9881 HOUSE JUDICIARY

SB

45

Alaska State Legislature

Senate

Official Business

RICK
HALFORD
State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958
Fax (907) 465-4928

P.O. Box 670190
Chugiak, Alaska 99567
Phone (907) 694-4958
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600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

CSSB 45(FIN) am S
Sponsor Statement

The Finance Committee Substitute for Senate Bill 45 amended Senate provides limited immunity to landowners when a conservation easement, which allows public access to the easement for recreational purposes, is granted to the state or a municipality, providing that there was no compensation paid for the access or use. The same limited immunity is granted to the state or municipality accepting the easement.

This legislation comes forward in response to the desire to preserve and expand recreational access for Alaskans, and for visitors to the State. The ability to access lands for purposes of skiing, hiking, hunting, fishing, snow-machining and numerous other outdoor recreational activities is an important aspect to enjoying the benefits of our great state. The potential for liability and litigation for private landowners who allow the public free access to their lands for recreational purposes has created pressure to further restrict entry and a disincentive to the establishment of other outdoor activity.

Promoting recreational opportunity and establishing additional trail systems has become a priority for a number of groups and organizations around the state. We have received requests and/or support for this legislation from numerous entities including: the State Division of Parks, the Municipality of Anchorage, the Anchorage Economic Development Corporation, the City of Wasilla, the Wasilla, Palmer, Fairbanks and State Chambers of Commerce, the Alaska Snowmachine Association, the Mat-Su Motor Mushers, the Alaska Boaters' Association, and the Alaska Outdoor Council.

CSSB 45(FIN) am S also makes a technical correction to the statutes governing vacation of RS 2477 rights-of-way and section line easements granted under former 43 U.S.C. 932. In addition, CSSB 45(FIN) am S provides concise direction in Title 29, the statutes pertaining to local governments, that is reflective of the procedures for easement vacation existing in Title 19.

CSSB 45(FIN) am S will assist in the effort to expand recreational opportunities for Alaskans and visitors alike. I urge your support for this legislation.

APR 26 1999

REALTOR ®

ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-561-1779

April 16, 1999

Senator Halford
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Halford,

The Alaska Association of REALTORS with over 1,100 members statewide supports Senate Bill 45 relating to tort immunity for personal injuries or death occurring on land.

We agree with Senate Bill 45 providing immunity from tort liability to a landowner, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct.

The Alaska Association of REALTORS encourages the passage of SB 45.

Sincerely,

Charlie Sandberg, CCIM, CRS, GRI
1999 President

ALASKA BOATING ASSOCIATION

Rick Halford, Senator
State Capital
Juneau, Alaska
99801-1182

Subj. SB 45

Feb.4th. 1999

Dear Senator Halford,

Thank you for introducing SB 45. I see this issue from two sides.

As an owner of remote property I allow snowmachines and dog sleds to cross my property at will. I have never had any property damage. People seem to respect private property. However, I am continually aware of the liability that I am exposed to; I just hate to put up signs and prohibit people from going about their business. I certainly feel the exposure and I can understand that people with less commitment to public access would close their property.

As President of the Alaska Boating Association, a member of the Alaska Outdoor Council and a member of the Mat-Su Fish and Game Advisory Committee I am continually confronted by cases of public access restrictions where it is necessary to cross private land to access public land. Anything that we can do to promote and assure equal access to Alaska's resources is worth the effort. We also support the technical correction concerning vacation of RS 2477 rights of way and section line easements.

Again, we are in full support of SB 45.

Sincerely,

Cliff Judkins, President,
Alaska Boating Association

Cliff Judkins - President • P.O. Box 874124 • Wasilla, Alaska 99687
(907) 373-3591 • Fax 373-3592 • E-Mail: cjudkins@customcpu.com

FEB 0 8 1999

Alaska Outdoor Council

PO Box 73902
Fairbanks, AK 99707-3902
Tel./FAX: (907) 455-4AOC (4262)
outdoor@polarnet.com

February 3, 1999

Senator Rick Halford
Alaska State Legislature
State Capitol MS 3101
Juneau, AK 99801-1182

Dear Senator Halford:

The Alaska Outdoor Council's board of directors voted unanimously to support Senate Bill 45, your bill relating to tort immunity and maintaining RS2477 right of ways.

Adopting SB45 as law will be a great benefit to public-spirited landowners who support public use trails and other uses on private lands. Our "litigious society" really chills those people's enthusiasm when the prospect looms of being liable in tort for injuries that are no fault of theirs. Without the protection afforded by SB45 a proliferation of no trespassing signs is predictable.

The second part of SB 45 is critically important to ensure that attrition of public access does not occur or is minimized. Under present circumstances the very limited expectations for new roads, railroads, etc. may lend credibility to the idea that RS2477 rights of ways are largely expendable. Following such a philosophy would be a great disservice to the outdoor user public. The public will have to rely more on legally sanctioned trails as increasing private ownership materializes, and access rules on federal areas become more rigid.

The Alaska Outdoor Council urges passage of SB45. Thank you again for you. efforts on these vital public access matters.

Sincerely,

Richard H. Bishop
Vice President

P.S. Question arose: How would this relate to Dipnetters who pay $10 state fee for access & services on Native Corp. land?

