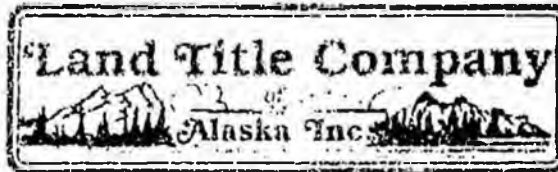


ALASKA LEGISLATURE

2101

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

292



PHONE (907) 563-LAND (5263)

5110 Arctic Blvd., Suite 103, Anchorage, Alaska 99503

Title Fax 563-2522
Escrow Fax 561-1376

March 31, 1999

Senate Finance Committee
Fax: 465-4779

Re : SB 113

Dear Mr. Torgerson:

I am shocked that our legislature would consider a bill that would effectively put ALASKA Housing Finance Corporation out of business!

I have lived in Alaska for 29 years and well remember the housing problems of the eighties. Housing problems that would have gone unsolved for who knows how long if it had not been for Alaska Housing.

Have we forgotten the economic benefits this state has received from the existence of Alaska Housing?

1. Made owning homes a reality for those Alaskans who live in our bush communities;
2. First-Time Homebuyer Program;
3. Interest Rate Reduction Program for Low Income Borrowers;
4. Increased the quality of homes by providing incentives for energy efficient houses and requiring builders to take responsibility for their houses with the PUR 101 and PUR 103.

I realize you will read this and say "We aren't trying to get rid of AHFC". With all due respect, the legislature is in session for only a few months out of the year - people buy homes all year long! Why would you choose to limit the bonding options for AHFC? What if they could get lower bonds in June? With this legislation they would be out of luck and so would alot of Alaskans.

Please give this bill careful attention - it will be a lose-lose situation for all of Alaska.

Sincerely,

A handwritten signature in cursive script, appearing to read "Crystal J. Peltola".

Crystal J. Peltola
President

**National
Bank of Alaska**

March 31, 1999

Mortgage Loan Servicing
P.O. Box 107025
Anchorage, AK 99510-7025
Phone (907) 257-3300 / Fax 257-3478

The Honorable Sean Parnell and John Torgerson
Co-Chairs, Finance Committee;
Members of the Senate Finance Committee
SENT VIA FAX

RE: SB 113

Dear Co-Chairs and Members of Senate Finance Committee:

Not only does the National Bank of Alaska strongly oppose SB 113, but I do also strongly oppose this bill in my capacity as a private citizen that has worked with homeowners for the past 16 years in the State of Alaska.

The State of Alaska should be proud of AHFC. They have created available housing in all forms for not only homeowners but renters. AHFC is innovative in meeting the demands of providing safe and affordable housing in a State where construction is difficult due to sub-Arctic temperatures. They are leaders not only here but are nationally recognized as being one of the most effective housing authorities and for the quality of their bonds.

My admiration does not stop there..... AHFC has proven how effective they can operate. Their ability to earn capital for the needed programs shines. Without special affordable programs for both residential and multifamily borrowers, we would see less development in this state and more individuals unable to stay as they have no investment a home is important, and to diminish one's ability to obtain this dream is not a goal I can see our legislature advocating.

In the course of time.... AHFC has always been here.... outside investors leave when the going gets tough. By placing restrictions created with SB 113 on the operations of AHFC, you are sacrificing one of the most stable housing authorities in the nation, and the future ability of low moderate income borrowers to find a value in staying and living in the State of Alaska.

Sincerely,

Amber Hutchens
Vice President
(907) 257-3302



TO: SENATE FINANCE COMMITTEE

FROM: NATIONAL BANK OF ALASKA

Honorable Sean Parnell, Co-Finance	465-6592
Honorable John Torgerson, Co-Finance	465-4779
Honorable Al Adams	465-4821
Honorable Dave Donley	465-6595
Honorable Lyda Green	465-3805
Honorable Pete Kelly	465-5241
Honorable Loren Leman	465-3810
Honorable Randy Phillips	465-4979
Honorable Gary Wilken	465-4714

Subject: SB113

Date: Wed, 31 Mar 1999 15:59:47 -0800

From: Sydney Mitchell <storm@alaska.net>

Organization: Brainstorm Media Studio

To: Senator_John_Torgerson@legis.state.ak.us

Senator Torgerson,

I do not support SB113. I have looked at this bill and feel that it is only an attempt to gut AHFC. Being a builder that works with AHFC I believe that they need to be able to respond to market conditions in a timely manner in order to protect the economy from repeating what happened in the 80's. I would think that the Senate would be looking for ways to work with AHFC in order to help solve our budget problems.
Sincerely, Alan Wilson, VP Alaska Homebuilders Association

SENATE FINANCE COMMITTEE

SIGN-IN

SB 113-FINANCES OF ALASKA HOUSING FINANCE CORP

NAME: Marie Darlin Subject/Bill No: 113
Co./Dept./Title: Nurse Phone: 586-3637
Address: 415 Willoughby Juneau Zip: _____
Do you wish to testify? ___ Yes No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

05/11/99
18:55:01

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:90753 SCHEDULED FOR:05/11/99 17:00 TO 21:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:JNU
FOR:ANC

LOCATION: ANCHORAGE

SB 97	JEFF	JESSEE (IF QUESTIONS)	MENTAL HLTH	UNABLE
SB 113	SUE	BENNEDETTI	AK MORT BROKERS	TESTIFY
SB 113	JIM	PICARD	AK MORT BANKERS	TESTIFY
SB 113	JIM	MCCORMACH		TESTIFY
SB 113	CHARLES	SANDECH		TESTIFY
SB 113	JOHN	BITNEY		TESTIFY
SB 113	CHUCK	BOOHER		TESTIFY
SB 113	DAN	J AUSKE		TESTIFY
SB 113	JAN	SIEBERTS		TESTIFY
SB 113	ARLENE	PATTON		TESTIFY

LTN1100-R01
03/31/99

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02
19:42:08

TCN: 90487 DATE & TIME: 03/31/99 18:00 TO 21:00 STATUS:5 IN PROG.

PARTICIPANTS IN:MATSU

MAT

AK (907)000-0000
TSFY. SB 113
AK (907)000-0000

2 MR BILL BRUU

**** UPDATES ****

01 03/29/99 12:04:28 ANNOUNCING TELECONFERENCE
02 03/30/99 11:25:40 FAIRBANKS ADDED ON
02 03/30/99 11:25:41 KENAI LIO ADDED ON
02 03/30/99 11:25:42 MATSU ADDED ON
02 03/30/99 11:25:43 OFFNET 1 ADDED ON

LTN1100-R01
03/31/99

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01
19:42:12

TCN: 90487 DATE & TIME: 03/31/99 18:00 TO 21:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****

SPONSOR: SFIN SENATE FINANCE

CHAIRS: PARNELL
TORGERSON

PURPOSE: PUB PUBLIC HEARING

LEGISLATIVE

CONTACT: DARWIN

TEL#: (907)465-2138

CHAIRING SITE: JUNEAU

CAPITOL

CAP532

TOLL FREE: (907)269-0141

DIAL-UP:

LIO: (907)258-8772

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED

3 MINUTE LIMIT

TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:10
MEETING ID = 7346

OTHER SITES MAY ADD.

TCN REQUESTED ON 03/31/99 AND HAS 2 UPDATES

**** AGENDA ****

- 1 SB 24 REGULATIONS: ADOPTION & JUDICIAL REVIEW
- 2 SB 113 FINANCES OF ALASKA HOUSING FINANCE CORP
- 3 SB 42 1999 REVISOR'S BILL
- 4 SB 84 CIGARETTE SALES: AGREEMENT/ESCROW

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL	LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
MAT MATSU	600 E RAILROAD	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

ZZZ OF1 OFFNET 1 ANCHORAGE DENNIS WOLDOCK (907)562-7051

PARTICIPANTS IN:ANCHORAGE

ANC

2 MR ERIC DYRUD

TSFY. SB 113
AK (907)000-0000

3 MR DICK DOLMAN

AK (907)000-0000
TSFY. SB 113

4 MS ARLENE PATTON

AK (907)000-0000
TSFY. SB 113

5 MR ARTHUR CLARK

AK (907)000-0000
TSFY. SB 113
AK (907)000-0000

03/31/99
18:33:35

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)

TCN:90487 SCHEDULED FOR:03/31/99 18:00 TO 21:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

SB 24	✓MS	TER	ISA	WILLIAMS	TESTIFY
SB 113	✓MR		ERIC	DYRUD	TESTIFY
SB 113	✓MR		DICK	DOLMAN	TESTIFY
SB 113	✓MS		ARLENE	PATTON	TESTIFY
SB 113	✓MR		ARTHUR	CLARK	TESTIFY
SB 113	✓MS		SUE	BENEDITT	TESTIFY
SB 113	✓MS		JUDY	KEMPLEN	TESTIFY
SB 113	✓MS		JAN	SIEBERTS	TESTIFY
SB 113	✓MR		CHARLES	BLALOCK	TESTIFY
	✓		<i>Jewel Jones</i>		

LOCATION: MATSU

SB 24	✓MR		GARVAN	BUCARIA	TESTIFY
SB 113	✓MR		BILL	BRUU	TESTIFY

Dennis

SB

114

FINISH

WELL

SENATE FINANCE COMMITTEE REPORT

DATE: 5/14/99

FURTHER:

2/11/00

DATE TURNED IN TO OFFICE: 2/11/00

Finance Committee considered

SENATE BILL NO. 114

"An Act relating to impersonating a public servant."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical title
- new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM.
		<i>[Handwritten signature]</i>	✓		
		<i>[Handwritten signature]</i>	✓		
		<i>[Handwritten signature]</i>	X		
		<i>[Handwritten signature]</i>	✓		
		<i>[Handwritten signature]</i>	✓		
Co-Chair: <i>[Handwritten signature]</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Law	3/24/99		

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

2/11/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSB 114(JUD)

Revision Date 2/7/2000 Dept. Affected Public Safety
 Title IMPERSONATE POLICE/EMERGENCY VEHICLE BRU AST
 Component: AST
 Sponsor Senator Taylor
 Requester S. Finance Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not impact our budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 2/7/2000
 Approved by: *Ronald L. Otte* Date 2-7-00
 Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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2/11/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSB 114 (JUD)

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to public officials and to impersonating a public servant."	BRU	Civil Division
Sponsor Senator Taylor	Component	Governmental Affairs
Requester Senate Finance Committee	Component Serial No.	2207;2213

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 114 (JUD) adds operating a vehicle that is altered to look like a police or emergency vehicle, but is not such a vehicle, to the crime of impersonating a public servant. The bill further adds to the crime of official misconduct a public servant using their title, uniform, badge, or other identifying accoutrements of office or public funds, facilities, equipment, services or other government asset or resource for partisan political purposes. These provisions are not anticipated to have a fiscal impact on the Department of Law.

