

SB

97

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/3/03

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-8-03

Resources Committee considered SENATE BILL NO. 97

SB 97 ATTY FEES: PUBLIC INTEREST LITIGANTS

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

and recommends:

Senate Bill:

be replaced with _____ CS _____ (_____)

same title

new title

adopt previous _____ CS _____ (_____)

House Bill:

same title

technical title

new: SCR # _____

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

Department	Date	Fiscal	Zero	FN#
ADM	3/3/03	**		2
Law	4/27/03		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Karen Seebus</i>	✓			
<i>Ken Stray</i>				✓
<i>Paul Wagon</i>			✓	
<i>K. J. [unclear]</i>		✓		
<i>[unclear]</i>		✓		
CHAIR: <i>Thomas H. Kogon</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 97
(S) Publish Date: 3/03/03

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 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.

This bill 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 1/27/03 8:28 AM
Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General Date 1/27/2003
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 97 #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: FY98, \$186.4; FY99, \$413.9; FY00, \$34.7; FY01 \$298.4; FY02 \$335.9. (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 this bill passes.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 97
 (S) Publish Date: 3/03/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to public BRU Risk Management
interest litigants..... Component Risk Management
 Sponsor _____
 Requester _____ Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Risk Management is not usually involved in public interest cases, as most do not involve recovery of damages that are typical in tort actions.

Prepared by: J. Brad Thompson, Director Phone _____
 Division Risk Management Date/Time 2/3/03 11:52 AM
 Approved by: _____ Date 2/3/2003
 Agency Administration

Alaska State Legislature
Senate Resources Committee
Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgianna Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



State Capitol, Room 103
Juneau, AK. 99801-1182
Phone: (907) 465-4907
Fax: (907) 465-3265

Memorandum

DATE: April 5, 2003

TO: All Resources Committee Members

FROM: Senator Scott Ogan
Chairman, Senate Resources Committee

RE: SB 97

Attached is a copy of the work draft CS for SB 97 Public Interest Litigants, which moved out of subcommittee on April 3rd. This version will be presented to the full Resources Committee for discussion on Monday, April 7th. A revised fiscal note has been requested but not yet received.

If you have any questions, please contact my committee aide, Linda Hay at extension 4907.

Senator Scott Ogan

23-GS1064\D
Luckhaupt
4/4/03

*NOT
adopted*

CS FOR SENATE BILL NO. 97()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting certain types of discrimination in the awarding of attorney fees and**
2 **costs in civil actions or appeals."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **PURPOSE AND INTENT.** (a) The judicially created doctrine respecting the award
7 of attorney fees and costs to or against public interest litigants has created an unbalanced set
8 of incentives for parties litigating issues that fall under the public interest litigant exception.
9 This imbalance has led to increased litigation, arguments made with little merit, difficulties in
10 compromising claims, and significant costs to the state and private citizens. More
11 importantly, application of the public interest litigant exception has resulted in unequal access
12 to the courts and an unlevel playing field for the parties in litigation.

13 (b) The purpose of secs. 2 and 3 of this Act is to provide for a more equal footing for
14 parties in civil actions and appeals by abrogating the special status given to public interest

1 litigants with respect to the award of attorney fees and costs. It is the intent of the legislature
2 to expressly overrule the decisions of the Alaska Supreme Court in *Gilbert v. State*, 526 P.2d
3 1131 (Alaska 1974), *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977), *Thomas v. Bailey*,
4 611 P.2d 536 (Alaska 1980), *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d
5 544 (Alaska 1983), *Danscreau v. Ulmer*, 955 P.2d 916 (Alaska 1998), and their progeny,
6 insofar as they relate to the award of attorney fees and costs to or against public interest
7 litigants in future civil actions and appeals. It is also the intent of the legislature to prohibit
8 the creation or application of judicially created doctrines in the future that have the effect of
9 treating public interest litigants differently than nonpublic interest litigants regarding the
10 award of attorney fees and costs.

11 (c) This Act does not preclude the enactment of specific statutes authorizing fee
12 awards in particular situations, such as AS 45.50.537.

13 * Sec. 2. AS 09.60.010 is amended to read:

14 **Sec. 09.60.010. Costs and attorney fees allowed prevailing party. Except**
15 **as provided in (b) of this section, the** [THE] supreme court shall determine by rule or
16 order the costs, if any, that may be allowed a prevailing party in a civil action. Unless
17 specifically authorized by statute or by agreement between the parties, attorney fees
18 may not be awarded to a party in a civil action for personal injury, death, or property
19 damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil
20 action is contested without trial, or fully contested as determined by the court.

21 * Sec. 3. AS 09.60.010 is amended by adding a new subsection to read:

22 (b) Except as otherwise provided by statute, a court in this state may not
23 discriminate in the award of attorney fees and costs to or against any party in a civil
24 action or appeal based on the nature of the policy or interest advocated by the party,
25 the number of persons affected by the outcome of the case, whether a governmental
26 entity could be expected to bring or participate in the case, the extent of the party's
27 economic incentive to bring the case, or any combination of those factors.

28 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

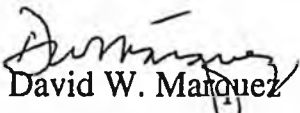
30 **APPLICABILITY.** This Act applies to a civil action or appeal filed on or after the
31 effective date of this Act.