TELEPHONE (907) 694-4702

FAX (907) 694-1205

Chugiak-Eagle River Chamber of Commerce

P.O. BOX 770363
EAGLE RIVER, ALASKA 99577

11401 OLD GLENN HIGHWAY, SUITE 110A
EAGLE RIVER, ALASKA 99577

"Place of Many Faces"

Chugiak-Eagle River Chamber of Commerce
Board of Directors
RESOLUTION 98-007

A RESOLUTION IN SUPPORT OF A STATEWIDE TRAILS PLAN & LIABILITY REDUCTION LEGISLATION

WHEREAS the Chugiak-Eagle River Chamber Commerce is a community based nonprofit organization which encourages projects that allow for quality community growth and development in the state of Alaska; and

WHEREAS sufficient data exists demonstrating the positive recreational impact of regulated and controlled snowmobile corridors on communities in the lower 48 and Canada; and

WHEREAS in the State of Alaska there exists a significant number of people whose needs for local snowmobile infrastructure and other use opportunities have gone largely unmet; and

WHEREAS the state of Alaska currently has existing (as well as planned) world-class trails and infrastructure for other recreational user groups such as cross-country skiing and dog mushing; and

WHEREAS the creation of snowmobile infrastructure will complement the existing summer tourist industry thereby enhancing or creating year-round visitor industry jobs - which will benefit all affected Alaska communities; and

WHEREAS the Chugiak-Eagle River Chamber supports the development of snowmobile corridors which would create a state-wide trail system.

NOW THEREFORE BE IT RESOLVED that the Chugiak-Eagle River Chamber of Commerce Board of Directors recommends to the Governor and Legislature of the State of Alaska that these entities develop in an expeditious manner statewide trails design criteria. BE IT FURTHER RESOLVED that the Chamber of Commerce supports the creation of liability reduction legislation which would hold harmless landowners and other

entitles whose property becomes part of the statewide trails system.

Signed this 12th day of November 1998.

Respectfully submitted by,

Mark Eidem
President

APR 06 1999

SnoTRAC

Snowmobile Trails Advisory Committee
3601 "C St. #1280
Anchorage, AK 99503

March 30, 1999

Senator Rick Halford
State Capital, Room 121
Juneau, AK 99801-1182

Dear Senator Halford:

At the March 19, 1999 regular meeting of the Alaska Snowmobile Trails Advisory Committee (SnoTRAC), there was unanimous support for a motion to support both Senate Bill 45 and House Bill 88, providing immunity to private property owners from liability when they allow recreational trail use across their property.

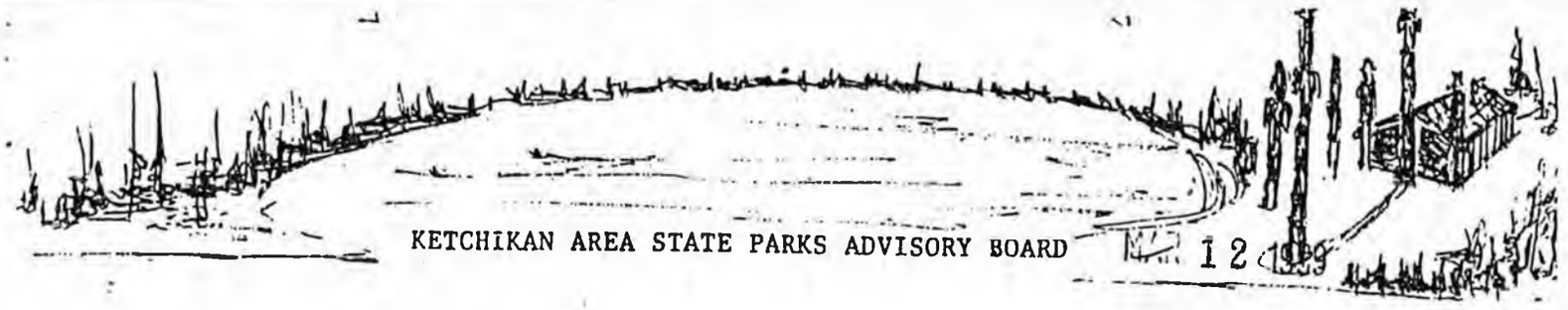
The committee feels very strongly that if traditional trails are to be protected in Alaska for the public good, and if new trails are to be established which may in part require crossing private property, that the state will need to provide some protection to property owners as provided in these two bills.

The SnoTRAC committee urges the Legislature and the Administration to enact this much needed new law.

Sincerely,

John Johnston, Chair
Alaska Snowmobile Trails Advisory Committee

cc: Senator Robin Taylor
Representative Norman Rokeberg



KETCHIKAN AREA STATE PARKS ADVISORY BOARD

March 10, 1999

Honorable Rick Halford
Senate Judiciary
State Capital
Juneau, Alaska 99801-1182

Dear Senator Halford,

The Ketchikan Area State Parks Advisory Board has resolved unanimously to support the passage of Senate Bill 45, providing protection from litigation for private property owners who have trails crossing their land. However, we would like to see added a requirement that easements across private land be dedicated for continued public use.

The Board would appreciate very much your pushing the bill, getting it out and through the Senate process, with the addition mentioned above, if possible. We feel that this protection is necessary for both private land owners and the public interest. Free and open trails have long been a tradition in Alaska.

We also support House Bill 88 which has a similar goal of protection for the land owner and the dedication of trails to public use.

Thank you very much for your consideration.

Sincerely,

R. A. Olsen

Robert Olsen, Chair
Ketchikan Area State Parks Advisory Board

From: Mr. Howard Davis Jr.
PO Box 395
Clam Gulch, AK 99568
262-5124

Bill: SB 45 Title: LAND OWNER IMMUNITY/ RT-OF-WAY VACATION

Message:

The Caribou Cabin Hoppers with a membership in excess of 250 representing in excess of 1000 individuals, supports SB45, an act relating to tort immunity for personal injury or death.

Subject: Senate Bill # 45
Date: Tue, 4 May 1999 20:10:16 -0800
From: "Tom Logan" <yahama@email.msn.com>
Organization: Microsoft Corporation
To: <Senator_Rick_Halford@Legis.state.ak.us>

As one of the directors of the Big Lake Chamber Thanks of this Bill Hope to see it's passage
Pray for our troops.

