers, in its political judgment, more worthy than other interests when the litigation involves public interest issues. Subsistence groups, native cultural interests newspapers, environmental protection and conservation groups (but not miners), homeowners on zoning issues when attempting to prevent development (but not the developers), and sometimes commercial fishermen (but not when attacking the regulations on set netting) have qualified.

On the other hand, oil companies, miners, logging companies, trucking companies, developers, and labor unions have consistently been denied public interest litigation status on the grounds that in each case they had a "sufficient economic incentive to bring a lawsuit," which disqualified them.

The end result is that under the doctrine certain groups are preferred over others according to the political judgment of the Alaska Supreme Court, which political judgment does not necessarily coincide with the political views and values of the majority of Alaskans, as represented by their elected officials in the legislature. Comparing the groups that are accorded this special status to those who are denied it shows a very marked and distinct anti-development, pro-preservationist political slant.

Senate Bill 183 would have the effect of leveling the playing field so that no groups are accorded special treatment in the awarding of or immunity from attorney's fees according to their political characteristics. The applicable rule of civil procedure, Rule 82, still will permit the trial judge to either raise or lower the amount of attorney's fees awarded based upon a variety of special factors, but all of which would be applied equally to all litigants.

For these reasons, the Alaska Support Industry Alliance encourages passage of Senate Bill 183. We ask for your active support of this bill.

Very truly yours,

Larry J. Houle  
General Manager  
Alaska Support Industry Alliance

**Subject:** [Fwd: Senate Bill 183]  
**Date:** Mon, 11 Feb 2002 13:42:13 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Senate Bill 183  
**Date:** Mon, 11 Feb 2002 11:57:17 -0900  
**From:** Arthur Curtis <artcurtis@gci.net>  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Hon. Norman Rokeberg, House Judiciary Committee Chair

Dear Mr. Rokeberg,  
Senate Bill 183 is a very bad bill, inhibiting public interest groups of all political stripes from suing to protect the public interest, and inhibiting lawyers from helping them. Anyone who values democracy knows that the right to sue is an important citizen's right. I hope you vote down this bill in committee.  
Sincerely yours,  
Arthur E. Curtis  
Anchorage

Sometimes my email application tells computers at the other end that my address is artcurtis@mail.gci.net instead of the correct address, artcurtis@gci.net  
PLEASE CHECK my address when you reply and eliminate "mail." if it is there.

**Subject:** [Fwd: SB 183]  
**Date:** Tue, 12 Feb 2002 09:05:08 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

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**Subject:** SB 183  
**Date:** Mon, 11 Feb 2002 23:44:07 EST  
**From:** HFLEISCH@aol.com  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Dear Representative Rokeberg-I have a pro bono action on behalf of juveniles in Anchorage challenging the Municipal Curfew. Regardless of how you feel about the merits thereof-one judge knocked down the ordinance and one upheld it-both are now in the Alaska Supreme Court. The issues are very real and this is an example of the kind of litigation that would be affected by this bill. Please kill it. Sincerely, Hugh Fleischer

**Subject:** [Fwd: Wev Shea's follow-up on Public Interest Litigation - SB183]  
**Date:** Tue, 12 Feb 2002 13:00:19 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Wev Shea's follow-up on Public Interest Litigation - SB183  
**Date:** Tue, 12 Feb 2002 09:49:06 -0900  
**From:** "Wev Shea" <wws@alaskalife.net>  
**To:** "Representative John Coghill" <Representative\_John\_Coghill@legis.state.ak.us>  
**CC:** "Scott Ogan" <Representative\_Scott\_Ogan@legis.state.ak.us>, "Norm Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>, "Kevin Meyer" <Representative\_Kevin\_Meyer@legis.state.ak.us>, "Jeannette James" <Representative\_Jeannette\_James@legis.state.ak.us>, "Ethan Berkowitz" <Representative\_Ethan\_Berkowitz@legis.state.ak.us>, "Albert Kookesh" <Representative\_Albert\_Kookesh@legis.state.ak.us>

The Honorable John Coghill  
Alaska State House  
Juneau, Alaska

Dear John:

Thank you for your response and interest. I appreciate your comments.

Whenever you are involved in public service, you now in our Legislature or me as the United States Attorney, you always must place your personal desires or goals secondary to the public good. You must always recognize you are responsible to the citizens of Alaska for your actions. You must not be directed by "special interests" and must place personal/professional ethics as the highest priority!!

Our U. S. Attorney, Attorney General or District Attorneys never should compromise doing "justice" and taking the "high road." Unfortunately, in Alaska we cannot always be assured of the foregoing. The recent "problem" between the District Attorneys and Public Defenders in Anchorage is a prime example of the failure of "justice" and taking the "high road." The role of the prosecutor and criminal defense counsel are entirely different. The prosecutor "must" do "justice" and the public defender must do all he/she can to represent/get off the criminal defendant. The criminal defense lawyer does not focus on "justice."

Our Attorney General (since he is appointed) does not always focus on "justice." At times without participation or detailed study it is easy to criticize "public interest litigation" and its "apparent" role. This is especially true as it may relate to certain environmental interests, i.e. anti-development of our oil and gas. However, public interest litigation in Alaska is unique. It is very, very time consuming and must never be taken lightly by potential counsel.

Essentially, the "litigants" are acting a "private attorney general" when Alaska's Attorney General fails to act. Fraud and corrupt practices in federal or state elections must be addressed. In 1994 the Attorney General, U. S. Attorney and Governor failed to take any action despite detailed written requests by me to the applicable law enforcement agencies.