Section 6 of CSSB 114 (JUD), however, adds a new private cause of action which will increase the department's costs. The Department of Law is charged with enforcement of the Ethics Act, and deals with ethics issues and complaints on an on-going basis. Current law has not created a private damages cause of action for people to sue state employees over ethics violations.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botwin *Bruce M. Botwin*
 Agency: Department of Law

Phone: 465-5370
 Date/Time: 2/7/00, 2:54 PM
 Date: 2/7/00

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ANALYSIS CONTINUATION

If the Senate Judiciary Committee Substitute were adopted, it is likely that one or more of the ethics matters the department handles each year will invite such litigation. Our experience is that if a private cause of action is available, someone will use it. Defending public officials in this litigation would be a new cost to the state.

If the department believes an ethics violations has occurred, we may be able to avoid defending the public official, assuming the acts complained about are outside the course and scope of the official's employment, or amount to gross negligence or intentional misconduct. However, given the state's contractual obligation to defend and indemnify most state employees for things done in the course and scope of their employment, it is certainly foreseeable that the Department of Law would be asked to defend and indemnify this new type of litigation in some cases.

If the department does not believe that there was an ethics violation, there would be no conflict for it to defend the public official. In cases where the department does have a conflict (a situation which could arise if the ethics case is in preliminary stages or where the employee and the state have inconsistent defenses), we may have to hire more expensive outside counsel to defend the employee. What the fiscal impact to the Department of Law might be will depend on how many cases a year are filed, and who defends the public official. We have no way of estimating these variables, and cannot quantify the fiscal impact at this time.

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. CSSB 114 (JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>"An Act relating to public officials and to impersonating a public servant."</u>	BRU <u>Civil Division</u>
Sponsor <u>Senator Taylor</u>	Component <u>Governmental Affairs</u>
Requester <u>Senate Finance Committee</u>	Component Serial No. <u>2207;2213</u>
	<u>Special Litigation</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 114 (JUD) adds operating a vehicle that is altered to look like a police or emergency vehicle, but is not such a vehicle, to the crime of impersonating a public servant. The bill further adds to the crime of official misconduct a public servant using their title, uniform, badge, or other identifying accoutrements of office or public funds, facilities, equipment, services or other government asset or resource for partisan political purposes. These provisions are not anticipated to have a fiscal impact on the Department of Law.

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Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>2/11/00, 1:55 PM</u>
Approved by <u>Commissioner Bruce W. Boehlke</u> <i>Bruce W. Boehlke</i>	Date <u>2/11/00</u>
Agency <u>Department of Law</u>	

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STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSB 114 (JUD)

ANALYSIS CONTINUATION

damages cause of action for people to sue state employees over ethics violations.

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Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3874
Fax: (907) 465-3922

50 Front Street
Suite 205
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

Sponsor Statement

CS for Senate Bill no. 114 (JUD)

Senate Bill 114 was introduced last session to deal with a situation that surfaced in Juneau. It was brought to my attention because it could actually expand across the State. On a regular basis, police departments dispose of their vehicles through the public auction process. Those vehicles have the identifying markings removed prior to the sale.

In the Juneau situation the vehicle was restored to give the appearance of being a patrol car. The owners stopped by the Juneau Police Station to find out if it presented a legal problem. There is no law on the books that prevents anyone from marking their vehicles appear to be a police or other emergency vehicle.

While this case involved an honest individual, the chance of someone doing the same thing and committing a crime is extremely high. Section 1 of this legislation will make it illegal to operate such a vehicle.

This legislation also deals with the current growing concern over political activity ethics. For us in the legislature it is clearly spelled out what we can and can not do. For state public officials it is not so clear. The amendments proposed in this bill would clearly define the use of a state title, equipment including badges or uniform for partisan political purposes.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

SB

123

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/12/99

FURTHER:

2/22/00

DATE TURNED IN TO OFFICE: 22 Feb 00

Finance Committee considered

SENATE BILL NO. 123

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

and recommends:

- be replaced with _____ CS. *Ernst Heming (FIN)*
- adopt previous _____ CS. *CS*
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Steve King</i>	✓	<i>Al Adams</i>	✗		
<i>John King</i>	✓	<i>Langley</i>	✓		
<i>W. Peter King</i>	✓				
<i>Daniel Donkey</i>					
Co-Chair <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair <i>Paul Parnell</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>Cart</i>	<i>4/9/99</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

REPORTED OUT OF
2/22/00

FISCAL NOTE

STATE OF ALASKA
 2000 LEGISLATIVE SESSION

BILL NO. SE 123

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Doug Woolver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date/Time: 1/14/00 8:49 AM
 Approved by: Stephanie J. Cole, Administrative Director Date: 1/14/2000
 Agency: Alaska Court System

1-LS0636V
Luckhaupt
1/19/00

adopted

CS FOR SENATE BILL NO. 123(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public interest litigants and to attorney fees; and amending
2 Rule 82, 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
7 a 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. Attorney fees may only be awarded to or
12 against a public interest litigant as provided in Rule 82(g), Alaska Rules of Civil
13 Procedure, on the effective date of this Act.

14 * **Sec. 2.** Rule 82, Alaska Rules of Civil Procedure, is amended by adding a new

1 subsection to read:

2 (g) **Attorney's Fees for Public Interest Litigants.** Attorney's fees shall be
3 awarded to or against a public interest litigant in the same manner as attorney's fees
4 may be awarded to or against a non-public interest litigant under (b) of this section.

5 * **Sec. 3.** Section 1 of this Act takes effect only if sec. 2 of this Act receives the two-thirds
6 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

1-LS0636M
Luckhaupt
1/31/00

CS FOR SENATE BILL NO. 123(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public interest litigants and to attorney fees; and amending
2 Rule 82, 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
7 a 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. Attorney fees may only be awarded to or
12 against a public interest litigant as provided in Rule 82(g), Alaska Rules of Civil
13 Procedure, on the effective date of this Act.

14 * Sec. 2. Rule 82, Alaska Rules of Civil Procedure, is amended by adding a new

Amend #1

1 subsection to read:

2 (g) **Attorney's Fees for Public Interest Litigants.** Attorney's fees shall be
 3 awarded to a public interest litigant in the same manner as attorney's fees may be
 4 awarded to a non-public interest litigant under (b) of this rule except that the court
 5 shall apportion the fees by issue and may award fees only for an issue upon which the
 6 public interest litigant was the prevailing party and only for the fees incurred in
 7 presenting that issue unless the court finds exceptional circumstances to be present that
 8 require an award of fees under (b) of this rule without apportionment by issue. If the
 9 court finds an issue presented by a public interest litigant to be frivolous, the court
 10 shall award attorney's fees under (b) of this rule against the public interest litigant for
 11 that particular issue to the party prevailing on that issue.

12 * Sec. 3. Section 1 of this Act takes effect only if sec. 2 of this Act receives the two-thirds
 13 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

Amend #1 SD

Reasonable compromise

delete Sec. 2 from Version "I" (Working Draft) ^{adopted}
 insert Sec. 2 from Version "M"

L

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	<i>SB 123</i>
Amendment	<i># 1</i>
Motion	
<u>Motion by</u>	<i>D</i>
<u>Objection</u>	<i>Sen. Parnell</i>
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Lemar	
Senator Al Adams	
Senator Gary Wilken	
Senator Pate Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION:</u> <i>Termination amend.</i>	

*Delete Section 2 of ver. I.
 insert 2 of ver. II.*

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 123(FIN), Draft Version "I"

1 Page 1, following line 13:

2 Insert a new bill section to read:

3 "* Sec. 2. Rule 82(b), Alaska Rules of Civil Procedure, is amended by adding a new
4 paragraph to read:

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

11 Renumber the following bill sections accordingly.

12 Page 2, line 5:

13 Delete "sec. 2 of this Act receives"

14 Insert "secs. 2 and 3 of this Act receive"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 123
Amendment	#2
Motion	
<u>Motion by</u>	Sen. Donley
<u>Objection</u>	
<u>Objection by</u>	?
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Lemar	
Senator Al Adams	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	Referred

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 123
Amendment	CS Version
Motion	CC adopt as Workdraft
Motion by	CCP
Objection	LA...
Objection by	
Removed	
Second Objection by	
Committee Member	Vote
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
Tally	
Yea	0
Nay	0
Absent	0
MOTION	VERSION I

Working Doc.

no obj.

CS FOR SENATE BILL NO. 123()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): THE SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public interest litigants and to attorney fees and costs; and
2 amending Rules 79 and 82, 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
7 a 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. Attorney fees and costs may only be awarded
12 to or against a public interest litigant on the same basis as provided in Rules 79
13 and 82, Alaska Rules of Civil Procedure, on the effective date of this Act.