LOGAN, THOMAS E
PO BOX 520253
BIG LAKE AK 99652-0253
District: 28-003 Party: R Sex: M

Subject: Trail Liability legislation
Date: Wed, 14 Apr 1999 09:30:22 -0800
From: Steve & Sarah Swift Masterman <ssmaster@mosquitonet.com>
To: Senator_Robin_Taylor@legis.state.ak.us,
Senator_Rick_Halford@legis.state.ak.us,
Senator_Dave_Donley@legis.state.ak.us,
Senator_Johnny_Ellis@legis.state.ak.us,
Senator_John_Torgerson@legis.state.ak.us

Dear Senator,

I am writing to voice my support for SB45. By offering protection to land owners who allow people to use their land recreationally, this bill will increase the likelihood that land owners will support and allow trails and other recreational use on their land. This benefits the state in several ways. First, it obviously would increase recreational opportunities for residents of Alaska. Second, it could decrease the need for the state, federal, and local governments to spend money acquiring trail rights of way, and maintaining trails for residents. Third, it would decrease the amount of litigation in our already overburdened court system. Please support SB45!

Thank you for your time and interest,

Sarah Swift Masterman
PO Box 263
Ester, AK 99725
District: 29-457 Party: N Sex: F

ssmaster@mosquitonet.com

Subject: SB45 Trail Liability
Date: Wed, 14 Apr 1999 18:20:30 -0800 (AKDT)
From: kayaker@mtaonline.net
To: Senator Rick Halford <Senator_Rick_Halford@legis.state.ak.us>

Mat-Su State Parks Citizens Advisory Board

HC 32 Box 6706, Wasilla, Alaska 99654
(907) 745-3975 Fax (907) 745-0938

April 14, 1999

Re: SB45; Trail Liability

Dear Legislative Members:

The members of the Mat-Su State Parks Citizens Advisory Board have passed a resolution (#99-09) in support of Senate Bill 45 regarding trail liability for personal property owners.

This bill will protect and assist in dedicating many of our established trail systems in the state. Our board is represented by a variety of recreational users. Snowmachiners, skiers, motorized and non-motorized boaters support this proposed legislation. We urge you to support this legislation to enhance and protect Alaska's recreational assets. Thank you.

Sincerely,
Mat-Su State Parks Citizens Advisory Board
Toby Riddell
Chair

Subject: Senate Bill 45
Date: Fri, 19 Feb 1999 09:55:06 -0900
From: "Scott Heidorn" <sheidorn@igloo.pplant.uaf.edu>
To: Senator Robin Taylor <Senator_Robin_Taylor@legis.state.ak.us>
CC: Senator_Rick_Halford@legis.state.ak.us

Dear Senator Taylor and Senator Halford,

It is great to see SB 45 with it's improvements to existing legislation. I hope these improvements will go far enough in meeting our ultimate goal and that is to encourage private property owners to open their land to public recreation use. Over the years two important issues have come to light as different states developed trail programs.

The first major change in legislation involved the issue of compensation. Compensation can take on a variety of meanings from offering a hind quarter of deer to the farmer that allows access, to property tax relief for trail access. Other forms of compensation include trail development improvements to property which result in increased property value or the offering of a gratuity for access. A variety of reward for access have become a necessity to initiate and maintain access. If SB 45 can address this issue as outlined in the model legislation I sent to you from the American Motorcycle Association it will be a better tool for me to work with.

Another issue many states are addressing involves frivolous law suits. Other states have found that private property owners are still at risk of having to defend themselves in court just to prove a law suit was frivolous. The states with successful trail programs are recognizing this and changing legislation to either allow the state to step in on the property owners behalf or developing an avenue for the courts to evaluate the case before the property owner is financially burdened.

SB 45 may or may not, in its current form, be the tool I need to preserve and promote trails for the snowmobilers whose economic impact state wide exceeds $80 million annually. However, I am the one who will apply this legislation by trying to convince private property owners that they will not be burdened by allowing public access to their land. Thanks for all your effort on on SB 45 and I look forward to the day when we are successful in having lease agreements signed that allow recreational use of private property.

Respectfully,

Scott Heidorn

HEIDORN, SCOTT W
PO BOX 84591
FAIRBANKS AK 99708-4591
District: 33-255 Party: U Sex: M

Subject: SB 45
Date: Wed, 14 Apr 1999 13:22:49 -0800
From: "Brad" <paddler@mosquitonet.com>
To: <Senator_Robin_Taylor@legis.state.ak.us>
CC: <Senator_Rick_Halford@legis.state.ak.us>, <Senator_Dave_Donley@legis.state.ak.us>, <Senator_Johnny_Ellis@legis.state.ak.us>, <Senator_John_Torgerson@legis.state.ak.us>

Dear Senator Taylor,

Senator Halford's SB 45 is an important step in melding the interests of Alaska's recreationists and those of private and public land owners. It provides those land owners who are benevolent towards the recreationists in letting them use portions of their property for access, through-travel, or even picnicking or camping, with the protection they deserve so that they will remain open to those uses. Yet, this bill does not remove a user's right to compensation when gross negligence is involved in the use of public property.

This is a win-win bill, and I urge you to consider recommending its passage.

Thank you for your public service.

Brad Snow, President
Fairbanks Paddlers
paddler@mosquitonet.com

Subject: SB 45
Date: Wed, 31 Mar 1999 07:52:36 -0900
From: gizmo@arctic.net (Lance Stevens)
To: "Senator Robin Taylor" <Senator_Robin_Taylor@legis.state.ak.us>
CC: "Michele Trainor" <mtt@knix.net>,
"Senator Rick Halford" <Senator_Rick_Halford@legis.state.ak us>

Dear Senator Taylor:

I am asking that you allow SB 45 to move out of committee. This is important legislation that will allow Alaska to become a state where trails are abundant and landowners who donate the easements are protected. So many of our trails currently cross private property at some point in the route that if we do not do something, long established trails could be closed due to a private land owner no longer wishing to risk is financial future in the name of public recreation.

If you have concerns on this bill I would like to help address them and look for ways to overcome them. As the legislative representative for ASSA, I would also like to express our thanks in supporting SJR 5. Keeping public lands open to the public is often under appreciated until something is taken away. We hope that you work with the supporters of SB 45 and not allow trails to be taken away from Alaskans.