The Dansereau litigation resulted in the Knowles Administration and our Legislature changing our state law to be parallel with federal election law. The actions in 1994 ("Gas for Votes" and "Vote for Tony Knowles, Win \$1000.00) were "corrupt prictices" in violation of federal and state election laws.

The public interest litigation exception to Civil Rule 82 attorney fees is defined by our Alaska Supreme Court:

The public interest exception to Civil Rule 82 is designed to encourage plaintiffs acting as private attorneys general to bring issues of public interest to the courts when such issures might not otherwise be brought.

No state or federal entity or agency would act in 1994 when 10 registered voters, as required by statute, assumed the role of Alaska's Attorney General. Unfortunately, SB 183 fails to recognize the very unique role of public interest litigation in Alaska. It protects our most basic rights when the executive or legislative branch fails to do so.

In Alaska, the appointed Attorney General is the Governor's attorney; he/she does/may not "at all times" represent the best interests of the citizens of Alaska. Certainly the failure of the executive branch and "for that matter" the legislative branch in 1994 is a prime example of the importance of public interest litigation. Never, nationwide (to my knowledge), have 10 voters stepped forward to contest an election when the candidate failed to do so and previaled in their state's Supreme Court.

I have taken the liberty to copy Chairman Norm Rokeberg and the other members of the House Judiciary Committee so they are fully aware of my position. I look forward to testifying before your House Judiciary Committee so you may all ask me questions to clarify my position on SB 183.

Respectfully and Best Wishes,

Wev

Wevley William Shea

**Subject:** [Fwd: SB 183]  
**Date:** Tue, 19 Feb 2002 14:26:22 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** SB 183  
**Date:** Tue, 19 Feb 2002 14:00:47 -0900  
**From:** "Judy Rae Smith" <judyrae@alaska.net>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,

Please to not advance SB 183 out of your committee. SB 138 threatens the First Amendment rights of non-profit organizations to seek protection judicially for groups in the general population. This bill is just another attempt to subvert the legislative process in favor of the narrow interests of some legislators. Thank you.

Judy Rae Smith

P.O. Box 81071

Fairbanks, AK 99708



# Fairbanks Economic Development Corporation

February 19, 2002

FEB 25 2002

House Judiciary Committee  
State Capitol, Rm. 118  
Juneau, AK 99801-1182

To Whom It May Concern:

The Fairbanks Economic Development Corporation is a private, non-profit entity with the mission of facilitating economic growth in the Fairbanks area. We bring together the experience and energy of the business, labor, education and government communities in a coordinated effort to improve job opportunities and enhance the prosperity and quality of life for the citizens of Interior Alaska. This organization strongly supports the passage of Senate Bill 183 relating to public interest litigants and attorney fees.

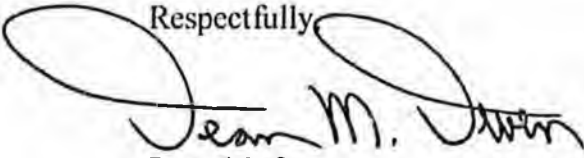
Under current law, special interest groups routinely oppose the permitting of resource development projects, because they have no risk or expense. These frivolous lawsuits delay projects, costing additional time and money.

When there are no consequences for filing frivolous litigation, these special interest groups, often financed from sources outside Alaska, are empowered to continue these delaying tactics.

Alaska ranks near the top for states with high potential for developing our vast natural resources; however, there is very low interest in developers financing projects, because of the probability of being forced to defend against lengthy and costly litigation with little possibility of recovering costs or attorney fees, even if the defense is successful.

Recent surveys have shown that the Alaskan economy ranks 49<sup>th</sup> out of the 50 states for economic growth. The practice of the courts reimbursing "sport litigants" is a major cause of the stagnant economy in our resource rich state. Legislation such as SB 183 is essential to the economic health of Alaska and we strongly urge its passage.

Respectfully

  
Dean M. Owen  
Executive Director

**Subject: [Fwd: Oppose SB 183]**

**Date:** Wed, 13 Feb 2002 12:39:37 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Ncbrega@legis.state.ak.us

---

**Subject: Oppose SB 183**

**Date:** Wed, 13 Feb 2002 11:18:19 -0900

**From:** Eric McCallum <ericrobin@customcpu.com>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Our government works well because of our system of checks and balances. SB 183 would nearly eliminate one check against government misconduct, interference or abuse. As a Republican I want the right to petition my government for redress of grievances. If I win in court then the government should pay for the cost of bringing the case forward. The government should pay for its mistakes.

Oppose SB 183 for everyone's benefit.

GREATER \* FAIRBANKS  
**CHAMBER**  
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665  
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: [staff@fairbankschamber.org](mailto:staff@fairbankschamber.org)  
website: [www.fairbankschamber.org](http://www.fairbankschamber.org)

Introduced By: Natural Resources  
Other Review: Governmental Affairs  
Date Introduced: January 21, 2002  
Date Passed: January 28, 2002  
Date Transmitted: January 28, 2002

**RESOLUTION 02-0128A**

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF  
COMMERCE TO SUPPORT THE PASSAGE OF SENATE BILL (SB)  
183 RELATING TO PUBLIC INTEREST LITIGANTS AND  
ATTORNEY FEES**

**WHEREAS** a critical component to business development in the State of Alaska is ensuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay; and

**WHEREAS** groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development with absolutely no financial downside to them if they lose the litigation; and