MEMORANDUM

State of Alaska
Department of Law

TO: Senator Scott Ogan
Room 103

DATE: April 2, 2003

FROM: 
David W. Marquez
Assistant Attorney General

TELEPHONE: (907) 465-2132

SUBJECT: Senate Bill 97

Attached is a proposed amendment to Senate Bill 97 which the Department of Law respectfully requests be considered by the Senate Resource Committee Subcommittee.

*moved out
of sub-committee today
as amended*

*Seekins - yes
Stewens - yes
Elton - no*

*CS for Senate Res
is ordered*

AMENDMENT #2

OFFERED IN THE SENATE RESOURCE
COMMITTEE
TO: SB 97

BY _____

1 Page 1, lines 1-2:

2 Following "Act":

3 Delete all material and insert:

4 "prohibiting discrimination in the awarding of attorney's fees and costs
5 in civil actions or appeals to or against public interest litigants."

6

7 Page 1, following line 3:

8 Insert a new bill section to read:

9 "* Section 1. The uncodified law of the State of Alaska is amended by adding a new
10 section to read:

11 PURPOSE. (a) The judicially created doctrine respecting the award of attorney's
12 fees and costs to or against public interest litigants has created an unbalanced set of
13 incentives for parties litigating issues that fall under the public interest litigant exception.
14 This imbalance has led to increased litigation, arguments made with little merit,
15 difficulties in compromising claims, and significant costs to the state and private citizens.
16 More importantly, application of the public interest litigant exception has resulted in
17 unequal access to the courts and an unlevel playing field for the parties in litigation.

18 (b) The purpose of sec. 2 of this Act is to provide for a more equal footing for
19 parties in civil actions and appeals by abrogating the special status given to public interest

1 litigants with respect to the award of attorney's fees and costs. It is the intent of the
2 legislature to expressly overrule the decisions of the Alaska Supreme Court in Gilbert v.
3 State, 526 P.2d 1131 (Alaska 1974), Anchorage v. McCabe, 568 P.2d 986 (Alaska 1977),
4 Thomas v. Bailey, 611 P.2d 536 (Alaska 1980), Southeast Alaska Conservation Council,
5 Inc. v. State, 665 P.2d 544 (Alaska 1983), Dansereau v. Ulmer, 955 P.2d 916 (Alaska
6 1998), and their progeny, insofar as they relate to the award of attorney's fees and costs
7 to or against public interest litigants in future civil actions and appeals. It is also the
8 intent of the legislature to prohibit the creation or application of judicially-created
9 doctrines in the future that have the effect of treating public interest litigants differently
10 than non-public interest litigants regarding the award of attorney's fees and costs.

11 (c) This Act does not preclude the enactment of specific statutes authorizing fee
12 awards in particular situations, such as in AS 45.50.537."

13

14 Renumber the following bill sections accordingly

15

16 Page 1, line 4 through Page 3, line 2:

17 Delete all material and insert new bill sections to read:

18 "* Sec. 2. AS 09.60.010 is amended by adding a new subsection to read:

19 (b) Except as otherwise provided by statute, a court in this state may
20 not discriminate in the award of attorney's fees and costs to or against any
21 party in a civil action or appeal based upon the nature of the policy or
22 interest advocated by such party, the number of persons affected by the
23 outcome of the case, whether a governmental entity could be expected to

1 bring or participate in the case, the extent of the party's economic incentive
2 to bring the case, or any combination of those factors.

3 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new
4 section to read:

5 APPLICABILITY. This Act applies to all civil actions and appeals filed on or
6 after the effective date of this Act."

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/3/03

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

must file

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

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

4 ~~* Section 1. AS 09.60.010 is amended to read:~~

5 ~~Sec. 09.60.010. Costs and attorney fees allowed prevailing party. The~~
6 ~~supreme court shall determine by rule or order the costs, if any, that may be allowed a~~
7 ~~prevailing party in a civil action. Unless specifically authorized by statute or by~~
8 ~~agreement between the parties, attorney fees may not be awarded to a party in a civil~~
9 ~~action for personal injury, death, or property damage related to or arising out of fault,~~
10 ~~as defined in AS 09.17.900, unless the civil action is contested without trial, or fully~~
11 ~~contested as determined by the court. In a civil action contesting a decision of the~~
12 ~~Department of Environmental Conservation, the Department of Fish and Game,~~
13 ~~or the Department of Natural Resources making a coastal consistency~~
14 ~~determination, adopting regulations, or for which there was an opportunity for~~

1 the public to comment to the agency before the final agency decision and to seek
 2 administrative review before the agency following the initial agency decision,
 3 attorney's fees may only be awarded to or against a public interest litigant as
 4 provided in Rule 82(g), Alaska Rules of Civil Procedure, on the effective date of
 5 this Act.

6 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
 7 read:

8 DIRECT COURT RULE AMENDMENT. Rule 82(b), Alaska Rules of Civil
 9 Procedure, is amended by adding a new paragraph to read:

10 (5) If the court chooses to vary an award of attorney's fees under (b)(3)
 11 of this rule by increasing the award beyond the amounts provided in (b)(1) or (2) of
 12 this rule, then the court shall apportion the attorney's fees by issue and may only award
 13 the increased fees for an issue the party prevailed upon unless the court finds
 14 exceptional circumstances to be present that require an increased award of fees
 15 without apportionment by issue.