Sincerely,

Lance Stevens

ASSA Legislative Rep.
17419 Kantishna
Eagle River, AK 99577
907-694-1825
gizmo@arctic.net
District: 25-453 Party: U Sex: M

Subject: SB 45
Date: Fri, 2 Apr 1999 09:48:17 -0900
From: "Michele Trainor" <mtt@knix.net>
To: <Senator_Rick_Halford@legis.state.ak.us>
CC: "Lance Stevens" <gizmo@arctic.net>

Dear Senator Halford,

It is my understanding that SB 45 is momentarily stalled pending changes in its wording and interpretation. Liability is currently the single most contributing factor towards access denial. Alaska has probably one of the most complete trails system in the United States. However, with the threat of liability looming over landowners' heads, we are finding access routes severed and/or denied. No one can fault the landowner for such actions. Please, if there is anything the Alaska State Snowmobile Association can do to help this process along, do not hesitate to contact us. As it stands, our state association is one of the few denied insurance coverage for this very reason. Therefore, we cannot pass it on to local clubs. The ASSA appreciates all the help and attention you have given to this matter. Thank you so very much for your time and consideration.

Sincerely,

Michele T. Trainor

****

Michele T. Trainor
President, ASSA
mtt@knix.net

SB

57

Amd 1 4/14

Amendment to CSSB 57 (Finance) to split the first "run-on" sentence into two sentences:

adopted

Page 1, line 6:

Delete "**unless** [. HOWEVER, IF]"

Insert ", However, **the department or its designee may not terminate the investigation** if"

Page 1, line 8, following "services,"

Inser "**and**"

Amendment to CSSB 57 (FIN)

Offered in the House

And: #2

4/14 moved then w/drawn

Sec. 47.24.050. Confidentiality of reports. (a) Investigation reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult filed under this chapter are confidential and are not subject to public inspection and copying under AS 09.25.110 - 09.25.125. However, in accordance with this chapter and regulations adopted under this chapter, investigation reports may be used by appropriate agencies, **legislators,** or **other** individuals inside and outside the state, in connection with investigations or judicial proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult.

SB

74

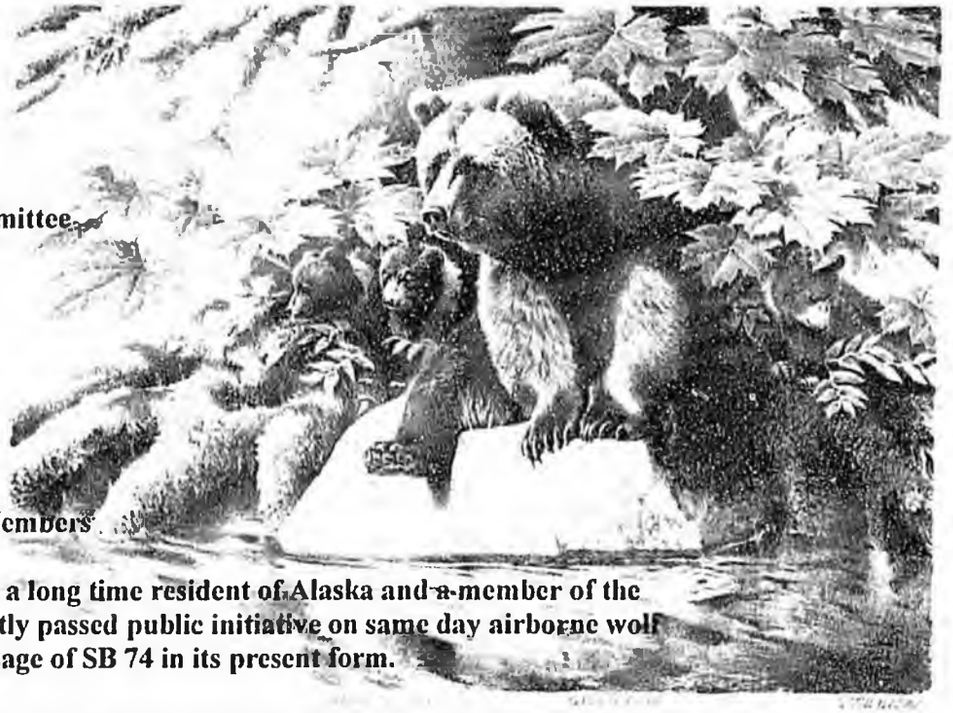
THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

In 1996 Alaskans overwhelmingly voted to ban same-day airborne wolf hunting except in the case of a biological emergency. Now, our state legislature is going against public opinion by gutting the citizens' initiative. This bill, SB 74, would allow the state to shoot wolves from the air under any circumstances. SB 74 is moving fast! **Please call your local Legislative Information Office** <u>now</u> to send a message to oppose SB 74 and any effort to change the 1996 ban on same day airborne wolf shooting.

Wolf Management Reform Coalition
P.O. Box 103424
Anchorage, Alaska 99510
907-274-WMRC (9672)

First Class Auto
Us Postage Paid
Permit #500
Anchorage, AK

Legislative Information Office Numbers: Anchorage 258-8111 • Fairbanks 452-4448 • Juneau 465-4648 • Kenai 283-2030 • Kodiak 486-8116 • Mat-Su 376-3704 • Seward 224-5066 • Sitka 747-6276 • Valdez 835-2111 • Cordova 424-5461 • Homer 235-7878 • Glenallen 822-5588 • Barrow 852-7111 • Bethel 543-354[illegible] • Delta Junction 895-4236 • Dillingham 842-5319 • Kotzebue 44[illegible]3880 • Nome 4[illegible]8-5555 • Petersburg 772-3741 • Tok 883-5020 • Wrangell 874-3013



Statement of Richard T Wallen
To Alaska House Judiciary Committee
Juneau, Alaska

May 3, 1999

Mr. Chairman and Committee Members

My name is Richard Wallen. I'm a long time resident of Alaska and a member of the Steering Committee for the recently passed public initiative on same day airborne wolf shooting. I'm opposed to the passage of SB 74 in its present form.