**WHEREAS** those groups who regularly oppose business development are not simply concerned citizen groups but rather special interest groups supported financially by national and/or international organizations whose stated mission is to prevent development; and

**WHEREAS** the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees even when they prevail in the litigation; and

**WHEREAS** this legislation modifying Alaska's existing rules and regulations by eliminating public interest litigant status in appeals of Administrative decisions and by awarding fees and costs to the prevailing party in such litigation ensures fairness and a level playing field for all litigants; and

**WHEREAS** an additional provision to this legislation to require disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative appeal would permit those defending the litigation know the identity of those who are actually supporting the litigation and the amount of that financial support; and

**Benefactors**

Alaska Airlines  
Alaska Communications Systems  
Alaska Railroad  
Alyeska Pipeline Service Company  
AT&T Alascom  
BP Exploration (Alaska) Inc.  
CellularOne  
Denali State Bank  
Design Alaska  
Fairbanks Building & Construction Trades Council "The Unions"  
Fairbanks Natural Gas, LLC  
Fairbanks Urgent Care Center  
First National Bank Alaska  
Flowline Alaska  
Fort Knox Mine  
Golden Heart Utilities  
Golden Valley Electric Association  
K. Janitorial  
Key Bank of Alaska  
Mt. McKinley Bank  
North Star Computing  
Northrim Bank  
Phillips Alaska, Inc.  
Santina's Flowers & Gifts  
Tanana Valley Clinic  
Third Sector Technologies, Inc.  
Totem Ocean Trailer Express  
Usibelli Coal Mine  
WebWeavers  
Wells Fargo Bank Alaska  
Wendy's  
Westmark Fairbanks Hotel & Conference Center  
Williams Alaska

GREATER \* FAIRBANKS  
**CHAMBER**  
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665  
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: [staff@fairbankschamber.org](mailto:staff@fairbankschamber.org)  
website: [www.fairbankschamber.org](http://www.fairbankschamber.org)

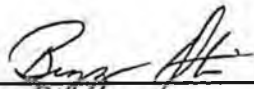
**WHEREAS** this legislation will inhibit frivolous litigation by ensuring that there is a consequence to those who file such litigation; and

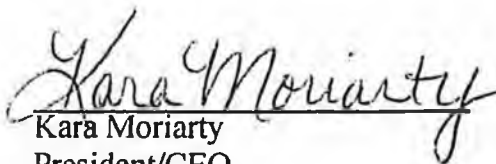
**WHEREAS** this legislation is critical to promoting and achieving responsible business development in the State of Alaska:

**NOW THEREFORE BE IT RESOLVED** that the Greater Fairbanks Chamber of Commerce Board of Directors supports the passage of Senate Bill (SB) 183 relating to public interest litigants and attorney fees.

**BE IT FURTHER RESOLVED** that this resolution be distributed to:  
Alaska State House of Representatives  
Senator Dave Donley  
Interior Delegation  
Governor Tony Knowles

**PASSED** in Fairbanks, Alaska this 28 day of January, 2002 by the Greater Fairbanks Chamber of Commerce Board of Directors.

  
\_\_\_\_\_  
Buzz Otis  
Board Chair

  
\_\_\_\_\_  
Kara Moriarty  
President/CEO

**Benefactors**

Alaska Airlines

Alaska  
Communications  
Systems

Alaska Railroad

Alyeska Pipeline  
Service Company

AT&T Alascom

BP Exploration  
(Alaska) Inc.

CellularOne

Denali State Bank

Design Alaska

Fairbanks Building &  
Construction Trades  
Council "The Unions"

Fairbanks Natural  
Gas, LLC

Fairbanks Urgent  
Care Center

First National Bank  
Alaska

Flowline Alaska

Fort Knox Mine

Golden Heart Utilities

Golden Valley  
Electric Association

K. Janitorial

Key Bank of Alaska

Mt. McKinley Bank

North Star Computing

Northrim Bank

Phillips Alaska, Inc.

Santina's Flowers & Gifts

Tanana Valley Clinic

Third Sector  
Technologies, Inc.

Totem Ocean  
Trailer Express

Usibelli Coal Mine

WebWeavers

Wells Fargo Bank Alaska

Wendy's

Westmark  
Fairbanks Hotel &  
Conference Center

Williams Alaska  
Petroleum

**Subject:** [Fwd: Support for SB 183]  
**Date:** Mon, 11 Mar 2002 11:26:18 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Support for SB 183  
**Date:** Fri, 8 Mar 2002 21:01:11 -0900  
**From:** "Jim Drew" <jimd@gci.net>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

I wish to urge passage of SB 183 relating to public interest litigants and attorney fees.

Historically, revenue to fund programs with high public demand in Alaska such as education and health care has come from the development of natural resources. Economic growth of resource industries is essential for increased revenue to maintain these programs and to maintain jobs for Alaskans.

Nevertheless, groups that oppose resource development, often with major funding from outside of Alaska, periodically engage in litigation that stymies resource development. Often this litigation delays or blocks resource projects for which permits have already been issued. Moreover, these groups incur no financial penalty if they lose the litigation.

The outcome is enhanced litigation costs for resource industries and major delays that contribute to increased costs for resource development. These costs and delays can destroy the economic feasibility of a project. Moreover, the state has spent hundreds of thousands of dollars in defending itself against this type of litigation.

At a time when constraints abound in state budgets, it seems rational to pass SB 183. This legislation will discourage frivolous litigation. At the same time, however, it will allow judges to increase fees awarded in public interest litigation when appropriate.