16 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 82, Alaska Rules of Civil Procedure,
 19 is amended by adding a new subsection to read:

20 (g) **Attorney's Fees for Public Interest Litigants.** In a civil action
 21 contesting a decision of the Department of Environmental Conservation, the
 22 Department of Fish and Game, or the Department of Natural Resources making a
 23 coastal consistency determination, adopting regulations, or for which there was an
 24 opportunity for the public to comment to the agency before the final agency decision
 25 and to seek administrative review before the agency following the initial agency
 26 decision, attorney's fees may only be awarded to or against a public interest litigant in
 27 the same manner as attorney's fees may be awarded to or against a non-public interest
 28 litigant under (b) of this rule.

29 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 **CONDITIONAL EFFECT.** Section 1 of this Act takes effect only if secs. 2 and 3 of this Act

- 1 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
- 2 the State of Alaska.

Amend #1

mentioned
but not
offered

Amendments to SB 97

Page 1, line 2, following "Procedure":

Insert "and Rule 508, Alaska Rules of Appellate Procedure"

Page 2, line 29:

Insert a new section:

"* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 508(e), Alaska Rules of Appellate Procedure, is amended to read:

(e) Attorney's Fees.

(1) Attorney's fees may be allowed in an amount to be determined by the court. If such an allowance is made, the clerk shall issue an appropriate order awarding fees at the same time that an opinion or an order under Rule 214 is filed. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.

(2) Public Interest Litigants In an appeal from an administrative agency contesting a decision of the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources making a coastal consistency determination or for which there was an opportunity for the public to comment to the agency before the final agency decision and to seek administrative review before the agency following the initial agency decision, attorney's fees may only be awarded to or against a public interest litigant in the same manner as attorney's fees may be awarded to or against a non-public interest litigant under (e)(1) of this rule.

Renumber the following bill sections accordingly.

Sectional Analysis HB 145 and SB 97

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

Section 1 of the bill amends AS 09.60.010 to require that attorney's fee awards to or against a public interest litigant in civil cases contesting decisions by the Departments of Environmental Conservation, Fish and Game, and Natural Resources which make a coastal consistency determination or adopt regulations or decisions by those agencies for which the public had an opportunity to comment to the agency and seek administrative review before the agency, may only be made as provided in the proposed new subsection (g) to Rule 82, found in section 3 of the bill and described below. Section 1 makes it clear that such attorney's fee awards must conform to the language in subsection (g) expressed in this bill and not to later amendments to subsection (g).

Section 2 of the bill would amend Alaska Rule of Civil Procedure 82 by adding a new paragraph to subsection (b) providing 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. This would change the current application of Civil Rule 82 which courts construe to allow, but not require, apportionment of attorney's fees by issue.

Section 3 of the bill would add a new subsection (g) to Alaska Rule of Civil Procedure 82 providing that attorney's fees to or against public interest litigants for cases contesting decisions by the Departments of Environmental Conservation, Fish and Game, and Natural Resources making a coastal consistency determinations, adopting regulations, or for which the public had an opportunity to comment to the agency and seek administrative review before the agency, are to be awarded in the same manner as attorney's fees are awarded to or against non-public interest litigants under subsection (b) of Rule 82. This would change current Alaska case law which creates an exception to Rule 82 by which, in most circumstances, public interest litigants who prevail in civil litigation receive full attorney's fees, with no apportionment by issue, but are not liable for an opposing party's fees if the public interest litigant loses the case.

Because sections 2 and 3 of the bill amend the Alaska Civil Rules, they must receive a two-thirds vote in each house in order to become law. Section 1 only requires a majority vote. For section 1 to have its intended effect, it is necessary that sections 2 and 3 also are passed by the legislature. Thus, Section 4 of this bill provides that section 1 takes effect only if sections 2 and 3 receive a two-thirds majority vote in each house.



ALASKA

Statement of Support

Senate Bill 97

Public Interest Litigant Fees

March 8, 2003

The Alaska Chapter of the National Federation of Independent Business has over 2,500 members, making it the largest small-business advocacy group in the state. NFIB supports SB 97. This bill allows for equal treatment of litigants under Court Civil Rule 82.

Civil rule 82 provides for a percentage of attorney fees to be reimbursed to the prevailing party. Through Alaska Supreme Court decisions, a policy has been established to exempt public interest litigants from Rule 82 when they do not prevail and give them a higher percentage when they do. This gives public interest litigants an incentive to litigate even weak claims because they will suffer no economic burden if they lose and usually are able to obtain full attorney fees if they prevail.

Groups that litigate "in the public interest" have imposed substantial economic burdens on the State in the development of its resources. Passing SB 97 will take away the incentive to litigate just to delay a project. Such delaying tactics have caused otherwise good projects to become uneconomic and not go forward.

Public interest litigants will not be unfairly treated by SB 97. They will simply be treated like all other Alaskans. They have the right to provide public input before an agency decision is made. They have the right to administratively appeal an agency decision with no cost to them if they lose. This bill will simply treat public interest litigants like every other litigant when they decide to go to court to contest a decision of a resource agency in making a coastal consistency determination, adopting regulations or making other administrative decisions for which there has been an opportunity for public comment.

Passage of SB 97 will benefit the economy in Alaska by reducing project delays.