I served a term on the Board of Game from 1990 to 1993 following a decade of bitter controversy on the wolf issues. In an effort to resolve the issues a citizens' Wolf Management Planning Team, recommended by the board, was formed and facilitated by the Alaska Department of Fish and Game. Members of the team came from all parts of the state and represented many viewpoints on wolf issues from those of animal protectionists to those of aerial wolf hunters. I recall that there were twelve team members and they convened monthly or bi-monthly during 1991 in different parts of the state. I attended several of the meetings, alternating with other Board of Game members.

Among the points of consensus coming out of this effort was a recommendation that same-day airborne hunting be banned, that wolves be elevated, for management purposes, to equal status with other large mammals, and that control programs be a special tool to be applied when ungulates were threatened with a decline toward a "predator pit". Not withstanding the recommendations of the team, in late 1992 the board authorized three controversial wolf control programs over areas of the state about the size of Montana. Some of the team members, feeling betrayed, resigned in protest, and state and national public reaction was swift and painful for Alaska. Bowing to the magnitude of the protest, Governor Hickel halted the programs and convened a National "Wolf Summit" in Fairbanks, which I attended. The consensus of the Summit mirrored that of the Planning Team. Wolf Control should be reserved to prevent incipient biological emergencies.

The scale of the protest was beyond anyone's predictions. By the state's own figures, when the Governor cancelled the control programs, Alaska had lost $85.6 million dollars in tourism revenues, and many millions more when the loss of Alaska jobs was figured in. I have included copies for you from the Alaska Economic Report, Feb:1993.

Some people dismiss that protest as interference in Alaska's affairs by 'Outsiders'. This conclusion overlooks Alaska public opinion. It dismisses the work of the Planning Team, the Wolf Summit, Alaska public opinion polls, and the recently passed Public Initiative.

Alaska's expensive Wolf Wars have exacted a toll in time, money and public confidence in Alaska's wildlife managers. Their history is one of wolf control advocates winning battles with Boards and Legislatures while losing the war in both public opinion and in control programs carried out. SB 74 in its present form will trigger another round in the Wars if control programs are instituted when no impending biological emergency can be demonstrated, if agents other than Fish and Game personnel are used, or if other actions are taken outside the guidelines approved by the voters in the initiative.

R.T. Wallen Studio, P.O. Box 21063, Juneau, Alaska 99802, 907-586-6517

Alaska State Legislature

Senate

Official Business

State Capitol
Juneau, AK. 99801-1182

Senator Pete Kelly

Sponsor Statement

Senate Bill 74

An Act Relating to Hunting on the Same Day Airborne

Sound Wildlife management dictates that predation pressure on a low or declining prey population is reduced far before the situation becomes an emergency. The current statutory language precludes this option. This means that the Board of Game and Department of Fish and Game cannot respond quickly to precipitous declines or to long-term declines in important prey populations, caused by weather or any other reason, even if consequences for thousands of Alaskans would be severe.

The current statute would preclude taking immediate action without board approval of a control program. In 1994 the department had to take immediate action to medicate or remove two louse-infected wolves that left the Kenai Peninsula in order to prevent the spread of lice to other parts of the state. While uncommon, such situations do occur and aerial shooting should remain a clear option.

The current wording of AS 16.05.783 has the appearance of allowing the Board of Game to authorize a wolf control program using aerial shooting, but the language chosen would make that nearly impossible without legal challenge. The use of the terms "adequate data", "no feasible solution" and "biological emergency" in AS 16.05.783(a)(1) are problematic from both biological and legal points of view. Rather than establishing workable standards for determining when predation control is appropriate, the language creates ambiguity in that regard, which will lead to endless legal challenges.

This bill would preserve the original stated intent of the 1996 ballot measure, but would more clearly provide the board and department the latitude to employ aerial shooting for management purposes. Management actions should not be considered "hunting" when performed by department personnel or persons acting as agents of the state.

May 7, 1999 (a)

5/7

DRAFT to AMEND SB No. 74 #2
Senator Pete Kelly

*Section 1: (a) would read

(a) A person may not shoot [OR ASSIST IN SHOOTING] a free-ranging wolf, wolverine, fox, or lynx the same day that a person has been airborne. However, the Board of Game may authorize a predator [WOLF] control program involving shooting from the air if

*Section 1: (1) would read:

(1) The Commissioner of Fish and Game makes written findings based on biological data that

(A) Predation is an important factor contributing to low or to a declining prey population that is inconsistent with a game management program authorized by the Board of Game and
(B) Reduction of predation can reasonably be expected to result in aiding an increase in the prey population or in arresting the decline of a prey population or,
(C) A disease or parasite is threatening the normal biological condition of a predator population or, if left untreated would spread to other populations.

*Section 1: (2) would read:

(2) The Commissioner determines that airborne or same day airborne shooting is necessary to accomplish a game management program authorized by the Board of Game.

5/7

Amendment #1

OFFERED IN THE HOUSE BY REPRESENTATIVE CROFT
TO: SB 74

1. Page 1, line 5 insert after "airborne."

"However, the Board of Game may authorize a wolf control program involving the shooting of wolves from the air if

(1) the Commissioner of Fish and Game makes written findings demonstrating that a biological emergency exists and that there is no feasible solution other than airborne control to eliminate the biological emergency, and
(2) the program is conducted only by Department of Fish and Game personnel
(3) the program is limited to the specific geographical area where the biological emergency exists, and
(4) the program removes only the minimum number of wolves necessary to eliminate the biological emergency.

2. Page 2, line 8, after "flight" delete

"; and
(2) an employee or agent of the department who, as part of a game management program, is authorized to shoot or to assist in shooting wolf, wolverine, fox, or lynx on the same day that the employee or agent has been airborne."