SB 183 will encourage resource development, associated jobs for Alaskans, and revenue for the state.

James V. Drew  
4725 Villanova Drive  
Fairbanks, Alaska 99709

# Alaska Forest Association, Inc.



111 STEDMAN STREET, SUITE 200  
KETCHIKAN, ALASKA 99901-6599  
Phone 907-225-6114  
FAX 907-225-5920  
Web Site [www.akforest.org](http://www.akforest.org)

March 12, 2002

Senator Dave Donley  
State Capitol, Room 204  
Juneau, AK 99801

Re: Senate Bill 183

Dear Senator Donley:

The Alaska Forest Association (AFA) supports SB 183. This legislation would significantly reduce the incentive for environmental lawsuits by putting environmental organizations on the same footing with those whose projects they seek to stop. Most of AFA's experience has been with the Federal Equal Access to Justice Act (EAJA) which actually invites environmental groups to target timber sales. Such groups have nothing to lose if they lose the lawsuit because of their public interest litigates status. On the other hand, if they win they can recover the costs of their suit from the federal government using an hourly rate for their attorneys which far exceeds what they pay their attorneys. Since the seed money for these organizations is provided by groups like the Pew Charitable Trust, EAJA becomes a profit center for environmental organizations.

In the typical AFA situation, the Forest Service spends millions of dollars preparing extensive Environmental Impact Statements (EIS's) in connection with each timber sale. Because of the incentive which EAJA provides to contest such EIS's, the government also encourages environmental groups to attack the agencies work. The timber industry is the real loser.

Because of the way in which the state courts have interpreted Rule 82, a similar situation exists in the State of Alaska. The AFA applauds you for addressing this issue in a constructive way by removing the incentive for environmental groups to file lawsuits against the state.

Sincerely,

Owen J. Graham  
Executive Director

cc: Senator Frank H. Murkowski  
Senator Ted Stevens  
Congressman Don Young

## POM for Representative Rokeberg



From: Mr. Gerald R Brookman  
715 Muir Ave

Telephone: 283-9329

Kenai, AK 99611

NON Constituent

Registered Voter: V

Email:

Bill: SB 183 Title: ATTY FEES:APPORTIONMT/PUBLIC INT.LITIGANT

Message:

I would like to urge that you vote against passage of SB 183 which would make it very difficult for public interest groups to bring lawsuits against the state when their rights are violated. I do not believe that government is always right. Do you? SB183 seems to assume that government is always right and citizens should have no legal recourse when their rights are violated by the state.

Entered in SOL on 5/04/01 POMID: 2673 Stored

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Message 2 out of 3.

## POM for Representative Rokeberg



From: Ms. Suzanne M Miles  
PO Box 772196

Telephone: 694-1603

Eagle River, AK 99577

NON Constituent

Registered Voter: V

Email:

Bill: SB 183 Title: ATTY FEES:APPORTIONMT/PUBLIC INT.LITIGANT

Message:

**SB183 denies First Amendment rights to all but the rich and should be sounding defeated.**

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Message 3 out of 3.

**Subject:** [Fwd: Senate Bill 183]

**Date:** Mon, 04 Feb 2002 07:57:59 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Senate Bill 183

**Date:** Fri, 1 Feb 2002 15:23:57 -0900

**From:** "Brad Owens" <bowens@jdoilaw.com>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Rep. Rokeberg:

I think this is a dangerous bill that would effectively deny access to the courts for a host of public interest parties. The common wisdom is that public interest litigants are liberal environmental groups, planned parenthood, etc.. But there have also been some important "conservative" public interest cases ... challenges to rural fish and game preferences, to PFD residency requirements, etc.. No matter what a person's political leanings, I think public interest litigation is an important part of the balance of power in state government ... I urge you to oppose this bill...

Brad Owens

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**Subject:** [Fwd: SB 183]  
**Date:** Fri, 01 Feb 2002 13:46:47 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** SB 183  
**Date:** Fri, 1 Feb 2002 12:31:43 -0900  
**From:** "Greg Taylor" <gtaylor@jdolaw.com>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Please do not let this bill out of committee! It is not a well thought out piece of legislation and regardless of political party affiliation will damage litigants access to justice. Thank you.

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**Subject: [Fwd: Senate Bill 183]**

**Date:** Mon, 04 Feb 2002 10:30:59 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject: Senate Bill 183**

**Date:** Mon, 04 Feb 2002 08:40:09 -0900

**From:** "R. Holmes Johnson" <drbob@keconnect.net>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Senator,

SB 183 may have been devised to streamline government action by eliminating nuisance suits but, whatever the reason, it also eliminates a primary right of citizens to challenge government actions in court. I hope you can see this as unconstitutional and will not allow it out of committee.

Dr. Bob Johnson, Trustee  
Alaska Pioneers of Kodiak

**Subject:** [Fwd: Senate Bill 183]  
**Date:** Mon, 04 Feb 2002 07:57:59 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Senate Bill 183  
**Date:** Fri, 1 Feb 2002 15:23:57 -0900  
**From:** "Brad Owens" <bowens@jdolaw.com>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Rep. Rokeberg:

I think this is a dangerous bill that would effectively deny access to the courts for a host of public interest parties. The common wisdom is that public interest litigants are liberal environmental groups, planned parenthood, etc.. But there have also been some important "conservative" public interest cases ... challenges to rural fish and game preferences, to PFD residency requirements, etc.. No matter what a person's political leanings, I think public interest litigation is an important part of the balance of power in state government ... I urge you to oppose this bill...