NFIB/Alaska urges support for SB 97

Submitted by Thyres Shaub on behalf of NFIB/Alaska

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

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February 28, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would change the Alaska Rules of Civil Procedure as they apply to the award of attorney's fees. First, the bill provides for specific rules that govern the award of attorney's fees to or against certain public interest litigants. The bill does so by specifically requiring that any award of attorney's fees to or against public interest litigants for cases contesting decisions by the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources making a coastal consistency determination, adopting regulations, or in which the public had an opportunity to comment to the agency and seek administrative review before the agency, be governed by Alaska Rule of Civil Procedure 82 (Rule 82). The bill would then amend Rule 82 to require that attorney's fees be awarded to or against a public interest litigant in those situations in the same manner as attorney's fees are awarded to or against non-public interest litigants under Rule 82(b). Second, the bill provides, for all litigants, that in the absence of exceptional circumstances, courts may award increased fees only for issues upon which a party prevailed.

Under Rule 82, attorney's fees are awarded to the prevailing party. By rule, the attorney's fee awards are limited to a specified percentage of the actual fees, with the precise percentage dependent upon 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. Upon consideration of a variety of factors, a court may apportion fees based upon the issues and whether a party prevailed. In contrast, current Alaska case law creates an exception to Rule 82 by which, in most circumstances, public interest

The Honorable Gene Therriault
February 28, 2003
Page 2

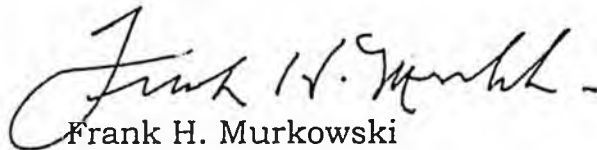
litigants who prevail receive full attorney's fees, with no apportionment by issue, but are not liable for an opposing party's fees if the public interest litigant loses the case.

The attorney's fee exception for public interest litigants creates several undesirable incentives when decisions of the state are called into question. First, those seeking to preserve an action of the state have an incentive to avoid litigation because of the possibility of full attorney's fees being awarded against them. This is compounded by the fact that those seeking to overturn actions of the state have an affirmative incentive to take a chance on doubtful claims because they may win and earn large rewards in the form of full fees, without the counterbalancing risk of even partial fees being awarded against them. This is of particular concern in the area of resource development where well-financed groups have sought to use litigation to impede the state's efforts to proceed with the orderly development of its resources.

This bill would redress this imbalance in the narrow group of cases involving the resource agencies.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor



Closing the Door on Public Interest Litigants (SB 97)

810 N St, Ste 203, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
PO Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.acvoters.org

TO: Senate Resources Committee
FROM: Matt Davidson
Date: March 28, 2003

SB 97 would severely limit Alaskans' ability to challenge poor government decisions. **SB 97** changes the court rules that allow public interest litigants to recover legal expenses for challenges of decisions made by the Departments of Natural Resources, Environmental Conservation, and Fish and Game. The current Rule 82 exemption is necessary to ensure that poor decisions by state agencies can be challenged the Alaska public. We urge you to reject **SB 97**.

Public Interest Litigants, by definition, are *not* motivated by an economic incentive, but rather by an interest in the resolution of a significant public policy issue. In 1974, the Alaska Supreme Court removed barriers that allowed only the rich to challenge bad government decisions.

While it has been argued that the bills target suits by environmentalists, **SB 97** does not single out these plaintiffs, but rather impact all citizens' ability to challenge decisions by DNR, ADF&G, and DEC. As the Alaska Supreme Court once said "the policy of awarding full attorney's fees to public interest litigants was designed to encourage plaintiffs to raise issues of public interest as private attorneys general."

All Sides Impacted

Public interest litigants represent all points along the ideological and political spectrum. Some Alaska cases brought by public interest litigants targeted by **SB 97** and **HB 145** include:

Citizens for the Preservation of the Kenai River, Inc. v. Sheffield, 758 P.2d 624 (Alaska 1988):

A group of boat-owners brought suit challenging the validity of a state regulation limiting horsepower of motorized boats on the Kenai River. If not for the public interest rule, the boat owners would have been required to pay tens of thousands of dollars to the State of Alaska in attorney's fees. This would deter other multiple use advocacy groups from going to court to protect their access rights against overzealous regulators in the state agencies.

Evak Traditional Elders Council v. Sherstone, Inc., 904 P.2d 420 (Alaska 1995): A traditional village elders council disputed logging plans regarding historic sites.

Alaska Survival, Inc. v. Dept. of Natural Resources, 723 P.2d 624 (Alaska 1988): An organization of local residents filed suit regarding state land disposal of 32 agricultural homesteads.

Alaskans building a better future.

Unnecessary Changes

Existing law already protect against frivolous litigation. The courts are charged with deciding whether a plaintiff passes the public interest litigant test. Secondly, the courts already allow the courts to reduce a fee award for a variety of reasons in cases where the judge finds the requested award unreasonable. Attorneys are held accountable by the threat of significant fines for bringing frivolous claims.

SB 97 and HB 145 are unnecessary and would severely limit the checks and balances necessary for a sound public process. Limiting public interest litigant status cuts the ability of Alaskans to participate in important decisions affecting us all.

Please oppose SB 97.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Davidson", with a long horizontal flourish extending to the right.

Matt Davidson
Conservation Advocate

Alaskans building a better future.