Insert:
"; or
(2) activities conducted by the Department of Fish and Game to remove diseased or louse infected wolves that are considered a threat to the health of the population."

3. Page 2, line 13 insert

"Sec. 3 AS 1605.783 (d) is amended to read:
(2) "biological emergency" means a condition , as determined by the commissioner, where a wolf population in a specific geographic area is causing a serious decline in a prey population to the point that the prey population might not likely recover within a reasonable time without implementing wolf control."

4. Page 2, line 13, Sec. 3 is renumbered to Sec. 4

5/3/99
Dick Bishop

Alaska Outdoor Council Testimony
Senate Bill 74
"An Act relating to hunting on the same-day airborne."

The Alaska Outdoor Council supports Senate Bill 74. The Defenders of Wildlife, a national animal rights group, was instrumental in passing Ballot Measure 3 in 1996. Alaska voters were misled into believing that the ballot initiative would not prevent the Alaska Department of Fish and Game or the Board of Game from using same-day airborne taking if necessary to address wildlife conservation problems.

In reality, the initiative language was skillfully written so that the state could never use same-day airborne taking. While the wording of AS 16.05.783 appears to allow the Board of Game to authorize a wolf control program using same-day airborne taking, the choice of terms such as "biological emergency", "adequate data", and " no feasible solution" ensure that no program authorized by the board under this section could withstand a legal challenge by animal rights activists.

A basic premise of sound wildlife conservation is to manage in a manner that prevents decimation of wildlife populations important to tens of thousands of Alaskans. AS 16.05.783 requires not only that managers allow a "biological emergency" to occur before being allowed to take action, but that biologists demonstrate "with adequate data" that a wolf population "is causing the irreversible decline of a prey population" and that "there is no feasible solution other than airborne control" that can eliminate the emergency.

No professional biologist would ever risk his or her credibility attesting to these unreasonable criteria. There has never in the State of Alaska's history ever been an irreversible decline of a game population; the addition of a single animal to a severely diminished population, by definition, means that a decline is not irreversible. Moose and caribou declines are almost always the result of a host of mortality factors like weather, bear and wolf predation, not wolf predation alone. Finally, it can always be argued in court that feasible solutions exist other than airborne control to reduce mortality on a herd, such as stopping all hunting, habitat acquisition and improvement, heavier bear harvests, and even poisons. Therefore, the current wording of AS 16.05.783 provides limitless opportunities for a successful court challenge of any necessary state management program.

Senate Bill 74 does not allow same-day airborne hunting by the general public. It clarifies that same-day airborne taking can only be conducted by the state if a state management action is authorized by the Board of Game or the commissioner. In short it clarifies what the voters thought they were voting on in 1996.

As we have been discussing SB 74, the Alaska Board of Game is struggling with a chronic decline of moose and caribou numbers in Game Management Unit 13, one of the most important hunting areas in Alaska. A severe decline in moose numbers has already occurred in the upper Kuskokwim River drainage. AS 16.05.783, drafted by anti hunting and anti management activists, is providing the administration a most convenient excuse to take no effective management action to ensure sustained yield management for the benefit of thousands of Alaskans.

ALASKA AIRBORNE HUNTING SURVEY - JULY 1995 *
Conducted by Dittman Research Corporation, Anchorage, AK

METHODOLOGY

In July 1995, five hundred seventeen (517), randomly selected Alaskans over the age of 18, located in 64 communities were personally contacted by professional interviewing employees of the Dittman Research Corporation. A random sample design was used which ensured that all households had an equal chance of being polled. Data processing was completed through a computer system featuring the Statistical Package for the Social Sciences (SPSS/PC+) program. Citizen opinion measurements by the Dittman Research Corporation, utilizing these methods and data processing systems, have proven to be virtually perfect predictors of political election results in Alaska for the past twenty-five years.

FINDINGS

Question: "Please tell me whether you agree or disagree with this next statement: No person should use an airplane in the act of hunting wolves, and is that strongly (agree/disagree) or just somewhat (agree/disagree)?"
Response: 66% agree (50% strongly agree, 16% somewhat agree)
31% disagree (15% strongly disagree, 16% somewhat disagree)
4% unsure

Question: "Do you agree or disagree with this statement: It is unsporting and violates a basic principle of hunting ethics for a person to use an airplane in the act of hunting wolves?"
Response: 71% agree (57% strongly agree, 14% somewhat agree)
25% disagree (13% strongly disagree, 12% somewhat disagree)
4% unsure

Question: "Do you agree or disagree with this statement: If a biological emergency exists, such as a moose or caribou population in danger of local extinction, the Department of Fish and Game should be allowed to use airplanes to conduct limited aerial wolf control programs?"
Response: 69% agree (39% strongly agree, 30% somewhat agree)
26% disagree (17% strongly disagree, 9% somewhat disagree)
5% unsure

Question: "If Alaska had a statewide ballot initiative that said, "No person may shoot a wolf, coyote, wolverine, fox or lynx that same day that person is airborne. However, if authorities conclude that a biological emergency does exist, a same-day aerial wolf control program conducted by Fish and Game personnel only may be authorized" - Do you think you would vote for or against that initiative?"
Response: 63% For
33% Against
4% Unsure

Please note that the support for the initiative exceeded opposition in all geographic regions of Alaska:

Rural: 57% for, 45% against
Central: 55% for, 42% against
Southcentral: 65% for, 33% against
Anchorage: 66% for, 29% against
Southeast: 62% for, 27% against

* *The poll was commissioned by Defenders of Wildlife.*

Sen. F. Kelly.