Brad Owens

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**Subject: [Fwd: SB183]**

**Date:** Wed, 06 Feb 2002 07:46:49 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject: SB183**

**Date:** Tue, 5 Feb 2002 19:47:08 -0900

**From:** "mail.mtaonline.net" <mazzella@mtaonline.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Mr. Rokeberg,

My husband and I are opposed to SB183. It is a bill which would I believe keep me from challenging our government, or anyone else who couldn't afford to fight you. That is like tying your opponents hands, slugging him in the financial belly for speaking out and calling it a fair fight. I think Mr. Leman has done that with our medical marijuana law and now SB183.

It is my privilege to go serve jury duty tomorrow and I am disheartened to think anyone would stop our courts, people, and constitution from serving all of us. Alaska is about the fight. The little guy still gets to win here or they use too... He use to get his say also.

It is wrong to use a persons finances as a way to stop ideas from being tested. It may be political and successful, but it is wrong. Little guy's who can't be heard because someone intimidated them financially; is that the Alaskan way?

We pass a law and the BigBucks R Us buddies come along and say, who the hell are you? Got Cash? We will just override you with this regulation and intimidate you for that dollar in your hand but it is all for you own good and you had well best see it our way. Or we come after your pennies.....with lawyers and tie your hard working hands with law that work to our advantage. It's our court go home or pay to play.

That may be capitalism but it isn't democracy, it's the big bucks bully against little people who are very tired of being laughed at for watching the pennies they have worked for. How cruel to think it is okay to take a persons right to challenge the Goliaths. How odd to think you could not fight an oil company like Enron for fear of having to pay up if you lose; like a cheap football bet lost. How odd to feed fear to people who are trying to fight for the new idea or the better way.

Right now I don't have a fight but I sure want to be able to stand my ground if someone who has had to much power for lunch starts something. If SB183 lives something decent and right about fighting in Alaska will be given a dose of poison from power too full of itself. I am throwing in with the little guy. SB183, not for our family. We like those little guy wins stories most the time at our home and if the big boys can't fight fair then someone brave should step up to the fight. You have the power to do that. I still do today, but I wonder about tomorrow.

Bills and laws should be loud and noisy and out for the fray. Not pushed through and secreted. Put the power in the courts and let us play our best games. Bloody ugly and oh so democratic. Little guys with a black eye from a big bucks fight is a proud thing. Don't neuter the little guy giving it his best shot. Maybe they play that way in Washington but here?

Please stop SB183. It is not the best for Alaska's heart.

Thanks,

Ruth Mazzella  
4555 E Dimond Way  
Wasilla, AK 99654

**Subject:** [Fwd: Resolution to support SB 183]

**Date:** Wed, 06 Feb 2002 10:23:05 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

**Subject:** Resolution to support SB 183

**Date:** Wed, 6 Feb 2002 09:26:06 -0900

**From:** "Administrative Assistant" <staff@fairbankschamber.org>

**To:** <Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
<Representative\_Con\_Bunde@legis.state.ak.us>,  
<Representative\_Mike\_Chenault@legis.state.ak.us>,  
<Representative\_Sharon\_Cissna@legis.state.ak.us>,  
<Representative\_John\_Coghill@legis.state.ak.us>,  
<Representative\_Harry\_Crawford@legis.state.ak.us>,  
<Representative\_Eric\_Croft@legis.state.ak.us>,  
<Representative\_John\_Davies@legis.state.ak.us>,  
<Representative\_Fred\_Dyson@legis.state.ak.us>,  
<Representative\_Hugh\_Fate@legis.state.ak.us>,  
<Representative\_Richard\_Foster@legis.state.ak.us>,  
<Representative\_Joe\_Green@legis.state.ak.us>,  
<Representative\_Gretchen\_Guess@legis.state.ak.us>,  
<Representative\_Andrew\_Halcro@legis.state.ak.us>,  
<Representative\_John\_Harris@legis.state.ak.us>,  
<Representative\_Joe\_Hayes@legis.state.ak.us>,  
<Representative\_Bill\_Hudson@legis.state.ak.us>,  
<Representative\_Jeannette\_James@legis.state.ak.us>,  
<Representative\_Reggie\_Joule@legis.state.ak.us>,  
<Representative\_Mary\_Kapsner@legis.state.ak.us>,  
<Representative\_Beth\_Kerttula@legis.state.ak.us>,  
<Representative\_Vic\_Kohring@legis.state.ak.us>,  
<Representative\_Albert\_Kookesh@legis.state.ak.us>,  
<Representative\_Pete\_Kott@legis.state.ak.us>,  
<Representative\_Ken\_Lancaster@legis.state.ak.us>,  
<Representative\_Beverly\_Masek@legis.state.ak.us>,  
<Representative\_Lesil\_McGuire@legis.state.ak.us>,  
<Representative\_Kevin\_Meyer@legis.state.ak.us>,  
<Representative\_Carl\_Morgan@legis.state.ak.us>,  
<Representative\_Carl\_Moses@legis.state.ak.us>,  
<Representative\_Eldon\_Mulder@legis.state.ak.us>,  
<Representative\_Lisa\_Murkowski@legis.state.ak.us>,  
<Representative\_Scott\_Ogan@legis.state.ak.us>,  
<Representative\_Brian\_Porter@legis.state.ak.us>,  
<Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
<Representative\_Drew\_Scalzi@legis.state.ak.us>,  
<Representative\_Gary\_Stevens@legis.state.ak.us>,  
<Representative\_Jim\_Whitaker@legis.state.ak.us>,  
<Representative\_Bill\_Williams@legis.state.ak.us>,  
<Representative\_Peggy\_Wilson@legis.state.ak.us>,  
"Gary Wilken (E-mail)" <Senator\_Gary\_Wilken@legis.state.ak.us>,

[Fwd: Resolution to support SB 183]

"Gene Therriault \ (E-mail)" <Senator\_Gene\_Therriault@legis.state.ak.us>,  
"Pete Kelly \ (E-mail)" <Senator\_Pete\_Kelly@legis.state.ak.us>


Hi Everyone, Here is an e-mailed version of our resolution supporting SB  
183.  
Thank You.

