

SB

86

SENATE COMMITTEE REPORT

DATE: 4/5/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 86

SB 86 STATE/MUNI LIABILITY FOR ATTORNEY FEES

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>		X		
<i>[Signature]</i>		X		
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>	✓			

5686



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to, as a matter of sovereign immunity, limit the award of attorney's fees against the state and municipalities.

Since territorial days, Alaska has had a statutory policy of requiring the losing party in most litigation to pay a portion of the prevailing party's attorney fees. In recent years, this policy has been embodied primarily in Alaska Rule of Civil Procedure 82, which the Alaska Supreme Court adopted in response to a legislative delegation, made immediately following statehood, in AS 09.60.010. In most cases, the prevailing party receives a partial fee award, equal to no more than 20 percent of a money judgment or 20 percent of actual fees in a non-monetary case.

In cases brought against state or local governments, departures from the general rule of partial fee reimbursement have occurred with some regularity, with the governmental party required to reimburse all of the prevailing party's fees. Ordinarily, the basis for these enhanced fee awards has been the judicially created public interest litigant policy, wherein selected litigants bringing suits to advance ends deemed by the court to reflect strong public policies are granted full fees as a subsidy from the state treasury. The cost of this subsidy has been significant to the state in all recent fiscal years and, on a more irregular basis, has been significant to the municipalities targeted by such lawsuits.

There are instances where a Legislative policy sufficiently supports full attorney fee awards and the legislature has chosen to provide for them by statute. Full reimbursement is also important for eminent domain proceedings. Beyond these contexts, the Legislature has not identified a policy that would support a direct public subsidy to private litigants that goes beyond the traditional norm of partial fee awards. To ensure that public money is not disbursed as a subsidy to these litigants without an appropriate legislative authorization, this bill would provide, as a matter of sovereign immunity, that the state or a municipality would not be liable for an attorney fee award in excess of certain percentages of a money

COMMITTEE COPY

The Honorable Ben Stevens
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judgment or, if a money judgment is not recovered, certain percentages of the reasonable actual attorney fees the prevailing party incurred in litigating the issues upon which the party prevailed. This would prevent enhanced fee awards against the state or municipalities that are not authorized by statute, but leave those governments open to the standard partial fee awards called for in the Civil Rule 82 fee schedule.

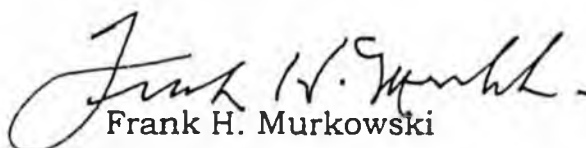
Section 1 of the bill describes the purposes of the Legislation. It notes the fiscal impact of enhanced fee awards, and specifically relies on the legislature's constitutional authorities in regulating this area. Section 1 states clearly that this bill, if enacted into law, would neither preclude nor repeal specific statutes authorizing the award of costs or fees in particular situations.

Section 2 of the bill would create a new provision in the chapter of AS 09 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the state and municipalities are not liable to pay more than 20 percent of the money judgment. In civil actions in which no money judgment is recovered, the liability of the state and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed, and 20 percent for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the state and municipalities for attorney fees is capped at 20 percent of reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed. These limits on liability are very similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party. These limitations do not apply if the statutes provide differently, if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Section 3 of the bill would make the bill, if enacted into law, applicable only to civil actions or appeals initiated after it takes effect.

I urge your prompt consideration and passage of this bill.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 86
 (S) Publish Date: 1/31/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to liability for attorney RDU Risk Management
fees in certain civil actions 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 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 2 provides enhanced immunity for State and municipalities to not be liable to pay attorney fee awards exceeding those provided for in Civil Rule 82 (unless otherwise provided by specific statute).

Risk Management is not affected by this new limitation.

Any monetary judgment awarded on personal injury (tort) actions against the State of Alaska covered by the Risk Management self insurance program are presently addressed by Civil Rule 82 - which remains unchanged.