ALASKA AIRBORNE HUNTING SURVEY - NOVEMBER 1998 *
Conducted by Dittman Research Corporation, Anchorage, AK

METHODOLOGY

During the period of November 5 through November 16, 1998, five hundred six (506) Alaskans over the age of 16, located in 64 communities, were personally contacted via telephone by professional interviewing employees of the Dittman Research Corporation of Alaska. The views and opinions of Alaska residents were recorded on a strictly confidential basis. A random sample design was used which ensured that all households had an equal chance of being polled. Data processing was completed through a computer system featuring the Statistical Package for the Social Sciences (SPSS) program. Citizen opinion measurements by the Dittman Research Corporation, utilizing the previously described methodology, analytical procedures and data processing systems, have proven to be virtually perfect predictions of political election results in Alaska for the past twenty-eight years.

FINDINGS

In 1996 Alaskan voters approved an initiative to ban the same-day airborne killing of wolves by a margin of 58% to 42%. Today, two years later (1998), the margin appears to remain consistent - reported current support exceeds opposition by 17% (56% support, 39% oppose) and 70% say they would oppose legislative attempts to overturn the ban on airborne hunting.

Question: "And what's your opinion now, two years later - do you support or oppose the hunting of wolves the same day that hunters had been flying?"
Response: 56% oppose
39% support
5% unsure

Question: "Under Alaska law, the State Legislature could attempt to repeal the current ban on same-day airborne wolf hunting early next year. Would you support repealing the ban, or do you feel the ban should be left in place?"
Response: 70% Leave ban in place
24% Repeal the ban
6% unsure

Opposition to repealing the same-day airborne hunting ban exceeds support in all geographic regions of Alaska and regardless of political affiliation.

Rural: 65% oppose, 30% support

Central: 62% oppose, 31% support

Southcentral: 62% oppose, 32% support
Anchorage: 76% oppose, 19% support
Southeast: 76% oppose, 15% support

Democrat 76% oppose, 19% support

Republican 60% oppose, 37% support

* *The poll was commissioned by Defenders of Wildlife.*

April 30, 1999

Dear Representative:

Attached are some materials relating to SB74, which passed the Senate in early March, and is currently in the House. These include the House district breakdown of the 1996 vote on Proposition 3, the breakdown of the Statewide vote by town and village, a 1998 Dittman poll, and an economic report of costs to the state's tourism industry.

As members of the coalition responsible for the citizen initiative that restricted same-day airborne wolf hunting (now AS 16.05.783), we urge you to vote against SB 74 as w..ten.

We believe that SB74 does not currently reflect the will of the people in this state, nor does it represent the view of the people in your district. We believe that the public still opposes the use of aircraft to control wolves unless wolves are causing a serious decline in a prey population and there is no other alternative. SB 74 eliminates this standard completely. In addition, SB 74 allows the use of agents, raising serious questions of control and accountability.

A suggested amendment to address Senator Kelly's concerns regarding As 16.05.783 was rejected by Senator Kelly, even though it had the support of the Alaska Department of Fish and Game and others.

Proposed aerial wolf control programs have drained state time and resources over the years and have rarely been implemented. In 1996, an overwhelming 58.5 % of alaskans voted against this method absent a serious biological problem. There is simply no widespread pressure to change current law. High numbers of wolves are already being taken each year by other legal means, such as trapping, snaring, and ground shooting, and the state is presently controlling wolves through sterilization and relocation.

We urge you to vote in accordance with the people of Alaska and your district and oppose SB 74.

Sincerely,

Doug Pope, Former chairman, Alaska Board of Game

Douglas Pope

R.T. Wallen, Former member, Alaska Board of Game

R.T. WALLEN

Joel Bennett, Former member, Alaska Board of Game

Joel Bennett

James Brooks, Former Commissioner of Fish and Game

James W. Brooks

Jack Lentfer, Former Regional Supervisor, Alaska Department of Fish and Game

Jack W. Lentfer

Alaska Conservation Voice

750 W. 2nd Ave. #109, Anchorage AK 99501 / Ph. 907-258-6171 / Fax 907-258-6177
P.O. Box 22151, Juneau AK 99802 / Ph. 907-463-3366 / Fax 907-463-3312 / unite@akvoice.org

To: House Judiciary Committee
Subject: Senate Bill 74
Date: 5/3/99

The Alaska Conservation Voice, is a coalition of twenty-nine conservation organizations representing over 15,000 individuals statewide. We oppose Senate Bill 74, as it subverts the will of the citizens of Alaska that was explicitly expressed through passage of a 1996 ballot initiative.

The Alaskan public supports the principals of fair chase and repeatedly show overwhelming opposition to same-day airborne wolf hunting, whether the hunter is from out of State looking for a trophy or a sanctioned representative of the Alaska Department of Fish and Game conducting predator control.

SB 74 would allow same-day airborne shooting of wolves without a biological emergency. We take issue with this attempt to decry agency wildlife management and attempt to legislate these decisions by decree. Emotions run high when wolves are hunted from planes. Currently, extensive public outreach is implemented before initiating same-day airborne predator control. The public does not consider killing wolves a routine element of good wildlife management.

The Alaskan public has already spoken via the initiative process regarding their opinion on the issue of same-day airborne wolf hunting. We urge you to be responsive to their voices. Please oppose SB 74.

(3) the person exhausted all other practicable means to protect life and property before the bear was taken.

(d) Notwithstanding (a) — (c) of this section, the department may authorize the taking of a problem brown or grizzly bear within one-half mile of a solid waste disposal facility at any time, if the taking of the bear is necessary to protect the public and is consistent with sound game management principles.

(e) In this section

(1) "criminal negligence" has the meaning given in AS 11.81.900(a);

(2) "property" means

(A) a dwelling, permanent or temporary;

(B) an aircraft, boat, automobile, or other conveyance;

(C) a domestic animal;

(D) other property of substantial value necessary for the livelihood or survival of the owner;

(3) "solid waste disposal facility" means a facility for the disposal of solid waste, other than sewage, for which a permit has been issued under AS 46.03.100. (§ 1 ch 64 SLA 1989)

Sec. 16.05.783. Prohibition of same-day airborne hunting. (a) A person may not shoot or assist in shooting a free-ranging wolf, wolverine, fox, or lynx the same day that a person has been airborne. However, the Board of Game may authorize a wolf control program involving the shooting of wolves from the air if

(1) the commissioner of fish and game makes written findings based on adequate data demonstrating that a biological emergency exists and that there is no feasible solution other than airborne control to eliminate the biological emergency, and

(2) the program is conducted only by Department of Fish and Game personnel

(3) the program is limited to the specific geographical area where the biological emergency exists, and

(4) the program removes only the minimum number of wolves necessary to eliminate the biological emergency.