Heather Palow  
Administrative Assistant

Your Greater Fairbanks Chamber of Commerce  
"Focusing on the Future Together"

Phone: 907.452.1105  
Fax: 907.456.6968

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 <a href="#">SB 183 Resolution.doc</a>	<b>Name:</b> SB 183 Resolution.doc <b>Type:</b> WINWORD File (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message
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**Subject:** [Fwd: OPPOSE Senate Bill 183]  
**Date:** Wed, 06 Feb 2002 10:24:01 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** OPPOSE Senate Bill 183  
**Date:** Wed, 6 Feb 2002 10:18:42 -0900  
**From:** "Jeff & Susan Sloss" <jssloss@gci.net>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
<Representative\_Scott\_Ogan@legis.state.ak.us>,  
<Representative\_John\_Coghill@legis.state.ak.us>,  
<Representative\_Jeannette\_James@legis.state.ak.us>,  
<Representative\_Kevin\_Meyer@legis.state.ak.us>,  
<Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
<Representative\_Albert\_Kookesh@legis.state.ak.us>

Dear Judicial Committee Members,

SB 183 would eliminate public interest litigant status, thereby holding losing plaintiffs liable for the government's attorney's fees and costs. Most public interest groups, and certainly most individuals in Alaska who might wish to bring valid public interest lawsuits, would be chilled from challenging the government in court because the financial risk would be too great. The bill also changes the way attorneys' fees are apportioned, and the purpose of this is to deter attorneys from being willing to invest their time and energy into these lawsuits when the litigants do not have the resources to pay their fees and costs up front. <?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

SB 183 poses a very grave threat to our ability to bring litigation in the future to defend Alaskans' constitutional rights against encroachments by State or local governments. The Alaska Constitution is worthless if there is no practical way that we can enforce it in the courts. These bills are obviously a legislative attempt to discourage public interest litigation and ensure that unconstitutional laws go unchallenged in court.

**We urge you to kill this bill in your Committee.**

Thank you, Jeff & Susan Sloss, 740 5th St., Juneau, AK 99801

Jeff and Susan Sloss <jssloss@gci.net> Jeff & Susan Sloss
--

**Subject:** [Fwd: Public Interest Litigation - SB183]

**Date:** Thu, 07 Feb 2002 09:42:48 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Public Interest Litigation - SB183

**Date:** Wed, 6 Feb 2002 16:14:03 -0900

**From:** "Wev Shea" <wws@alaskalife.net>

**To:** "Albert Kookesh" <Representative\_Albert\_Kookesh@legis.state.ak.us>,  
"Ethan Berkowitz" <Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
"Jeannette James" <Representative\_Jeannette\_James@legis.state.ak.us>,  
"John Coghill" <Representative\_John\_Coghill@legis.sate.ak.us>,  
"Kevin Meyer" <Representative\_Kevin\_Meyer@legis.state.ak.us>,  
"Norm Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
"Scott Ogan" <Representative\_Scott\_Ogan@legis.state.ak.us>

**CC:** "Larry Baker" <baker@bkingalaska.com>

Wev Shea  
329 F Street  
Suite 222  
Anchorage, Alaska 99501

907-274-0020  
fax 274-3004

**Re:** House Judiciary Committee - Public Interest Litigation  
SB 183

Dear Chairman Rokeberg and Honorable Committee Representatives:

I have been licensed to practice law in Alaska for 25 years, Hawaii for 20 years. I presently handle civil litigation, trials and appeals, in state and federal courts. I also have extensive criminal prosecution experience in Alaska and Hawaii. I was an enlisted Navy Yeoman 3rd Class before 1966 when as a Ensign I was awarded by "wings" prior to attending Naval Justice School.

On two combat cruises on the USS Ranger flying A-6 Intruders I was also (as a "non-flying duty") the legal and public affairs officer. I flew over 100 combat missions, a high number over the Hanoi-Haiphong area of North Vietnam. I understand the importance of freedom and the importance of our "unique" right to vote in free and fair elections. My beliefs are life long, not new.

I also consider myself a lifelong "conservative" Republican. I do not "swing in the breeze" and "take poles" like some "herein."

It has come to my attention that Senator Donley and other Senate co-sponsors I respect are questioning "public interest litigation's" role in Alaska. Over the past few years I have handled a number of cases resulting in Alaska Supreme Court decisions on public interest litigation. I handled the following cases both in the Superior Court and on appeal before the Alaska Supreme Court:

*Dancereau v. Ulmer*, 955 P.2d 916 (Alaska 1998)

*Cook and The Alaska State Legislature v. Botelho*, 921 P.2d 1126 (Alaska 1996)

*Dancereau v. Ulmer*, 903 P. 2d 555 (Alaska 1995)

All of the foregoing were prompted by action or lack of action by the Executive and Legislative Branches. *Dancereau* involved 10 public interest litigants (private Alaska voters) stepping forward as required by statute to address "alleged" voter fraud in the 1994 governor's race. It involved "gas for votes" and "Vote for Tony Knowles, Win \$1000.00" which were violations of state and federal election law.