14 * Sec. 2. Rule 79, Alaska Rules of Civil Procedure, is amended by adding a new

1 subsection to read:

2 (i) **Apportionment of Costs for Public Interest Litigants.** When awarding
 3 costs to a public interest litigant, the court shall apportion the costs by issues presented
 4 in the pleadings and may award costs only for an issue upon which the public interest
 5 litigant was the prevailing party and only for the costs incurred in presenting that
 6 particular issue. If the court finds that an issue presented by a public interest litigant
 7 upon which the litigant was not the prevailing party was not well grounded in fact, or
 8 was not warranted by existing law or a good faith argument for the extension,
 9 modification, or reversal of existing law, the court may award costs to the party
 10 prevailing on that issue.

11 * **Sec. 3.** Rule 82, Alaska Rules of Civil Procedure, is amended by adding a new
 12 subsection to read:

13 (g) **Apportionment of Attorney's Fees for Public Interest Litigants.** When
 14 awarding attorney's fees to a public interest litigant, the court shall apportion the fees
 15 by issues presented in the pleadings and may award fees only for an issue upon which
 16 the public interest litigant was the prevailing party and only for the fees incurred in
 17 presenting that particular issue. In a case that goes to trial, the court shall award a
 18 prevailing public interest litigant not more than 50 percent of the litigant's reasonable
 19 actual attorney's fees that were necessarily incurred on issues upon which the litigant
 20 was the prevailing party and shall, in a case resolved without trial, award the
 21 prevailing public interest litigant not more than 25 percent of the litigant's reasonable
 22 actual attorney's fees that were necessarily incurred on each issue upon which the
 23 litigant was the prevailing party. If the court finds that an issue presented by a public
 24 interest litigant upon which the litigant was not the prevailing party was not well
 25 grounded in fact, or was not warranted by existing law or a good faith argument for
 26 the extension, modification, or reversal of existing law, the court may award attorney's
 27 fees under (b) of this rule to the party prevailing on that issue.

28 * **Sec. 4.** Section 1 of this Act takes effect only if secs. 2 and 3 of this Act receive the
 29 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State
 30 of Alaska.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT SENATE BILL 123

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

SB 123 makes public interest litigants subject to Court Civil Rule 82 regarding judgments for attorneys fees. 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.

Additionally, SB 123 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 123 seeks to prevent awards of lawyer fees of \$150 or more an hour to 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 123 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.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT

SENATE BILL 123

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

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.

SB 123 makes public interest litigants subject to Court Civil Rule 82 regarding judgments for attorneys fees, thus adopting a uniform standard for all litigants.

Additionally, SB 123 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 123 seeks to prevent awards of lawyer fees of \$150 or more an hour to 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 123 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.

SB 123 Differences

Public Interest Litigant Doctrine (as opposed to Rule 82)

- Prevailing PIL recovers full, reasonable, actual attys fees and costs.
- Losing PIL is not liable for any of the prevailing party's attys fees and costs.
- Four requirements for a PIL
 - 1) Lawsuit implements strong public policies.
 - 2) Numerous people would benefit from the lawsuit's success
 - 3) Only a private party could be expected to bring a lawsuit.
 - 4) Plaintiff must not have a significant economic interest in the outcome.

Version (I)

Amends Rule 82 (attys fees). Attorney's fees are awarded to and against a PIL in the same manner as civil litigants under Rule 82, Alaska Rules of Civil Procedure.

- Prevailing PIL: For non-monetary judgements, receives 30% attys fees for a case that goes to trial and 20% attys fees for a case that doesn't go to trial.
- Losing PIL: Required to pay 30%/20% attys fees to prevailing parties.
- Exceptions to varying attys fees apply under Rule 82(b)(3)
- Apportionment: No requirement to apportion attys fees by issue
- Costs: Doesn't address the issue of awarding costs to or against a PIL under Rule 79.

Version K

Amends Rule 79 (costs) and Rule 82 (attys fees)

- Prevailing PIL: Receives 50% attys fees with trial, and 25% attys fees without trial.

- Losing PIL: Court may award attys fees against a losing PIL only if issue presented was frivolous. Otherwise, losing PIL is not responsible for attys fees.
- Exceptions to varying attys fees under Rule 82(b)(3) do not apply.
- Apportionment: attys fees must be apportioned by issue.
- Costs: Prevailing PIL would be awarded costs apportioned by issue. Losing PIL would pay costs for frivolous issues only.

Compromise Version M (not yet distributed)

Amends Rule 82 (attys fees)

- Prevailing PIL: receives attys fees in the same manner as civil litigants under Rule 82 except a) fees shall be apportioned by issue
- Losing PIL: Court may award attys fees against a PIL only if issue presented was frivolous.
- Exceptions apply under Rule 82(b)(3), allowing the court to vary attys fees and not apportion under exceptional circumstances.
- Apportionment: Courts must apportion by issue unless exceptional circumstances can be found.
- Costs: Doesn't address the issue of awarding costs to or against a PIL under Rule 79.

ALASKA STATE CHAMBER OF COMMERCE

Position 99 - 25

Public Interest Litigants

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

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

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

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

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

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

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

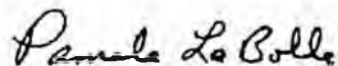
WHEREAS, even though the groups only prevail on one or two issues, they are typically awarded full costs and attorneys fees;

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

ADOPTED

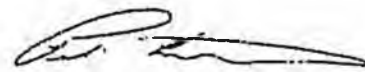
March 2, 1999

BY



Pamela La Bolle
President

BY



Peter Leathard
Chairman



ALASKA MINERS ASSOCIATION, INC.

3305 Arctic #202, Anchorage, Alaska 99503 FAX: (907) 563-9225 Telephone: (907) 563-9229

April 7, 1999

Honorable Dave Donley
Alaska State Senate
Capitol Building
Juneau, AK 99801

RE: SB-123, Regarding Public Interest Litigants and Rule 82

Dear Senator Donley,

The Alaska Miners Association wishes to go on record in strong support of Senate Bill 123 which deals with public interest litigants and attorney fees and amends Rule 82 of the Alaska Rules of Civil Procedure.

For many years so-called public interest groups have blocked and harassed businesses and legitimate development projects under the guise of protecting the public interest. The current procedures for awarding attorney fees actually encourage such actions and suits, regardless of the merit of the case. The public interest litigant has everything to gain and nothing to lose by taking the action. Under the current procedures for awarding fees, these litigants will often be paid their fees even if they prevail on only a very marginal part of their case. Furthermore, if these groups lose the case, they do not currently face the possibility of being required to pay their opponents fees.

It is long past time for Rule 82 to be changed and we urge that SB-123 be passed and become law at the earliest possible time.

Sincerely,

Steven C. Borell, P.E.
Executive Director



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance Comm.
committee name
committee on S.B. 123, dated 4/21/99.
bill/subject

As one who has litigated civil rights public interest litigation as well as property owners class actions designated as public interest, I oppose this bill. According to a public interest litigant goes against 30 years of A.K. Sup. Ct. decisions. According 20-30 has the potential to kill such litigation. Keep in mind that James Watt headed a conservative public interest litigation group. Let the cap on such fees if that is a concern.

Signed: Hugh Fleischer
Testifier
Leif
Representing (Optional)
140 W. 11th Ave. 99501
Address
274-2453
Phone No.

(OVER)

On the morning after the Littleton, when everyone is reeling from this tragedy - we should re-double efforts to prevent such a carnage coming here. In that regard, DFEYS is on the front line - pl. fund the Division so that "problem children" can be dealt with by understanding professionals.



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
committee name
committee on SB 123 / Public Interest Litigants dated 4/21/99
bill/subject

1. This bill is a reaction to a high public interest attorney fee award of \$295/hr. The best resolution would be to simply cap fees at "reasonable attorneys fees of no more than \$165/hr.
2. Most public interest litigants in my experience make \$30,000 per year or less. ~~SB 123 allows~~ They are fishermen, hunters, teachers, etc. SB 123 imposes ^{substantial} fees against them if they file good faith claims, but lose. This provision allowing fees against public interest litigants should be dropped, except where the claim has "no good faith basis".
3. Good public interest litigation, of all political colors, occurs. It is a strength of our state. Let it continue, with a reasonable fee cap of \$165/hr. This is a compromise all sides of this issue can live with. Call with any questions.

Signed: Yu Lan (Les Gara)
Testifier

Representing (Optional)
1202 1242 W. 10TH Ave, Anchorage
Address
274 - 0730
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
 committee on SB 123 / Public Interest Litigants dated 4/21/99
 committee name
 bill/subject

1. This bill is a reaction to a high public interest attorney fee award of \$295/hr. The best resolution would be to simply cap fees at "reasonable attorneys fees of no more than \$165/hr.
2. Most public interest litigants in my experience make \$30,000 per year or less. ~~SB 123 allows~~ They are fishermen, hunters, teachers, etc. SB 123 imposes ^{substantial} fees against them if they file good faith claims, but lose. This provision allowing fees against public interest litigants should be dropped, except where the claim has "no good faith basis".
3. Good public interest litigation, of all political colors, occurs. It is a strength of our state. Let it continue, with a reasonable fee cap of \$165/hr. This is a compromise all sides of this issue can live with. Call with any questions.

Signed: Yu Gara (Les Gara)
 Testifier

Representing (Optional)
~~1202~~ 1242 W. 10th Ave, Anchorage
 Address
274-0730
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
 committee name
 committee on SB 123 / Public Interest Litigants dated 4/21/99
 bill/subject

1. This bill is a reaction to a high public interest attorney fee award of \$295/hr. The best resolution would be to simply cap fees at "reasonable attorneys fees of no more than \$165/hr.

2. Most public interest litigants in my experience make \$30,000 per year or less. ~~SB 123 allows~~ They are fishermen, hunters, teachers, etc. SB 123 imposes ^{substantial} fees against them if they file good faith claims, but lose. This provision allowing fees against public interest litigants should be dropped, except when the claim has "no good faith basis".

3. Good public interest litigation, of all political colors, occurs. It is a strength of our state. Let it continue, with a reasonable fee cap of \$165/hr. This is a compromise all sides of this issue can live with. Call with any questions.