Points Supporting Bill Abrogating the "Public Interest Litigant" Doctrine

- This Bill abrogates the so-called "public interest litigant" doctrine. This doctrine has been created exclusively by the Alaska Supreme Court through judicial decisions. It provides special treatment for certain litigants chosen by the Supreme Court when it comes to the awarding of attorney fees and court costs.
 - In sum, should a "public interest litigant" prevail on any issue in a case, then that so called "public interest litigant" is entitled to an award of its full attorney fees and costs.
 - Conversely, should a "public interest litigant" lose its case, then it is immune from an award of attorney fees and costs against it.
 - This doctrine has been applied against the State and private parties being sued by a "public interest litigant".
- It is time for Legislature to step in and assert its authority over this area. The public interest litigant doctrine represents policy making by the Supreme Court on issues which are the province of the Legislature to decide – not the Supreme Court.
- This Bill "levels the playing field" and prohibits the courts from discriminating amongst litigants appearing in state courts. And it does so without amending existing Court Rules. Importantly, existing Court Rules – in particular Civil Rule 82 on attorney fee awards – provide the courts with the authority and discretion to tailor attorney fee awards, on a case-by-case basis, to protect litigants truly deserving of special consideration by the courts.
- Why should the "public interest litigant" doctrine be abrogated? Because it provides a perverse incentive for environmentalists and other interests opposed to development activities in Alaska to sue the State and potentially private companies doing business in the State to stop projects of great benefit to Alaskans.
 - The "public interest litigant" doctrine is tailor-made for environmentalists and other anti-development litigants, who automatically qualify as "public interest litigants" under this loose judicial doctrine.
 - These litigants face virtually no risk when bringing even the most frivolous challenge to a State-approved project: if they win on any issue, no matter how trivial, they "hit the jackpot" and receive an award of full attorney fees and costs. If they lose, they are immune from an award of fees or costs against them.

- Such decisions by the courts – which occur frequently – not only are costly to the State, they operate as a significant disincentive for responsible companies to do business in Alaska. Take Forest’s Redoubt Shoal development project in Cook Inlet.
 - First, Forest worked with State agencies to make the Redoubt project a model of environmentally responsible oil and gas development.
 - This was not good enough for environmentalists opposed to any oil and gas development in Cook Inlet, and one group – calling itself Cook Inlet Keeper – has been relentlessly attacking the project.
 - Its first challenge, to the exploration phase of the project, was rejected at the trial court but upheld, in part, by the Supreme Court. CIK ultimately received an award of attorney fees and costs exceeding \$100,000
 - I note, the Legislature promptly overruled the Supreme Court’s decision in favor of CIK, but CIK got to keep its money anyway.
 - Further, CIK’s challenge and the Supreme Court’s decision did nothing to increase protection for the environment; the case was a technical challenge to the conduct of the Alaska Coastal Management Program review.
 - Before that case was even over, CIK challenged the current production phase of operations, and “public interest litigant” fees received as a part of CIK’s challenge to the exploration phase are now funding the challenge to the production phase of the project
 - An injunction was entered against the project once already during the exploration phase. It was only temporary but its still cost Forest hundreds of thousands of dollars and caused Forest to lay off contractors and employees during the duration of the injunction.
 - Now, CIK is seeking another injunction to stop the production phase of the project.
- Thus, Forest’s experience is a prime example of why the Legislature should act now to remove this perverse incentive that fuels frivolous, obstructionist litigation against the State and companies seeking to do business in the state.
 - Critical juncture for Alaska -- North Slope production is falling and the State is feeling the pain of budget cuts

- The State should encourage responsible development, not discourage investments in Alaska's future by providing financial incentives for challenges to responsible projects in Alaska.
- Finally, as noted at the beginning of my comments, the existing Court Rules – which are unaffected by the Bill – provide the courts sufficient authority and discretion to protect litigants truly deserving special consideration by the courts.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
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COPIES



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) Resources
 Committee on SB 97 Dated 3-28-03
Committee Name
Bill / Subject

The Council of Alaska Producers, a nonprofit organization representing most of the large mines in Alaska, strongly supports SB 97.

Once permitted by the appropriate state agencies, mining & development projects in Alaska rarely proceed without considerable delay due to litigation. Generally these lawsuits are filed with the sole purpose of delaying the project - with no risk to the organization filing the appeal, but with great risk to industry.

This legislation will inhibit frivolous litigation by ensuring there is a consequence to those who file such litigation.

SB 97 is critical to ensure and promote responsible development in the state of Alaska. The Council of Alaska Producers urges your support.

SIGNED:

Lorna Shaw

Testifier

Council of Alaska Producers

Representing

POB. 13726 Fldo AK 99707 490-2218

Address / Phone Number

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515

Regional Office:
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Anchorage, Alaska 99501
(907) 278-2722 FAX 278-6643



SB 97 – Public Interest Litigants
Testimony by Pamela La Bolle, President

The Alaska State Chamber of Commerce, representing approximately 700 business members and 35 local chambers of commerce, offers the following comments in support of SB 97 regarding Public Interest Litigants.

The Public Interest Litigant is a special status granted to a certain group of Alaskans over the interests of other Alaskans. This status was not created by the elected representatives of Alaskans through the recognized public process of the legislature, but instead was created by the courts.

Under this special status, litigants are provided exemption from the requirements of Rule 82 (g) of the Alaska Rules of Civil Procedure that provides for the prevailing party in a civil procedure to recover a portion of its attorney fees. Under Rule 82, if the prevailing party is the defendant, they can recover 20-30% of the attorney fees incurred. The rationale, in addition to encouraging settlement, is to provide partial compensation to parties who are forced to go to litigation to defend their rights.

The Alaska State Chamber was among those who worked hard to bring Rule 82 into law, and it is our belief that it is fair to all. We believe that no groups, based on their political characteristics, should be accorded special treatment or immunity from Rule 82.