In 1994, our governor was elected by 536 votes. (As an aside "Democratic" Candidate Donley defeated Republican Larry Baker by 26 votes on the new governor's coat tails.) The foregoing "Gas" and "Win \$1000.00" programs were created to elect "their" candidate. The foregoing "voter" programs affected in excess of ten thousand (10,000) Alaska voters; certainly substantially more than to "affect the result of the election." Most importantly, we all now recognize nothing is more important in our democratic republic than free and fair elections.

No action was taken by the Executive Branch because the Attorney General in Alaska is the Governor's counsel, not the attorney for the citizens of Alaska as many may believe. ("The State of Alaska will not appeal ... to the United States Supreme Court despite the legal foundation for success.") The Legislature, much too late, attempted to take action without standing when in fact public interest litigants would most probably have had standing. The big picture was ignored until it was too late.

In 1994, neither our Republican Legislators nor the new Governor, Lt. Gov., Attorney General, U. S. Attorney or the Republican candidate were willing to "challenge the election fraud." In fact, other than the Republican candidate's counsel Cliff Groh the vast majority of Republicans would not dare "question" the individuals or entities involved, despite the effect on our most basic freedom.

As a result 10 public interest litigants with my assistance stepped forward to litigate against the State. I handled two appeals through the Alaska Supreme Court with the assistance of one attorney. The Attorney General had 10-14 attorneys and para-professionals from his office with the assistance of private counsel representing the newly elected Governor and Lt. Gov.

Complex public interest litigation is tough. No one recognizes the importance of oil and gas development in our state. However, the "perceived" picture of environmental groups bringing litigation to prevent/postpone development does not justify Senator Donley's SB 183 and its grossly overreaching result. The key in litigation is have the facts/evidence and law to destroy the opposition.

Despite prevailing before the Alaska Supreme Court public interest litigation in my experience is not a "money maker." I advanced over \$250,000.00 (attorney time at \$150.00/hour and out of pocket costs). I was awarded attorney fees and costs after years of litigation of less than \$125,000.00. However, I handled the "complex" litigation since I felt our most basic freedom was compromised. Others, did not have the same conviction on the issue as I did at the time. Now they recognize their error.

I was forced into that position due to my strong convictions and the failure of the Executive and Legislative Branches to address the issue of "election fraud." Without public interest litigation no one would have been able to represent Alaska's voters. Quite frankly, it is only after Governor Knowles has had the opportunity to appoint most of the State's Judiciary that many Republicans are realizing the "true importance" of the 1994 governor's election. Unfortunately, they ignored the obvious in 1994.

It is very important to recognize that our Judiciary, regardless of their political positions, in my experience do all they can to be fair to all concerned. Unfortunately, many attorneys when they lose (50% do in every case that goes to trial or appeal) blame the judiciary for their failure on behalf of their client.

Litigation is very difficult to evaluate unless you handle it personally (I do not believe Senator Donley has ever tried a case or written and argued before the Alaska Supreme Court.) or are involved in it personally at every stage. Ethical and professional standards of attorneys in the courtroom are defined by Civil Rule 11 governing sanctions. In my opinion they are rarely applied. Certainly they would be in cases where counsel was able to define for the court the "frivolous" litigation of his opponent. It is counsel's obligation.

It is up to the legal profession to "police its own" just as it is the Legislature's responsibility to have its "representatives" attend the session in Juneau on behalf of all Alaskans, not just those in his/her district. Professional integrity is acquired over one's lifetime. We do not need more laws; we need responsible, professional individuals in the executive branch to enforce those we have.

Certainly, the picture of public interest litigation painted by now "Republican" Senator Donley is parallel to the litigation "reporting" by *Anchorage Daily News* gossip columnist Sheila Toomey. Whether it is addressing recent State reapportionment or the Public Defender drunk driving cases, you are never assured of the truth with Sheila. Sheila has her own agenda.

I suggest you look at Senator Donley's SB 183 with the same questioning "eye" you do Sheila's "independent" liberal analysis. Senator Donley wants to "throw the baby out with the rinse water." In the present situation it is the public interest litigant's ability to sue in unique situations to protect our most basic rights when the Executive or Legislative Branch will not act.

Please recognize Senator Donley's actions as those of the uninformed lawyer who has simply "lost his way." Especially, regarding litigation, trials or appeals. Do not be "mislead" simply because he is now a "Republican lawyer." Senator Donley's focus is "tainted" by his own inexperience or in some cases experience!!

I will be happy to address in more detail my position on the importance of public interest litigation. Please contact me at any time to address my concerns. I respect each of you for your public service. You have a tough job in Juneau. Thank you for your service.

Respectfully and Best Wishes,

Wev

Wevley William Shea



# Alaska State Legislature

Please enter into the record my testimony to the House ~~Finance~~ Judiciary  
 committee name  
 committee on SB 183, dated 4/30/01  
 bill/subject

AKPIRG wishes to express its opposition to SB 183. We believe it is bad legislation. In addition, more input is needed to ensure that the public is cognizant of this effort. Virtually no chance for public testimony was given in the Senate. This bill would eliminate public interest litigant status, thereby holding losing plaintiffs liable for the government's attorney's fees and costs. This would discourage public interest groups and individuals as the financial risk would be too great. In addition, lawyers will be deterred from taking cases from ~~their~~ clients who cannot pay their fees and costs up front.