Signed: Les Gara (Les Gara)
 Testifier

Representing (Optional)
~~1202~~ 1242 W. 10th Ave, Anchorage
 Address
274-0730
 Phone No.

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Erichsen
Borough Attorney

(907) 228-6635
Fax: (907) 247-6625

April 6, 1999

Senator John Torgerson
Senate Finance Committee
State Capitol Room 514
Juneau, Alaska 99801-1182

Re: Senate Bill 123

Dear Senator Torgerson:

At its meeting of Monday, April 5th, 1999, the Ketchikan Gateway Borough Assembly requested that I send a letter indicating that the Ketchikan Gateway Borough Assembly supports Senate Bill 123.

The public interest litigant doctrine protects unsuccessful public interest litigants from attorney fee awards against them, and provides for recovery of costs by successful public interest litigants. The purpose of a public interest litigant concept is to avoid discouraging litigation that is truly in the public interest through the threat of awards against the plaintiff and the expense of representation.

In the Assembly's discussion of Senate Bill 123, concerns were expressed about abuse of the "public interest litigant" status by some entities to recover more than their actual expenses. For example, if a non-profit entity which commonly engages in "public interest" type litigation has staff counsel, they may actually pay their counsel \$30.00 per hour, but bill their counsel's time for attorney's fees purposes at \$150 per hour. If they recover reasonable actual attorney's fees as a prevailing public interest litigant, the windfall is the difference between the billed rate and the compensation paid. This windfall may then be used to fund other additional litigation or other projects of the entity. Apart from the potential windfall effect, the current application of the public interest litigant principle, as a practical matter, acts to encourage litigation against the government.

A normal litigant with a vested financial interest can only recover partial fees even if successful, and must pay the opposing party's Rule 82 fees if unsuccessful. The potential full recovery of costs without a risk of responsibility for the costs the litigation imposed on the opposite side (normally a governmental entity) creates an imbalance. It has a tendency to encourage "recreational litigation" by those with the time and inclination. For just the filing fee and often minor expenses, a "sport litigant" can delay governmental action and cause the expenditure of significant public resources in defending against the litigation without a risk of bearing those costs in the event that the plaintiff is unsuccessful. At the same time, the public interest plaintiff may be paid handsomely for their time if they are successful even in part.

The changes proposed by Senate Bill 123 would retain the protection of the public interest litigant from awards of attorney's fees and costs against them, so long as the claim has a reasonable basis. It would not allow protection for spurious claims. It would also level the playing field somewhat on successful claims by taking away the windfall aspect of successful public interest litigation. Additionally, by relating costs to specific claims, a public interest litigant could not simply put forth dozens of causes of action in the hopes of being paid for all time spent on the matter if it prevails on only one of its claims.

For these reasons, the Ketchikan Gateway Borough Assembly supports Senate Bill 123.

Separately, as an attorney who has worked on public interest litigation cases, I personally endorse Senate Bill 123. On one occasion, while representing the Municipality of Anchorage, I found myself in a situation where my client was being sued by individuals on both sides of an issue, both of which were found to be public interest litigants. In this situation, it was obvious that the Municipality of Anchorage would win one and would lose one. Due to the public interest litigant nature of the claims, the municipality could not recover from the unsuccessful litigant and would be required to pay the costs of the successful litigant. As the case progressed, there was little that could be done except to watch the bills mount.

Provisions such as those in Senate Bill 123 would significantly improve this situation. No longer would attorney's fees for the public interest litigant be a potential blank check,

and therefore there would be less of an incentive for "sport litigation."

If I can be of further assistance in connection with this legislation, please contact me at your convenience.

Sincerely,

KETCHIKAN GATEWAY BOROUGH



Scott A. Brandt-Erichsen
Borough Attorney

ss/1/SB.123

cc: Honorable Mayor and Assembly
Borough Manager
Borough Clerk
Representative Bill Williams

2/16/00

Senator John Torgerson
Senate Finance Committee
State of Alaska Legislature

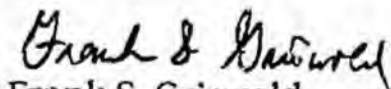
Re: Senate Bill No. 123

Dear Senator Torgerson,

The Supreme Court has ruled that public interest litigation is to be encouraged, why is the Senate now considering measures to deter it? The Court has imposed a stringent four pronged criteria for qualifying as a public interest litigant. Those with a financial incentive to bring suit, even in matters of general public concern, do not generally qualify as public interest litigants. Altruistic efforts to further the public good should not be thwarted; successful public interest litigants deserve to be awarded 100% of attorney fees actually and necessarily incurred. Reducing the award of attorney fees would discourage attorneys from taking a public interest case on a contingency basis. A public interest litigant could be forced to either prosecute the case himself or be saddled with attorney fees even in a winning cause. Either way this would constitute a strong disincentive to filing suit and matters of great public importance could go under-represented or unrepresented altogether. For the same reasons, no unsuccessful public interest litigant should be held liable for the prevailing party's attorney fees if the suit was brought in good faith. There are already suitable provisions in the Alaska Rules of Civil Procedure to discourage the filing of any frivolous litigation.

Senate Bill 123 is not in the public interest and should be voted down. Thank you for considering my concerns.

Sincerely,


Frank S. Griswold
(Lay Pro Se Public Interest Litigant)
519 Klondike Avenue
Homer, Alaska 99603
235-7627

Comments made by Bob Dickson during February 17, 2000
Senate Finance Committee hearing of SB 123

This is Bob Dickson calling. I am in Anchorage. I'm a lawyer. I'm a shareholder in the law firm of Atkinson, Conway and Gagnon. I've been in private, civil practice for about 27 years, a little more. My practice is commercial, civil litigation. A lot of it construction, some of it in health law. And, I would like to talk in favor of what I understand now is to be version "I" because it fundamentally treats all public interest litigants (PIL) the same as all other civil litigants. I'll explain why as I walk through some of the comments.

Mr. Dickson: First, I would like to correct, with all due respect to Darwin, the question was in "all other civil litigants, does the court, is the court able to apportion the issues," and the answer was: "it's up to the court's discretion." Actually what the Alaska Supreme Court has held, and this is a ruling of long-standing and it continues to hold to it, is that the lower court has the discretion to determine who is the prevailing party. The lower court is suppose to look at all of the issues, determine which of the core issues, the ones that were really litigated and determine who prevailed on those. The, the case that has really prompted this, in which the court allowed the lower court to look at some issues and award attorney's fees, even though there was a loss on a lot of other issues, it's not so much saying that the lower court has the discretion to divide up issues, but it has the discretion to determine who is the overall prevailing party when all of the issues that are litigated are looked at. So that's, really what the state of law is right now.

Mr. Dickson: And, I would suggest that it is very difficult. Some of these versions have the language that allows the award of attorney's fees or the decision to not award attorney's fees on an issue by issue basis. As a practicing lawyer, I can tell you that will be very difficult to carry out. Not only among the lawyers who will be submitting motions, but more importantly perhaps, the judges trying to figure how much attorney's fees are attributable to what issues. That will be a very, very difficult thing to carry out. Another point is the question on, I think it was mentioned in version "K," which will allow attorney's fees to be awarded only against a PIL, only when there are frivolous lawsuits. The law has

been long standing since back in the 1970's, the law on attorney's fees, Rule 82 and it's not in Rule 82, but it has been a long standing principle of the court. And that is, even though Rule 82 has always been designed to award partial attorney's fees, the court has always said, if a lawsuit is frivolous, or, one of the parties has engaged in vexatious conduct, if it's frivolous, the lower court has always had the ability to award full attorney's fees against the losing party if it was a frivolous lawsuit. And after 27 years, I can tell you there have been quite a few that I have considered frivolous, have prevailed on and the courts have disagreed. I can tell from my experience, and there's not a shadow of doubt that, the courts will not throw out cases because they are frivolous. As a practical matter, when you get a lawyer and a party who genuinely believe in their case, even if they lose, getting a court to say that it was frivolous, is essentially impractical. It's just simply not going to happen. So, as a practical matter, I don't see that as having any real affect.

Mr. Dickson: To the Senator, and I didn't catch the name and I apologize, but the Senator who had the question about "why do we need this litigation," because tort reform addressed all of this and fixed it last year. Senator, the kinds of litigation that the PIL, this statute addresses the litigation involving Public Interest Litigants, has nothing to do with torts. The torts are when someone does something or allegedly does something wrong, is negligent and tort reform addressed those kinds of cases. If there is a tort claim, there automatically is enough money involved to provide the economic incentive to bring the lawsuit or defend the lawsuit. So, if they're mutually exclusive, between a tort case and the kinds of cases that PLI people are involved in, those are cases where timbering is opposed, or mining, or someone is attacking a zoning ordinance or someone is attacking an election result or a bond issue. Those are the kinds of issues this legislation is looking at and are completely separate from the tort reform types.