The public interest litigant doctrine came about in the 1990 case of *The Anchorage Daily News v. Anchorage School District* before the Alaska Supreme Court. Under this special status, the court determined that if the prevailing party is considered a public interest litigant, they are able to recover all of their attorney fees. If the public interest litigant loses, however, they do not have to pay any of the other parties' attorney's fees.

Some groups routinely challenge state resource development decisions and are granted the status of public interest litigant by the courts. These groups are often special interest groups posing as public trusts. Such challenges typically allege as many as 15 to 20 specific deficiencies in the state's administrative finding. When groups challenging resource development decisions prevail, they generally do so on just one or two issues, however they are typically awarded full costs and attorneys fees.

SB 97 will return fairness to the civil proceedings. Under Rule 82, the court is allowed to raise or lower the amount to be awarded in attorney's fees based upon established factors. The rule should be applied equally to all litigants.

We urge the committee to support SB 97.

Subject: Please oppose SB 97

Date: Sat, 05 Apr 2003 23:14:40 -0900

From: Jeff & Susan Sloss <jssloss@gci.net>

To: Senator_Scott_Ogan@legis.state.ak.us, Senator_Tom_Wagoner@legis.state.ak.us,
Senator_Fred_Dyson@legis.state.ak.us, Senator_Ralph_Seekins@legis.state.ak.us,
Senator_Ben_Stevens@legis.state.ak.us, Senator_Gene_Therriault@legis.state.ak.us

Dear Senators,

CSSB 97 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 deterred from challenging the government in court because the financial risk would be too great.

This bill poses a very grave threat to one's 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 one 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.

Please do not trample the Alaska Constitution; bury this bill now.

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

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

Subject: CSSB 97

Date: Sun, 6 Apr 2003 10:54:15 -0800

From: "Louise Barnes" <lb114@worldnet.att.net>

To: <Senator_Scott_Ogan@legis.state.ak.us>, <Senator_Tom_Wagoner@legis.state.ak.us>, <Senator_Fred_Dyson@legis.state.ak.us>, <Senator_Ralph_Seekins@legis.state.ak.us>, <Senator_Ben_Stevens@legis.state.ak.us>, <Senator_Gene_Therriault@legis.state.ak.us>

Please vote to KILL this bill. Do not make it harder for us (the public you represent) to defend ourselves against possible wrong doing.
Thank you very much.

Jennine Williamson
2454 Killarney Way
Fairbanks, AK 99709

Subject: Opposition to CSSB 97

Date: Mon, 7 Apr 2003 10:37:43 -0800

From: Janel Wright <jwright@dlcak.org>

To: "Senator_Scott_Ogan@legis.state.ak.us" <Senator_Scott_Ogan@legis.state.ak.us>

Dear Senator Ogan:

The Disability Law Center of Alaska wishes to express our opposition to CSSB 97, which will effectively eliminate the public interest litigant exception of Alaska Civil Rule 82. The Disability Law Center of Alaska is the Protection and Advocacy System designated to advocate on behalf of Alaskans with disabilities. An important component of our ability to effectively advocate on behalf of Alaskans with disabilities is judicious pursuit of state court remedies.

It is our belief that eliminating the current body of case law regarding allocation of attorney's fees in public interest litigation is both unnecessary and unwise. The rule that public interest litigants are not liable for attorney fees should they lose a lawsuit brought in good faith serves the important interest of ensuring access to the courthouse. If Alaskans faced an automatic penalty of paying 20 per cent of the defense's attorney fees upon losing an action brought in good faith, Alaskans will be chilled from seeking redress for grievances in which their direct financial stake is small in comparison to the cost of attorney fees. In our experience, the "public interest litigant exception" does not foster frivolous lawsuits. The Alaska Supreme Court has clearly stated that any lawsuit brought frivolously or vexatiously exposes both the attorney and the client to payment of the defense's attorney fees, including an award of full fees in egregious cases. As such, there is no real need for this bill.

Finally, we urge you to consider the unintended effect of CSSB 97. Alaskans with disabilities, in addition to public interest groups and most individuals who might be interested in bringing valid public interest lawsuits will be chilled from challenging the government in court because the financial risk will be much too high. Lawsuits involving questions of constitutional rights and rights granted by state and federal laws often do not implicate a direct financial interest of the litigant or litigants. Such lawsuits, when successful, have the impact of protecting the rights of society as a whole.

I urge you to vote against this bill to protect Alaskans with disabilities' access to the courts.

Very truly yours,
DISABILITY LAW CENTER OF ALASKA

Janel L. Wright, Legal Director

Disability Law Center of Alaska
3330 Arctic Blvd.
Suite 103
Anchorage, AK 99503
(907) 565-1002 Phone
(907) 565-1000 Fax

Subject: CSSB 97 (SB 97)

Date: Fri, 4 Apr 2003 10:58:11 -0900

From: Jean Kollantai/CLIMB <climb@pobox.alaska.net>

To: Senator_Scott_Ogan@legis.state.ak.us

CC: Senator_Tom_Wagoner@legis.state.ak.us, Senator_Fred_Dyson@legis.state.ak.us,
Senator_Ralph_Seekins@legis.state.ak.us, Senator_Ben_Stevens@legis.state.ak.us,
Senator_Gene_Therriault@legis.state.ak.us

Our family strongly urges you *not* to pass out this bill, which would eliminate public interest litigant status. How many years now has someone(s) been trying to get this through??--at least 4 or 5 that we know of. We all know that valid public interest law suits, and court challenges to laws which may be unconstitutional, have become an integral part of what is supposed to be our democracy. Eliminating them doesn't even serve the long run interests of those who think this would be a convenience, let alone the rest of us. We are looking for some new things from you that truly speak to the challenges of our state, not the same old tired and dangerous ones.