Unconstitutional laws need to be challenged in court. That is how our rights as citizens are protected and preserved. This legislation undercuts that. Please do not pass SB 183 out of your committee.

Signed: Steve Cleary  
 Testifier

AKPIRG--Alaska Public Interest Research Group  
 Representing (Optional)

PO Box 101093 Anchorage AK 99501  
 Address

(907) 278-3661  
 Phone No.

**Subject: SUPPORT-SB183**

**Date: Fri, 4 May 2001 10:56:39 -0800**

**From: "Susan Fischetti" <sfischetti@gci.net>**

**To: <sfischetti@gci.net>**

MAY 04 2001

(Hard copy to follow)

May 4, 2001

Dear Legislator:

The Alaska Support Industry Alliance (The Alliance) expresses strong support for Senate Bill 183 - Attorney Fees: Apportionment and Public Interest Litigation. We applaud the Senate Finance Committee's efforts to curb the escalating misuse of "public interest litigation" against responsible resource development in Alaska.

The Alliance is a statewide nonprofit trade organization representing 400 member businesses that provide products and services to oil and gas companies in Alaska. We are oilfield service companies, transportation enterprises, technical experts, wholesalers and retailers, and private citizens who advocate the environmentally responsible development of Alaska's petroleum resources. As the voice for Alaska's support industry, we offer the following background for our position.

Since before statehood, Alaska Civil Procedure allowed a prevailing party in a civil lawsuit to recover a portion of its attorney's fees. If the prevailing party recovered a money judgment, the party could automatically recover approximately ten percent (10%) of that judgment as an additional recovery for attorney's fees incurred. If the prevailing party was the defendant, the defendant recovered a portion (now 20% - 30%) of its attorney's fees incurred. The purpose for the rule was, and is, to encourage settlement and to partially compensate parties who are forced to go to litigation to vindicate their rights or defenses.

Beginning in 1968, the Alaska Supreme Court developed what is now called the Public Interest Litigant Doctrine, which provided that if a prevailing party was considered a public interest litigant, the person recovered all of its attorney's fees. If the public interest litigant lost, it did not have to pay any of the other parties' attorney's fees.

When the over 100 cases that have applied this doctrine since 1968 are reviewed, it is clear that the Alaska Supreme Court has selected certain groups that it considers, in its political judgment, more worthy than other interests when the litigation involves public interest issues. Subsistence groups, native cultural interests newspapers, environmental protection and conservation groups (but not miners), homeowners on zoning issues when attempting to prevent development (but not the developers), and sometimes commercial fishermen (but not when attacking the regulations on set netting) have qualified.

On the other hand, oil companies, miners, logging companies, trucking companies, developers, and labor unions have consistently been denied public interest litigation status on the grounds that in each case they had a "sufficient economic incentive to bring a lawsuit," which disqualified them.

The end result is that under the doctrine certain groups are preferred over others according to the political judgment of the Alaska Supreme Court, which political judgment does not necessarily coincide with the political views and values of the majority of Alaskans, as represented by their elected officials in the legislature. Comparing the groups that are accorded this special status to those who are denied it shows a very marked


and distinct anti-development, pro-preservationist political slant.

Senate Bill 183 would have the effect of leveling the playing field s that no groups are accorded special treatment in the awarding of or immunity from attorney's fees according to their political characteristics. The applicable rule of civil procedure, Rule 82, still will permit the trial judge to either raise or lower the amount of attorney's fees awarded based upon a variety of special factors, but all of which would be applied equally to all litigants.

For these reasons, the Alaska Support Industry Alliance encourages passage of Senate Bill 183. We ask for your active support of this bill.

Very truly yours,

Larry J. Houle  
General Manager  
Alaska Support Industry Alliance

 <a href="#">SB 183 Public Interest Litigant Letter.doc</a>	<p><b>Name:</b> SB 183 Public Interest Litigant Letter.doc <b>Type:</b> Microsoft Word Document (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message</p>
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MAY 04 2001

**Subject: SB 183****Date:** Fri, 04 May 2001 10:18:42 -0800**From:** lisa fitzpatrick <lmf@alaska.net>**To:** "Rep. John Coghill" <Representative\_John\_Coghill@legis.state.ak.us>,  
"Rep. James" <Representative\_Jeannette\_James@legis.state.ak.us>,  
"Rep. Mcyer" <Representative\_Kevin\_Meyer@legis.state.ak.us>,  
"Rep. Ogan" <Representative\_Scott\_Ogan@legis.state.ak.us>,  
"Rep. Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
"Rep. Berkowitz" <Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
"Rep. Kookesh" <Representative\_Albert\_Kookesh@legis.state.ak.us>

Members of the House Judiciary Committee -

I urge all of you not to pass SB 183 out of committee. It is bad public policy and bad law.

The state will not save any serious money through passage of this bill. Truly frivolous lawsuits filed by so-called "public interest litigants" do not cost the state significant amounts of money because they are thrown out early in litigation through a timely filed motion to dismiss or motion for summary judgment. Those that proceed generally merit consideration - whether they result in the public-interest litigant prevailing or not.

The public interest exemption has served Alaska well. It provides a recourse for ordinary citizens to raise issues of concern to many without fear of incurring substantial litigation costs. Please do not take away this right.

Thank you. Lisa Fitzpatrick

*WJR*