Mr. Dickson: I think that one thing I have not heard in any of the debate, that one of the points I'd like to make is that and I don't think it's really come home is that, the public interest litigation, which is an exception as I heard, is an exception to Rule 82. It's not codified anywhere and it's not set out in statute or even in Rule 82. Basically what's going on is that the Alaska Supreme

Court is making, what are in essence, political decisions of a nature that really ought to be made by the legislature. If you look at the over 100 cases since 1968, when this doctrine was started, what you find is that those parties who have been accorded public interest litigant status, are those who are living a subsistence lifestyle. Newspapers, even the Anchorage Daily News was accorded that, even though it is a commercial operation, environmental protection and conservation groups have always been accorded that status. Native cultural interests have, home owners who are opposing an apartment house going up a few doors away. Sometimes commercial fishermen when they are in essence preserving, wanting to preserve the resources, but not if they're attacking regulations on set netting. Oil companies, miners, logging companies, trucking companies, labor unions, and others have always been consistently refused that status because the Supreme Court says that those parties have sufficient economic interest in the result of the litigation too. They don't need to be accorded a PIL status and the Supreme Court, as I think I've heard, the whole idea behind this, the court has explained the purpose for this exception as being, to encourage plaintiffs to bring issues of public interest to the courts. That's what it said in the McCave case, which started the whole idea of awarding full attorney's fees to a party that prevails. It also said in another case that "litigation on behalf of the public interest should be encouraged. Few aggrieved parties would be in the position to advance the public interest by invoking the injunctive powers of the courts." And there are several other examples, basically the Supreme Court wants to encourage those types of public issues that have gone through the executive branch and have been found in accordance with the laws passed by the legislature. The Supreme Court wants those issues to be brought to the courts, so that the Supreme Court can have its view of whatever the issue is. And it's basically a matter of separation of powers as to who should be making the political decision as to which groups are going to be preferred over others. And that's not a point or an argument that I've heard voiced, but it, when you take a look at those 100 cases, you see a very definite pattern of those groups and interests that are considered "politically correct," or politically influential such as newspapers and others. They receive this interest, whereas, those interests that are aligned with more development and things of that nature, are typically on the other end of the

decision. That I submit is basically, being a political decision ought to be made by the legislature and that's why I suggest that the best way to do this is version "I," which basically and simply says that all PIL litigants are treated like all other civil litigants. Alaska is the only state in the union that permits the recovery of even a portion of attorney's fees as a matter of course in all civil cases. We're the only state that does it. And I can tell you as a practicing lawyer that Rule 82 in its normal application does have the affect of keeping really frivolous suits out and awarding those people who have prevailed, giving them an incentive because they will be able to recover a portion of their attorney's fees. Rule 82 already does the job of screening out, to the extent that it can effectively be done, the so-called frivolous cases. And it seems to me that since all other civil litigants in the state have to abide by Rule 82, in its normal application that all other parties ought to be treated equally and without trying to give a boost or a detriment to one political group or another. Those are my remarks.

Senator Adam: I just have three questions Mr. Dickson, thank you for your response. The first question is, is, I'll just read them, is what is the purpose of applying Civil Rule 82 to public interest litigants. My second is, is, again, on frivolous lawsuits, I thought that we have Alaska Rules of Civil Procedure to help stop that and I thought that when the Supreme Court looked at this, that they, they made this criteria so tight that you would keep out frivolous lawsuits. And my last question is, is no matter what version we look at on this, the passage of this amendment, doesn't it stifle the right of individuals or Alaska organizations to question the, the actions of the state and it, it upsets our check and balance system that we presently have.

Mr. Dickson: Let me start with the second question because I didn't hear the first one, but the second one dealing with frivolous. Rule 11 is a part of the Rules of Civil Procedure. It says, it talks to the lawyer. It says that any lawyer who signs a pleading has to basically, it does by signing it, certify that they have made some inquiry, reasonable inquiry into the facts. And the arguments that are being made are reasonably based upon the facts and are in accordance with the law unless there is a good reason to be trying to change the law and you're up front about

trying to change the law. That is Rule 11, that, I have never seen a lawsuit thrown out, in fact, I've never, actually well, there was one exception, I've never seen that rule used as a real sanction. In federal court where there's a similar rule, I've seen it used once. But, the Alaska Supreme Court in interpreting Rule 82, has put in this other provision that full attorney's fees can be awarded against a losing party if the case was frivolous. But, as my point being, that's what the Supreme Court says, that's what the law is. It simply has not stopped what some people consider frivolous law suits. The Supreme Court doesn't consider them frivolous.

Mr. Dickson: The second question, or the third question was, does any version stifle the ability of people to question the action of the state. What it would do, is it deprives an incentive for people to give them a financial incentive to do it. It puts everybody on an equal plane with all other people who have wrongs or interests that they want to protect. It doesn't put them at a disadvantage, it simply removes a very strong financial incentive. They can't lose. If they qualify, even if they lose, they don't owe any attorney's fees and if they win their attorney recovers full attorney's fees. It does remove an incentive that, in the minds of many, has been abused. And, I'm sorry, I didn't hear the first question.

Senator Adams: My first question is, why are we applying Civil Rule 82 to public interest litigants. Why is that necessary.

Mr. Dickson: Because that, that's a good question. The court, the Supreme Court awards fees and costs by virtue of a statute that the legislature has enacted, that's 09.60.10, that statute the legislature says the Supreme Court is authorized to determine costs and allow costs, which include attorney's fees to the prevailing party in a civil action. Therefore, all PIL litigation is considered civil litigation. Rule 82 automatically covers PIL litigation. What this legislation is designed to do is remove an exception to Rule 82 that the Supreme Court in its opinions has carved out. So Rule 82 automatically applies.

Other public testimony was taken in the interim of the following excerpt. The following testimony was in regards

to specific considerations about the award of attorney's fees.

Co-Chair Parnell: Mr. Dickson, one thing came up, your discussion about when the court awards [inaudible] attorney's fees, you discussed how the court determines who the prevailing party is and then they go into that 30 percent calculation and with the possibility of enhanced attorney's fees. We thought, or I thought you said that they do not currently apportion fees by issue or that, and I'm not clear on that. Could you clarify that for us.

Mr. Dickson: Yes that is correct. The Supreme Court has discouraged awarding attorney's fees by issue. It, the language in that most recent case was, as far as they come. But typically they have, the lower courts have been instructed on numerous occasions to look at all of the issues, decide which were the ones that were primarily litigated, which ones are the core or central points of the litigation. And the person who prevailed on that, the party who prevailed on that issue or those core issues, is determined to be the prevailing party and then recovers 30 percent if it goes to trial, of all attorney's fees. Even if some of those attorney's fees were spent on unsuccessful motions for summary judgment or discovery issues that turned up to be not well taken, that type of thing. So, the goal has been to decide, after the dust has settled, at the end of the litigation, who "prevailed." Now it is up to the trial court, it is within the trial court's discretion to determine who has prevailed. And there has been a number of occasions where the lower court has decided, neither party prevailed and then did not award any attorney's fees in either direction, but it is something, who prevails is up to the, is within the discretion of the trial court.

Co-Chair Parnell: Mr. Dickson, we currently have some discussion around our table because it appears from some of our state judgments, that attorney's fees have been awarded based upon, prevailing on a particular issue and have been segregated. Do you have any experience or knowledge of those as opposed to the prevailing party determination.

Mr. Dickson: No, in fact, my experience and my understanding of the Supreme Court is that what the trial court is suppose to do, is determine who prevailed overall and not on a case by an issue by issue basis. And the

problem with that is that the Supreme Court has recognized, is how do you determine how much attorney's fees were spent on which issue. Typically all issues move forward at the same time some are subject to a summary judgment issue, some are not and it's very difficult to separate out fees that are attributable to a definitive claim or point.

Senator Donley: We might have a way out of this box Mr. Chairman, the real public policy problem I think we all want to address on the apportionment issue is, currently we've got some professional litigators out there, from special interest groups that have staff attorneys that they probably pay \$30 or \$40 an hour, who go out and file lawsuits and then get judgments, even if, and [inaudible] lawsuits and they plead maybe 20 items and they may prevail on one item, but then they get an award of attorney's fees based on 20 items and [inaudible] lot of money, plus the court awards the fees based on \$150 an hour, rather than what they're actually getting paid for their salaries. They take that money back and file more lawsuits. So, it actually encourages litigation and actually encourages almost frivolous litigation to argue and plead as many issues as you can even though you know you're not going to win on them, as long as you win on one, you get paid for all of them. And, I think that's a real serious problem that I'm hoping this legislation will address. And maybe the way to do that, is to compromise here and say that, the apportionment only occurs if the court awards more than the standard Rule 82. The court's making the decision, okay we're going to give more money to this public interest litigant than the standard Rule 82. Then we compel them to apportion and only award for the actual things they prevailed on.

Co-Chair Torgerson: Would that be above the 30 percent you mean?

Senator Donley: Yeah, if they go above the 30 percent, then they are required to apportion.

Co-Chair Torgerson: So it wouldn't be true Rule 82, because Rule 82 lets them exceed the 30 percent. Mr. Dickson do you have a comment on that?

Mr. Dickson: That's an interesting comment, or an interesting concept. I suppose in the last analysis that would be a reasonable compromise. It is true that Rule 82

permits a trial court to go beyond the 30 percent or 20 percent. There are about six different factors. And I should point out that one of those factors is, is the extent to which a given fee award maybe so erroneous to the non-prevailing party, that it would deter similarly situated litigants from the voluntary use of the courts. The whole issue of keeping poor people out of the courts has been an issue that has rightfully so, troubled the Supreme Court with Rule 82. And so this most recent amendment to Rule 82 has put that provision in as a way around the typical application, so if the committee were to say Rule 82 applies to everybody, including PIL, that part would go with that and would still give the lower court the opportunity to prevent the losing public interest litigant from being hit with a lot of attorney's fees if, in the discretion of the trial court, it thought it was warranted. But, getting back to the other question. If they're going to award more, the other side of the coin, if they're going to award more, requiring them to go to a issue by issue basis, it's certainly better than the current situation that's clear. I've raised the point of difficulty of apportioning it, but putting that difficulty aside requiring that if they're going to go above the 25 or 20, or 30 percent would be better than the current situation.

Senator Parnell: On the idea, I guess it comes back to the fundamental issue of why, why would we treat public interest litigants different than civil litigants in that regards. For instance, a civil litigant to file and may file eight cases of action in a complaint, they have eight different claims in a complaint, one or two of which are very strong, the other six of which they have a ten percent chance of winning, or a five percent chance of winning on. And yet what we're saying is that's occurring currently, in the civil litigant context, but we're saying in the public interest litigant context that we're going to punish you for doing that too. When they have a colorable argument, they've not been sanctioned for raising those claims even if they have a five-percent chance of winning. So the fundamental issue is, why would we treat them different than the civil litigant in that context. I don't know why we would do that.