Sincerely,
Jean Kollantai
Anchorage

Subject: SB 97 as amended

Date: Sat, 5 Apr 2003 07:37:57 -0900

From: "David Allen" <david.allen@alaska.net>

To: <Senator_Scott_Ogan@legis.state.ak.us>

Dear Sen. Ogan:

I want to let you know that as an Alaskan, I am more than willing to bear the cost of public-interest lawsuits. They do far more good than harm. Citizens need a way to bring the government to court, without facing fear of financial disaster. Please reject SB 97's elimination of public-interest litigant status.

Thank you.

David Allen
Fairbanks

TRUSTEES FOR ALASKA

A Nonprofit Public Interest Law Firm Providing Counsel to Protect and Sustain Alaska's Environment

1026 W. 4th Ave., Suite 201 Anchorage, AK 99501 (907) 276-4244 (907) 276-7110 Fax Email: ecolaw@trustees.org

March 28, 2003

Senate Resources Committee
Juneau, Alaska 99811

My name is Deborah Greenberg. I am Executive Director of Trustees for Alaska, a non-profit public-interest law firm. I am here to testify in opposition to SB 97, the bill before you today. Please, forward this letter to committee members for their consideration and include this letter as written testimony for the record.

Since 1974, Trustees has represented environmental organizations, conservation groups, Alaska Native villages and nonprofit organizations, community groups, hunters, fishers and others who have concerns about Alaska's natural resources. We provide legal services that our clients cannot otherwise afford.

Public interest litigant fees were established in recognition that the public needed to have access to the courts to resolve matters of important public policy. The courts recognized that without the ability to receive public interest litigant fees, public interest suits would be cost prohibitive.

SB 97 bars all members of the public who seek to challenge a regulation adopted by the Departments of Fish and Game, Natural Resources and Environmental Conservation from collecting public interest litigant fees. At the same time, it allows those who would in the public interest, seek to challenge regulations adopted by other agencies to receive the fees.

Be aware that under the language of the bill, the members of the public who would be barred from their access to the courts, are not just our clients, but constituents in every district who have a public interest in challenging the regulations of these resource agencies.

In effect, any members of the public who care about how the state regulates its natural resources would have severely reduced access to the courts because of the unavailability of these fees.

We urge you not to bar your constituents from access to the courts to challenge bad natural resources regulations. Please, vote against SB 97.

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
website: www.fairbankschamber.org

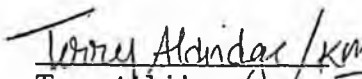
WHEREAS the Greater Fairbanks Chamber of Commerce Board of Directors has identified this legislative change to address public interest litigant and attorney fees as one of their top priorities for 2003.


NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce Board of Directors fully supports Governor Frank Murkowski's initiative for modification to existing Alaska state statutes to specifically address public interest litigants and urge the 23rd Legislature its swift passage.

BE IT FURTHER RESOLVED that this resolution be distributed to:

Alaska State Legislature
Governor Frank Murkowski

PASSED in Fairbanks, Alaska this 11th day of March, 2003 by the Greater Fairbanks Chamber of Commerce Board of Directors.


Terry Aldridge
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
ConocoPhillips Alaska, Inc.
CTG Alaska
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
GCI
Golden Heart Utilities
Golden Valley Electric Association
Guardian Flight, Inc.
Key Bank of Alaska
Mt. McKinley Bank
North Star Computing
Northrim Bank
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

Introduced By: Governmental Affairs
Date Introduced: March 11, 2003
Date Passed: March 11, 2003
Date Transmitted: March 11, 2003

Resolution 03-0311

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF
COMMERCE TO SUPPORT THE PASSAGE OF A BILL 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 legislation, such as Senate Bill 97 introduced by Governor Frank Murkowski, to modify Alaska's existing rules and regulations by eliminating public interest litigant status in appeals of Administrative decisions, in which the party was afforded an opportunity for public input and administrative appeal, and by awarding fees and costs to the prevailing party in such litigation would ensure fairness and a level playing field for all litigants; and,

WHEREAS an additional legislative provision 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 to know the identity of those who are actually supporting the litigation and the amount of that financial support; and,

WHEREAS such legislation would inhibit frivolous litigation by ensuring that there is a consequence to those who file such litigation; and,

WHEREAS such legislation is critical to promoting and achieving responsible business development in the State of Alaska;

Benefactors

Alaska Airlines
Alaska
Communications
Systems
Alaska Railroad
Alyeska Pipeline
Service Company
AT&T Alascom
BP Exploration
(Alaska) Inc.
CellularOne
ConocoPhillips
Alaska, Inc.
CTG Alaska
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
GCI
Golden Heart Utilities
Golden Valley
Electric Association
Guardian Flight, Inc.
Key Bank of Alaska
Mt. McKinley Bank
North Star Computing
Northrim Bank
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

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SB 97 – Public Interest Litigants
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SB 97 will return fairness to the civil proceedings. Under Rule 82, the court is allowed to raise or lower the amount to be awarded in attorney's fees based upon established factors. The rule should be applied equally to all litigants.