Prepared by: J. Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 12/10/04 10:46 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 12/10/2004
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 86
 (S) Publish Date: 1/31/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the liability of the state and RDU CIVIL
municipalities for attorney fees..." Component Labor & State Affairs
 Sponsor _____ Component No. _____
 Requester Governor

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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)

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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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would, as a matter of sovereign immunity, limit the award of attorney fees against the state and municipalities. Though the bill will apply to almost all actions against the state and municipalities, it will have a particular effect on attorney fees awarded to parties determined by the courts to be public interest litigants. HB 145, passed by the legislature in 2003, has been challenged in court and found by the superior court to be unconstitutional because it was viewed as requiring a court rule change, thus needing a two-third vote by both houses of the legislature, which it did not receive. In addition the court found it to be an unconstitutional denial of due process and equal protection insofar as it required public interest litigants to pay attorneys fees. That decision is being appealed to the Alaska Supreme Court. This bill responds to the Superior Court decision by narrowly focusing on the award of fees against the state or municipality and limiting the award to the amount applicable under Civil Rule 82 unless

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 12/9/04 4:09 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 12/9/2004
 Agency Department of Law

FISCAL NOTE #2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 86

ANALYSIS CONTINUATION

otherwise provided for in specific statutes, or if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Sectional Analysis of CSHB 117(CRA)/CSSB 86(CRA) (Liability of State and Municipalities for Attorney Fees)

CSHB 117(CRA)/CSSB 86(CRA) addresses the use of state or municipal funds to subsidize certain types of litigation through awards of attorney fees to prevailing parties that are higher than the partial awards that are the norm in Alaska. The legislation would limit these enhanced awards to instances where the legislature has made a policy judgment to provide for them by statute.

Sec. 1. The findings, purpose and intent section notes the fiscal impact of enhanced fee awards, and determines that except where provided by specific statute, where needed as a court sanction, or in the context of an exercise of eminent domain, no public policy sufficiently supports such awards to justify their fiscal impact. The section relies on the legislature's constitutional authorities to regulate suits against the State and to confer immunities on the State and municipalities, as well as on the doctrine of sovereign immunity. Section 1 states that this Act neither precludes nor repeals specific statutes authorizing the award of costs or fees in particular situations.

Sec. 2. The single substantive provision of the bill creates a new section in the chapter of title 9 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the State and municipalities are not liable to pay more than 20 percent of the money judgment as an attorney fee award to the adverse party. In civil actions where no money judgment is recovered, the liability of the State and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual fees that were necessarily incurred in litigating issues on which the party prevailed, and at 20 percent of the same figure for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the State and municipalities for attorney fees is capped at 20 percent of reasonable actual fees that were necessarily incurred in litigating issues on which the party prevailed. These limits do not apply where statutes provide differently, where the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or their counsel, or in cases involving the condemnation of property under the power of eminent domain.

Sec. 3. The Act will apply only to civil actions or appeals initiated after the Act becomes effective.

Sec. 4. The Act will take effect immediately.



Alaska State Legislature

Please enter into the record my testimony to the SJUD
committee name

Committee on SB 86, dated 4-15-05
bill # / subject public hearing date

I believe the proposed SB 86 violates Article I, Section 1 of the Alaska Constitution, i.e., "that all persons have corresponding obligations to the people and the State."

SB 86 will cloud and / or eliminate the inherent rights and the "obligations to the people and to the state" will not be fundamentally clear.

I have successfully and personally used this section to gain court acceptance and obtain legal standing in certain cases filed by our organization
The Alaska Constitutional Legal Defense Fund.

To actually change this "Inherent Rights" section of the Alaska State Constitution would, and should, require a popular vote of the people of Alaska.

Signed: Dale Bondurant Dale Bondurant
Testifier
Alaska Constitutional Legal Defense Fund
Representing (optional)
31864 Moonshine Dr Soldotna, AK 99669
Address
262-0818
Phone number



State of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
(907) 283-2030

Date: 4-14-05

Please accept the enclosed original(s) of written testimony for the
STUD teleconference hearing that was
scheduled on 4-15-05.

A copy of this testimony was transmitted to your committee via fax on
4-14-05.

Thank you,

M. B. Byrnes



Alaska State Legislature

Please enter into the record my testimony to the SJUD
committee name

Committee on SB 86, dated 4-15-05
bill #/ subject public hearing date

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Representing (optional)

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