Senator Donley: And maybe we don't treat them differently, maybe we make it apply to everybody under Rule 82, that if they go beyond that then they should apportion based on which issues they did prevail on, but there is a good

public policy argument for also making it, for public interest litigants and that's that, the court uses the public interest litigant label to abuse the process and to award excessive fees. We've seen that, they've proven their propensity for abusing the process by over awarding fees to people they classify as public interest litigants even when they're not truly prevailing parties. So, we're addressing a specific abuse the court's been doing and they use that label to, as an excuse for that abuse they're doing. But, I think it would be appropriate, it might be fine to apply it to everybody.

Senator Phillips: Can I ask Mr. Dickson for a recommendation?

Co-Chair Torgerson: Mr. Dickson, Senator Phillips asked if you had any recommendations on the debate that we just had and whether or not...

Mr. Dickson: My feeling would be to, if something is not broken, don't fix it. So, I'm a little hesitant to suggest making this new wrinkle about going beyond the 20 or 30 percent applied to all civil litigants. I haven't really thought that out. I can tell you that, for a long period of time there was a lot of litigation just over Rule 82, you would have basically two chapters of the lawsuit. First, on the merits and then second on the attorney's fees issue. The Supreme Court basically said it's most up to the discretion of the trial court trying to reduce that. So, I'm a little, I'm concerned that, to the extent we tweak it more, we run the risk of more litigation over just what that means in the "run of the mill" civil litigation, the commercial stuff, the tort stuff, the other type things. So I'm a little hesitant to, my, I would recommend not going that way because I'm concerned about how it would affect all the rest of the "bread and butter" type cases that go before the courts and the citizens and the companies that have to use the courts. I think effectively is to simply try to treat the PIL litigants the same as all others. I think that as a practical matter in looking at the way it would practically work itself out in the day to day business of the courts is that the only effective change would be to basically treat everybody the same.

Co-Chair Parnell: We have before us an amendment. Senator Donley moved an amendment that would add language from version "M," page two, which was subsection (g) that would

require the court to apportion the fees by issue. And, it says if the "court finds an issue presented by public interest litigants to be frivolous, then the court shall award attorney's fees under (b) of this rule." So essentially, this provision as it sits right now is more punitive to public interest litigants than the civil litigants because its requiring the court to apportion the fees by issue which we're not requiring of non-public interest litigants. Maybe the thing to do would be to vote on this particular amendment and if Senator Donley has another amendment to do with the issues he's raised, then we could take those up. Instead of working to craft this one, just a suggestion.

Senator Adams: The compromise language that I thought Senator Donley had, expounded on, I thought it was very good. That you'd paid for only the causes, the good causes that you would win. You would not be paid for the ones that were frivolous causes. I was hoping that was the direction we were coming to on this particular point.

Co-Chair Parnell: On that, that's a good point except you, it's confusing and complex to try to apportion by issue. And that's why they only get 30 percent of their attorney's fees. I presume that's one of the reasons they get 30 percent of the attorney's fees is because you bring eight causes of action, all of which have some merit, but two of which you've got a ninety percent shot of winning on, six of which you've got a five percent of winning on. If you actually determined to be the prevailing party, you're only entitled to 30 percent of your attorney's fees, if you go through trial. And, with a possibility of enhanced attorney's fees. So, I guess what I'm saying is that, the 30 percent is recognition that, that some of the claims are going to fall by the wayside. But it's also causing people to think about filing a lawsuit and take a second look at, because it could cost them that, it could cost them money to the other party if they don't prevail. So, it really is a hard thing to start saying that we're going to apportion fees by issue. It just adds more work to the courts and adds more litigation for the Supreme Court to resolve.

Senator Donley: Mr. Chairman, I was, I thought it was important to have the work that you'd done with other members of the legislature before the Committee and that's what this amendment is. I don't how, this is a really important discussion and I think we're all learning a lot.

I don't know how you feel about it, but I kind of like the idea of, if, because, I want to go ahead and finish out on this amendment if you would like it, because you helped develop this language. But if not, I could withdraw that amendment and propose something else. It would take me some time to get it drafted up. But I would think, I would like to go, the direction I would suggest possibly we consider, is that, if the court awards in excess, and make it apply to all litigants, not just the public interest litigants. But, if the court awards an excess of the Rule 82 standard amount, then it would, it shall apportion, based on issue, unless it finds exceptional circumstances, language that you've come up with already here that require an awarded fees without apportionment. And also make something that requires the court to state in their decision why they found those exceptional circumstances. [Inaudible] articulated why. And that gives the court a way out, so if they find its too hard to apportion, they don't have to, but it gives them direction that they should apportion if they're going to award more than the standard Rule 82.

Senator Green: Just review for me, I think I may have missed a discussion earlier. On the 30 percent attorney's fees, are these actual cost, as you had referred earlier to the normally work for \$30 an hour, that much. Or is this the inflated thing that we've seen in Finance when we've, the \$195 or the \$295, or whatever fee, that we're doing 30 percent of, because that makes a big difference. Because otherwise, we're paying three hundred percent plus, or a thousand percent of their fees and you can put anything you want to unless you're requiring a billable, their normal attorney's fees. I mean, like, if you did attorney's fees, you would have a method by which it says "x number of hours at this," and that's what, I would assume you would present to the court. Are you telling me that they could in a civil case, could they say, "oh we're not going to compute it at your normal \$200 an hour fee, but we're going to take it to \$350 an hour fee." Well how can they do that in public interest litigation then, why is that...

Senator Donley: It goes the other way.

Mr. Dickson: Can I respond to that? The answer to that is, in all other civil litigation, it is the actual fees incurred, the actual checks written by the client. And then the first thing the court does, is whether that's

reasonable and if it's been too much the court chops that down to reasonable, actual fees and awards 30 percent of that figure. The exception, part of the public interest litigation exception is that, and I think it was a Trustees of Alaska case, where it was demonstrated by the other party, that they were only basically charged \$40 to \$50 an hour. But their point was, well similar lawyers charge \$150 to \$200 an hour and we should get the value of that and the Supreme Court accepted that, so it's only in PIL litigation where this, they've actually allowed greater than actual attorney's fees.

Senator Green: Is there some way that we could address that issue? To me, that may be the bigger problem whether how you compute it.

Mr. Dickson: Certainly that's possible. That's possible.

SENATE FINANCE COMMITTEE

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SB 123-PUBLIC INTEREST LITIGANT: FEES

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SB 123

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SB

126

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FILE

SB 126

**was referred to the
Senate Finance
Committee**

Hearing(s) were held

**The bill did not move
from Committee**

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 126

Revision Date/Time (Note if correction) _____ Dept. Affected All state agencies
 Title An Act relating to payments to individuals BRU _____
 Component _____
 Sponsor Senate Finance Committee
 Requester Senate Finance Committee Component Serial No _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would require state agencies to prorate payments to individuals receiving state benefits if an appropriation is not sufficient to fully fund the program.

The fiscal impact is shown as zero because the bill would not change state agency costs, but instead would impact Alaska residents if the appropriation level fell short of the amount needed to fully fund the benefit.

For most individual benefits, such as the Longevity Bonus, program costs are based on projections updated in the spring before the beginning of the fiscal year. It is not possible to know with certainty at that time whether appropriated funds are sufficient to fully fund the program. Significant reductions may have to be made in the final months of the fiscal year to remain within the appropriation amount.

Prepared by Annalee McConnell, Director *JK for AMC* Phone 465-4660
 Division Office of Management and Budget Date/Time 4/6/99 4:39 PM
 Approved by Commissioner David Ramseur, Deputy Chief of Staff Date _____
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To: Senate Finance Committee
Senator John Torgerson, Co-Chair
Senator Sean Parnell, Co-Chair

From: Fairbanks Legislative Information Office

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SB 126: Bill dropped from agenda

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ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Finance
 Committee on SB 126 Committee Name
 Dated 4/7/99
Bill / Subject

I strongly urge the committee not to pass this bill. The need standards and payment standards for each program should be set based on a program-by-program assessment of needs and goals, not this blanket approach. Federal requirements vary from program to program and the legislature should not try to change the fundamental entitlement - vs. - nonentitlement aspect of all programs simultaneously; this could jeopardize federal matches. These programs are very sensitive at the individual level - an income cut of \$100 per month ~~more~~ has a lot more impact on an AFA or ATAP recipient than on a salaried state employee. Assistance recipients' payments have already fallen to a lesser proportion of poverty ^{level} as a result of the payment caps over the past several years. Please do not pass this bill.

SIGNED: Andrew Harrington Andrew Harrington
 Testifier
Arctic Alliance
 Representing
4624 Stanford Drive Fairbanks AK 99709
 Address / Phone Number



ALASKA STATE LEGISLATURE

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Committee Name
 Committee on SB. 126 Dated _____
Bill / Subject

How would you like to live on a
 fix income of less than 900.⁰⁰ a month?
 Your family would become very discouraged.
 You are only existing. Now you want
 to cut these individuals back some more
 in order to balance the budget. Have you
 consider turning down the pay increase that
 is proposed for you. I would appreciate if
 you would find a place in your heart to
 think of the needy.

SIGNED: _____ Helen Grant
 Testifier
 _____ Nam: FBKS
 Representing
 _____ 1369 Ballaine Rd.
 Address / Phone Number
455-6263

99709-6402



ALASKA STATE LEGISLATURE

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 Committee on SB 126 Committee Name
Bill / Subject Dated 4/7/99

This is one of the worst bills I have ever seen. Why does one of the richest states in the union need to balance its budget on the backs of its poorest citizens? If you live on \$850 a month or \$284 as a person on temporary public assistance does, all your money goes to food, rent and medication. There is no discretionary income. Alaska's mentally ill citizens would be hurt by this bill. They often depend on Public Assistance and Medicaid for their basic needs.