We urge the committee to support SB 97.



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) Resources
 Committee on SB 97 Committee Name Dated 3-28-03
Bill / Subject

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Once permitted by the appropriate state agencies, mining & development projects in Alaska rarely proceed without considerable delay due to litigation. Generally these lawsuits are filed with the sole purpose of delaying the project - with no risk to the organization filing the appeal, but with great risk to industry.

This legislation will inhibit frivolous litigation by ensuring there is a consequence to those who file such litigation.

SB 97 is critical to ensure and promote responsible development in the state of Alaska. The Council of Alaska Producers urges your support.

SIGNED: Lorna Shaw
 Testifier
Council of Alaska Producers
 Representing
POB. 73726 Fols AK 99707 490-2218
 Address / Phone Number

TRUSTEES FOR ALASKA

A Nonprofit, Public Interest Law Firm Providing Counsel to Protect Alaska's Environment

1026 W. 4th Ave., Suite #201 Anchorage, Alaska 99501 (907) 276-4244 (907) 276-7110 Fax Email: ucolaw@trustees.org

FACSIMILE COVER SHEET

Number of Pages Sent (including cover page):

TO: LINDA HAYS (sp?)
SEN. ORGAN'S OFFICE

Fax #: (907) 465-3285

FROM: DEBORAH L. GREENBERG

DATE: 4/1/03

RE: 2 pages including cover SB 97

Message: Thank you for your call. This is the written testimony I submitted for the record and referred to at the Sen. Resources Committee Hearing on Friday 3/28/03 on SB 97. Thank you for including it in the record and please do not hesitate to contact me with any questions.



PRIVILEGED & CONFIDENTIAL

This message is intended for the addressee only. It may contain privileged and confidential information exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this document is strictly prohibited. If you have received this document in error, please call us immediately. Thank you.

**Wayne
Anthony
Ross**

Law Offices of

ROSS & MINER

A Professional Corporation

327 East Fireweed Lane, Suite 201

Anchorage, Alaska 99503

(907) 276-5307

(907) 276-6672 - FAX

Curtis W. Patteson, Paralegal

Wayne Anthony Ross
Edward L. Miner
Michael Graper
Timothy Peters
Vince Curry

8 April 2003

To Members of the 2003 Alaska Legislature:

Re: SB 97 and HB 145

Dear Legislator:

It is my understanding that the Alaska Legislature is considering Senate Bill 97 and House Bill 145 (or variants thereof) which would virtually eliminate the "public interest litigants" rule that shields Alaskans from punitive awards of attorneys fees when they act as private Attorneys General and bring suit to correct abuses of government. **These bills should be defeated in all their forms!**

I have participated, as an attorney and as a plaintiff, in a number of such suits.

In Citizens for the Preservation of the Kenai River, Inc. v. Sheffield, 758 P.2d 624 (Alaska 1988), my office represented a large number of power boating enthusiasts protesting a horse-power restriction on motor boats operating on the Kenai River. The State was trying to eliminate erosion to the banks of the Kenai caused by wakes from passing power boats. Although we pointed out that a faster boat that is able to travel "on the step" makes less wake than a slower boat that cannot "get on its step", we lost that suit. A few years ago, at least one State expert was quoted in the Daily News saying that we had been right about our position.

In McDowell v. State, 785 P.2d 1 (Alaska 1989), my office represented Mr. McDowell and several other plaintiffs in seeking to set aside the State's rural preference for Subsistence. The suit was brought on behalf of all Alaskans seeking to uphold Alaska's Constitution which provides for equal access to fish and wildlife resources in Alaska. We won that suit.

In Alaska Gun Collectors Association v. State of Alaska and Tony Knowles et al, I represented a group of Alaskans who objected to the Governor requiring that State surplus firearms be destroyed rather than sold at public auction. Suit was brought to seek an injunction prohibiting the destruction of such firearms. After some 50 firearms (some of which were highly collectable) were cut up with a welding torch, we amended our complaint to ask for monetary

8 April 2003

Page - 2 -

damages on behalf of the people of Alaska against the Governor, personally, for willful destruction of State property. When that happened, the Governor called a moratorium on the destruction of surplus guns. After the Legislature enacted legislation prohibiting such destruction¹, the case settled with the Governor agreeing to end the destruction of surplus firearms, and the State paying a portion of my attorneys fees.

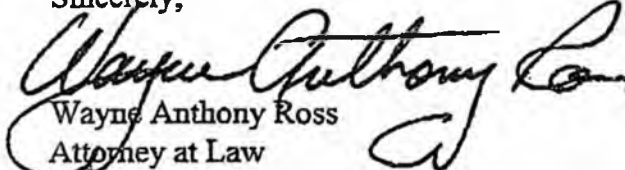
In several other cases I participated as plaintiff, along with other Republicans (and others) to challenge the State's campaign donation regulations. If I recall we won most, if not all, of those suits and all Alaskans (and especially Republican legislators and the Republican Party of Alaska) benefitted from such litigation.

None of those lawsuits would have been pursued had the specter of substantial attorney fees loomed on the horizon in the event we had lost those cases!

We ask that our citizens take an active interest in improving State government. Passage of this proposed legislation would have a chilling effect on such participation!

I urge you, most strongly, to defeat SB 97 and HB145, and all of their substitutes and amendments!

Sincerely,


Wayne Anthony Ross
Attorney at Law

¹The legislation was spurred on by the publicity garnered from our lawsuit against the Governor.