I would rather see us cap our dividends and begin to tap the Perm. Fund for essential state services, but not to increase the state's infrastructure. Another idea is to prioritize state services and fund the top priorities. Certainly our disabled citizens needs would be a top priority.

SIGNED:

Testifier

NAMI Alaska + NAMI Fairbanks

Representing

1369 Ballaine Rd, Fbks 99709

Address / Phone Number

455-6263

04/06/99

Marie Simmons
615 Cinko # 1
Fairbanks, Ak. 99709

REP. Gene Therriault
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear REP. Therriault,

My name is Marie Simmons, I am a member of the Governors Council on Disabilities and Special Education and a parent of Teisha, and she is a twenty two year old quadriplegia.

I have concerns on SB126 and HB161. I would like more information on these bills and that they be made available to the public and therefore. I am requesting a teleconference be held in Fairbanks and I would like to be a participant offering testimony

I am particularly concerned about Medicaid. 28% of Alaska's expenditures are dedicated to disabled people. These individuals cannot afford to have availability of medical care in jeopardy due to payment reductions. Also Adult Public Assistance. As the Disabled population rely on these programs for their rent, food and basic needs and are already living in poverty and can't sustain a reduction in benefits.

I thank you for your time regarding these issues and would also like to say thank you to your aides for returning my telephone call yesterday.

Sincerely,

Marie Simmons

FAX TO CMTE: 465-2187

FROM: HOMER LIO FAX 235-4008



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
 committee name
 committee on SB 126, dated 4/7/99
 bill/subject

I strongly oppose HB 161 & SB 126. These proposed changes will create a hardship for people who are already suffering from mental &/or physical disabilities and can not advocate for themselves. People have basic human rights to medical care, food, and a safe place to live. It is up to us to be sure that people who experience disabilities are cared for in a humane fashion. It is our moral obligation. We are not so poor as a state that we must sacrifice their welfare. Use the constitutional reserve fund to balance the budget.

The permanent fund was established to pay for government when oil revenues were down. I think we can find a way to fund these vital programs which protect our venerable citizens. Thank you.

Signed: Juan Dethman
 Testifier

Representing (Optional)

PO Box 12, Homer, AK 99603
 Address

907-235-6744
 Phone No.

FAX TO CMTE: 465-2187

FROM: HOMER LIO FAX 235-4003



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
 committee name
 committee on SB 126, dated 4/7/99
 bill/subject

I strongly oppose HB 161 & SB 126. These proposed changes will create a hardship for people who are already suffering from mental &/or physical disabilities and cannot advocate for themselves. People have basic human rights to medical care, food, and a safe place to live. It is up to us to be sure that people who experience disabilities are cared for in a humane fashion. It is our moral obligation. We are not so poor as a state that we must sacrifice their welfare. Use the constitutional reserve fund to balance the budget.

The permanent fund was established to pay for government when oil revenues were down. I think we can find a way to fund these vital programs which protect our vulnerable citizens. Thank you.

Signed: TSusan Drathman
 Testifier

Representing (Optional)
PO Box 12, Homer, AK 99603
 Address
907-235-6744
 Phone No.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

April 5, 1999

The Honorable Sean Parnell
The Honorable John Torgerson
Senate Finance Committee, Co-Chair
State Capitol, Room 518 and 516
Juneau, AK 99801-1182

Dear Senators Parnell and Torgerson:

The Senate Finance Committee will soon be considering SB 126. This bill has the potential to seriously effect the continuity and amount of benefits paid to a large number of people. I am providing you with a summary of its potential impacts and some of the difficulties that the Department will face if it were to become law.

Because the language in SB 126 does not specify which programs and individuals it is intended to effect, we can only assume application of its provisions to all of the benefit programs administered by Health and Social Services with the exception of those which are fully federally funded. Therefore, the following analysis includes the:

- Alaska Temporary Assistance Program (ATAP)
- Adult Public Assistance (APA)
- General Relief Assistance (GRA)
- Medicaid
- Chronic Acute Medical Assistance (CAMA)
- Foster Care—including the Foster Care Base Rate, Foster Care Special Needs, and Foster Care Augmentation components
- Subsidized Adoption and Guardianship.

Alaska Temporary Assistance Program (ATAP)

The Alaska Temporary Assistance Program was established by statute in 1997 (AS 47.27.005). The focus of the Alaska Temporary Assistance Program is to provide temporary financial assistance to poor families and to help those families off assistance, out of poverty and toward self-sufficiency through employment. Assistance payments are intended to help poor families with their basic living expenses (such as rent, and self-sufficiency services) while they take steps to move off assistance.

Maximum payments for recipients are specified in AS.47.27.025(B); for example, the maximum payment for a family of three is \$923 a month, a pregnant woman receives \$514 per month, and a child in relative care receives \$452 per month. A typical Temporary Assistance family consists of

a single mother with two children, and little or no other source of monthly income. In the past, we have been advised by the Department of Law that a reduction in these benefits would require a change in the ATAP statute.

In FY 00, we project an average of 9,300 families will need Temporary Assistance each month. Of these, approximately 6,975 will be single parent families, 1,395 will be two parent families, and 930 children in relative care.

Should the Division of Public Assistance be required to prorate Temporary Assistance payments if the program were under funded, the consequences would be as follows:

- When families are unable to meet their basic needs (rent, utilities, transportation), it greatly decreases their chances of succeeding in employment or taking other steps toward self-sufficiency.
- Reducing benefits could reduce the number of hours we can legally assign individuals to community service work activities. This could adversely affect our ability to meet federal work participation rates.
- Our TANF Block Grant requires that we maintain state expenditures at 80% of our 1994 level (MOE). The Governor's FY2000 budget for ATAP includes only the amount of General Funds necessary to meet the MOE requirement. Any reduction to the General Fund amount in this program will result in significant penalties.

Adult Public Assistance (APA)

The Adult Public Assistance Program (APA) was established by statute in 1982 (AS 47.25.30 – 47.25.615) with the purpose of furnishing financial assistance to needy aged, blind and disabled persons to cover basic living expenses such as shelter, clothing and food. People who receive APA financial assistance have severe and long-term physical and mental disabilities that impose limitations on their day-to day functioning.

In FY 00, we project the APA program will serve 13,097 individuals with an average monthly benefit of \$316. This amount along with the monthly Social Security benefit maintains the individual at the poverty level.

Should the Division of Public Assistance be required to prorate APA payments if the program were under funded, the unintended consequences would be as follows:

- About 4,420 elderly, 130 blind, and 8,450 disabled poor – the state's most vulnerable citizens - could suddenly lose a significant portion of income. With few options to improve or even maintain their quality of life, these citizens tend to be heavily dependent upon state assistance

to provide basic necessities. Any reduction in the APA benefit takes away from the income around which these Alaskans have structured their lives.

- A reduction in APA benefits could destabilize the living arrangements of a poor disabled or elderly person who is living independently, forcing them into institutional care at greater public expense, or into homelessness.

General Relief Assistance (GRA)

The General Relief Assistance program offers two types of assistance: General Relief cash assistance (GRA), and General Relief Burials. Both are emergency assistance programs designed to meet the immediate and basic needs of Alaskans experiencing extreme financial problems. These basic needs include shelter, utilities, food, and clothing. In addition, limited funds for cremation or a burial of a needy person may be provided.

The GRA program is 100 percent state funded, and because funds are limited, the program is to be used as a last resort in providing basic needs to an individual or household. GRA can only be authorized when the household cannot qualify for other assistance programs. Applicants must reapply during each month of urgent need to be considered to receive assistance.

AS 47.25.130 specifies that the amount of GRA payments shall be determined by the department and may not exceed \$120 a person per calendar month. Payments are made to vendors on behalf of needy clients. The average monthly payment made to vendors for GRA related services are approximately \$350.

The General Relief Burial program provides burial assistance for indigent persons. Assistance is granted only if the family has no other resource to pay the burial costs. The maximum payment for burial expenses under GA cannot exceed \$1,250, plus the cost of a burial plot, opening and closing of the grave, or cremation. The average monthly payment for burial services is \$1,500.

Approximately 200 GRA cases are approved each month. Over 75% of these cases receive rental assistance.

The GRA program serves as the last safety net for some of Alaska's most impoverished citizens. GRA benefits already represent the minimum payment for services that most vendors will tolerate. A pro rata reduction in benefits would further discourage participation by vendors and make it difficult, if not impossible for the program to meet the emergent needs of applicants.

Medicaid

The Medicaid Program serves approximately 90,000 low income Alaskans by reimbursing health care providers for the health care services they receive. This entitlement program is a joint federal-state partnership, in that the program is operated by states under federal rules and financed by both. The federal government pays for roughly 60 percent of the cost of the program, which totals about \$400 million in FY 99. Certain groups of people, and certain

medical services are required to be covered under federal law in order to participate in the Medicaid Program; other services and groups of people are optional and may be covered at state election.

Children represent over half of all Medicaid recipients, and about 29 percent of expenditures; the elderly represent 6 percent of eligibles and 12 percent of expenditures; the disabled represent 10 percent of the recipient population and 28 percent of the expenditures; home and community based waiver clients represent one percent of recipients and 12 percent of expenditures. Other adults, including parents of children and pregnant women account for the remaining expenditures.

About 6,000 medical providers are enrolled in Medicaid. Payments for services are received in the following proportions: 25 percent by hospitals, 15 percent by physicians, 11 percent by nursing homes, 10 percent by psychiatric hospitals, 9 percent by mental health clinics, 8 percent by pharmacies, and 3 percent by transportation providers. The remainder of expenditures are received by all other provider types including dentists, medical equipment suppliers, personal care attendants, laboratories and drug abuse treatment centers.

Federal rules require reimbursement of providers to be adequate enough to attract sufficient numbers of providers to secure access to health care services for program recipients. State law, regarding facility reimbursement under AS 47.07.070, requires a fair rate of compensation for reasonable costs incurred by a facility. Reimbursement for health care services is complicated, and for facilities, has significant case law history related to legal actions against the department. All reimbursement changes are done by regulation and could not be accomplished quickly without legislative authority to employ emergency regulations. Any reductions intended to be implemented through pro-rata payment reductions would be multiplied in their effect due to the length of the regulatory process; therefore significant decreases in payment has the potential to endanger meeting federal requirements for adequate reimbursement to guarantee access to care.

It is not clear how the Legislature intends SB 126 to apply to the Medicaid Program, as Medicaid is an individual entitlement to health care services; payments are not made to individuals but to health care providers who have rendered services to individuals. The only payments made that directly benefit recipients financially are for Medicare premiums, which payment is required under federal law. The division is currently purchasing premiums for more than 8,000 Alaskans; the cost for FY 99 was over \$6.2 million dollars, and because the senior population is experiencing rapid growth, premium costs are likewise increasing. State law, at AS 47.07.035, already directs the department in how to manage the program should funding be insufficient to cover program costs; this law lists optional services and groups of people to be eliminated from the program in a priority order. How this statute would inter-relate to the provisions of SB 126 is ambiguous, as AS 47.07.035 and SB 126 give conflicting direction (eliminating services and eligible groups vs. reducing payments).

Chronic Acute Medical Assistance (CAMA)

The CAMA program covers between 800 and 900 extremely poor and sick Alaskans each year; in order to qualify for coverage, a person must have income under \$300 per month, resources of less than \$500, and experience a significant chronic or acute illness such as cancer, a seizure disorder, diabetes, or other terminal condition. Recipients must apply monthly for eligibility, and the covered services are extremely limited. CAMA reimbursement generally follows Medicaid provider reimbursement rules, except that hospitals are already reimbursed at 28 percent of the Medicaid rate due to limited funding. Even though the CAMA program is totally general fund dollars, savings would be limited by any payment reductions due to the small size of the budget. Payment reductions for CAMA providers could effect the availability of care for program recipients, as it could for Medicaid.

Foster Care

As of this month, the children in foster care—for whom this care is required—number nearly 1,200 full time equivalents. The Department is required by statute to take care of these children in its custody:

AS 47.14 100. Powers and duties of department over care of a child. (a) Subject to (c), (f), (I), and (j) of this section, the department shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or outside the state.

When a child who has been physically abused, neglected, or sexual abused cannot be maintained safely in the child's own home and must be placed in out-of-home care, placement in a foster home is always the first preference. The foster care base rate component provides payments to foster parents on behalf of these children. The rate paid is established by the regulations necessary for the implementation of state law. Consistency in the amount paid for the care of a child is an essential factor in ensuring the availability of foster homes, particularly at a time when the number of children in state custody is growing. In order to maintain a consistent level of support for foster children, the standard daily rate is specified in 7 AAC 53.030. SB 126 would, if passed into law, supercede this regulation and undoubtedly result in rate reductions. (A provision of the regulation already allows for this given a funding shortage, but it does not require it.)

The ultimate result of a rate reduction in foster care payments would be counter to that intended by SB 126. Because fewer foster homes would be available for the children who will still be taken into state custody, more children will be placed in much more expensive institutional care. Therefore, state expenditures would actually rise. The only alternative would be for the Department to leave children in unsafe situations—a predicament that no one desires, and one we have been working very hard to avoid.

Subsidized Adoption and Guardianship

The adoption and guardianship program serves children in the custody of the Department who cannot return to their biological parents by providing permanent parents through adoption or guardianship. Adoptions and legal guardianships can be subsidized for special needs children who could not be adopted without assistance to meet the child's special needs.

The increase of children entering the child protection system has a direct impact on the number of children ultimately requiring alternate permanent homes because they are not able to return to their families. Not only are the number of children in need of adoption increasing, but the number of children with emotional disorders and the severity of the disorders is also increasing, resulting in an increase in the need to provide adoption or guardianship subsidies. Families are not able to assume the responsibility of providing complete and permanent care for these disturbed children without financial support. The number of children receiving adoption subsidies is projected to be 1,252 by June of this year.

Our adoption subsidy program has federal requirements that 1) there won't be a means test, 2) that subsidy amounts will be determined on both child's and family's needs, and 3) that no change in subsidy may occur without concurrence of the adoptive parent with whom the agreement has been negotiated.

In order to receive federal funds under Parts IV-B and IV-E of the Social Security Act (currently in excess of \$12 M), the department must meet the requirements of those sections of that Act:

42 USCS 671 Requisite features of State plan. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which----
(1) provides for foster care maintenance payments in accordance with 42 USCS 672 and for adoption assistance in accordance with 42 USCS 673.

42 USCS 673. Adoption assistance program (a)(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the state—

(1) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child...

(3) The amount of the payments to be made in any case...shall be determined through the agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents, depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment...exceed the foster care maintenance payment which would have been paid

during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

Ultimately, the passage of SB 126 into law would place us in the position of incurring additional expenditures for the care of foster children, greater difficulty in recruiting adoptive parents, degradation in the quality of care provided to children in state custody because of disruptions, and a potential loss of \$12,000.0 in federal revenue.

In summary, we oppose this bill for many reasons. It could have very real and devastating impact on Alaskans who depend on these payments. Its passage would result in a complicated process of changing regulations for all of the major programs that we administer—perhaps several times during a year—a costly and disruptive situation for all concerned. It would place us in the position of losing substantial federal revenue because of our inability to meet federal requirements. The irregularity of payments throughout the year and among individuals with like eligibility and like needs would result in legal challenges on behalf of those individuals and a variety of groups.

If you have questions or require additional clarification regarding this information, please contact Janet Clarke at 465-1630. Thank you for your attention.

Sincerely,



Karen Perdue
Commissioner

cc: Senator Dave Donley, Capitol Building, Room 508
Senator Randy Phillips, Capitol Building, Room 103
Senator Pete Kelly, Capitol Building, Room 510
Senator Lyda Green, Capitol Building, Room 125
Senator Gary Wilken, Capitol Building, Room 514
Senator Loren Leman, Capitol Building, Room 115
Senator Al Adams, Capitol Building, Room 417
Laura Glaiser, Staff, Senator P. Kelly, Capitol Building, Room 510
Elmer Lindstrom, Special Assistant
Janet Clarke, Director, Administrative Services
Russ Webb, Deputy Commissioner
Lisa Emerson, Budget Analyst, Administrative Services
Jim Nordlund/Randy Moore, Public Assistance
Tom Cherian, Administrative Manager, Family and Youth Services
Bob Labbe/Randy Super, Medical Assistance



April 5, 1999

By hand delivery

Sen. Sean Parnell
Co-chair, Finance Committee
Alaska Legislature
Capitol Room 518
Juneau, Alaska

Sen. John Torgerson
Co-chair, Finance Committee
Alaska Legislature
Capitol Room 516
Juneau, Alaska

Re: **SB 126 / HB 161: Limitations on benefits due to shortfall in appropriations**

Dear Senators Parnell and Torgerson:

I enclose a copy of my testimony regarding HB 161 before the House Finance Committee. I was not able to attend the hearing last week, but I understand there was a statement that the bill is not intended to affect non-cash benefit programs such as Medicaid.

To the extent that the state fails to provide its contribution necessary to secure federal funds for existing programs, the Legislature places such programs in jeopardy at a most inopportune time, when federal dollars are most likely to help the current state fiscal crisis and when we enjoy leadership of unparalleled influence in the U.S. Congress.

Without a clear definition of "benefit programs," the bill may jeopardize federal funding which contributes a significant portion of the overall state budget. For example, the Health Care Finance Administration is compelled by federal law to disapprove any Medicaid plan if "the State has in effect, . . . payment levels that are less than the payment levels in effect under such plan on May 1, 1988."¹ If by action of the bill Medicaid payments are reduced during some portion of the fiscal year to zero or otherwise below payment levels in effect in 1988, HCFA could be compelled by this law to disapprove Alaska's Medicaid plan. This and similar

MEMBER OF THE
NATIONAL
ASSOCIATION OF
PROTECTION &
ADVOCACY
SYSTEMS

¹ 42 U.S.C. § 1396a(c)(1)

**Hon. Sean Parnell and Hon. John Torgerson, co-chairs, Senate Finance Committee, Alaska
Legislature**

Re: SB 126 / HB 161: Limitations on benefits due to shortfall in appropriations

April 5, 1999

Page 2

“maintenance of local effort” provisions in federal laws provide strong incentives for continued state funding of state health and welfare programs. While assurances during a committee hearing as to legislative intent are useful, it would greatly ensure that the legislative intent is carried out for a definition of “benefit programs” to be added to the bill.

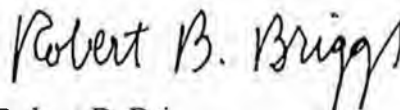
There is also a practical barrier to implementation of the bill for cash benefit programs such as Adult Public Assistance, Aid to the Disabled, ATAP, Child Care Assistance, and Day Care Assistance. The current language could be interpreted at least three ways as to how an administrator is to make the determination that “an appropriation . . . is not sufficient to fully fund all payments . . . under that program. . . .”:

- (1) appropriation at less than the amount of requested in the governor’s budget;
- (2) appropriation at less than the projected cost of the program (if higher than the governor’s budget request);
- (3) appropriation at less than the actual cost of the program

Either way it is interpreted, benefits are issued not based on need but on an estimate of available funds. This is a wholesale departure from the concept that a minimum standard of living for every Alaskan is the best way to promote, protect, and provide for the public health and welfare. Removing this floor of support from the most needy Alaskans is not the way to balance the budget.

I believe it is unwise for the committee to pass the bill in its present form without first exploring other means for balancing the budget, including methods to increase revenue. I also urge that before action by the Finance Committee, the bill should be referred to the Health, Education and Social Services committee for its evaluation and advice to the whole Senate of the implications of the bill.

Very truly yours,



Robert B. Briggs
Staff attorney

Encl.