(b) This section does not apply to a person who was airborne the same day if that person was airborne only on a regularly scheduled commercial flight.

(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. In addition, the court may order the aircraft and equipment used in or in aid of a violation of this section to be forfeited to the state.

(d) In this section,

(1) "free-ranging" means that the animal is wild and not caught in a trap or snare; and

(2) "biological emergency" means a condition where a wolf population in a specific geographic area is causing the irreversible decline of a prey population to the point that the prey population may not likely recover without implementing wolf control. (§ 1 1996 Ballot Measure No. 3)

Effective dates. — 1996 Ballot Measure No. 3, which proposed enactment of this section, was approved by a majority of the voters in the November 5, 1996 election. It was certified on November 27, 1996 and took effect February 25, 1997.

Sec. 16.05.785. Effect of failure to remove old markers. If the Board of Fisheries by regulation uses department markers to establish waters closed to commercial fishing and the state fails to remove the old markers when new markers are posted to establish waters closed to commercial fishing, commercial fishing is expressly permitted in the waters between the new markers and the old markers until the old markers are removed. (§ 1 ch 70 SLA 1980)

ALASKA BOATING ASSOCIATION

House Judiciary Committee Members:

Rep. Pete Kott
Rep. Joe Green
Rep. Jennette James
Rep. Lisa Murkowski
Rep. Norman Rokeburg
Rep. Eric Croft
Rep. Beth Kertula

I urge you to support the passage of SB 74 allowing the Fish and Game Department to use same day air borne management techniques in the management of wolves and other furbearers without the difficulties of first defining "biological emergency". Please do not allow well financed, state side, animal rights groups to influences your decision on this issue. When wildlife managers are not allowed to act before biological emergencies occur, biological disasters are often the result. Alaska's Wildlife Resources should be maintained for all Alaskan's for all times. Professional management with public input through our system of Advisory Committees and the Board of Game is the best way to manage our Wildlife Resources. Passage of SB 74 will provide the Department with a needed tool in the management of our Wildlife Resources. Again I urge you to support the SB 74.

Cliff Judkins, President
Alaska Boating Association

Cliff Judkins - President • P.O. Box 874124 • Wasilla, Alaska 99687
(907) 373-3591 • Fax 373-3592 • E-Mail: cjudkins@customcpu.com

To: Pete Kott, Chair, House Judiciary Committee
House Judiciary Committee

From: Richard Flanders
1870 Becker Ridge Rd.
Fairbanks, AK 99709-2709
richardflanders@compuserve.com

Re: SB74

I would like to voice support for SB74 that would allow ADF&G, under permit, to carry out predator control when they feel necessary. I think this would allow the department to manage predators when they feel it necessary, and to do it without a protracted court battle. They are the experts in the matter and we need to listen to them and do whatever necessaty to make it possible for them to do what we pay them to do.

Richard Flanders
(907)479-8873

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HOUSE JUDICIARY
Committee Name

Committee on SB 74 Dated 5-3-99
Bill / Subject

MY NAME IS ED DAVIS. I AM AN AVID (& SUCCESSFUL CONSISTENTLY) MOOSE HUNTER. I AM ALSO A CO FOUNDER OF "ALASKANS FOR FAIR CHASE", A GROUP OF FAIRBANKS HUNTERS WHICH ADVOCATES:

1) AN END TO AIRBORNE WOLF CONTROL BY THE GENERAL PUBLIC
2) HUNTING ETHICS (IE USE OF WILDERNESS SKILLS TO LOCATE & PURSUE GAME)

WE OPPOSE AIRBORE WOLF CONTROL AS IT WOULD BE ALLOWED UNDER SB-74, BECAUSE: 1) IT BRINGS BACK THE DAYS OF LAND & SHOOT WOLF CONTROL (LAND & SHOOT CANNOT WORK & INVITES RAMPANT VIOLATIONS)

2) THE LACK OF HUNTER ETHICS REQUIRED UNDER THIS BILL WILL:
   A) UNDERMINE THE IMAGE AND PUBLIC RESPECT OF ALL HUNTERS
   B) ALLOW ANYONE TO BECOME AN AGENT OF THE STATE, AND PARTICIPATE IN AIRBORNE WOLF CONTROL, REGARDLESS OF WHETHER IT MAY BE BIOLOGICALLY JUSTIFIED IN A PARTICULAR TIME AND PLACE.

POLLS LEADING UP TO THE 1996 ELECTION SHOWED THAT A MAJORITY OF HUNTERS IN ALASKA OPPOSE AERIAL WOLF HUNTING. I URGE THIS COMITTEE TO REVISE THIS BILL TO ALLOW SAME DAY AIRBORNE WOLF CONTROL ONLY

1) WHEN AND WHERE IT IS BIOLOGICALLY JUSTIFIED, AND
2) IN A MANNER WHICH PREVENTS THE WHOLESALE ABANDONMENT OF HUNTER ETHICS AND REAUTHORIZATION FOR THE GENERAL PUBLIC TO PARTICIPATE IN AIRBORNE WOLF CONTROL.

SIGNED: Ed Davis
Testifier

ALASKANS FOR FAIR CHASE
Representing

BOX 71616
FAIRBANKS, AK 99707
Address / Phone Number

Surveys show cancelled reservations and postponed trips

Wolf hunt cost to tourism: $100 million-plus?

The controversial aerial wolf hunt planned, and then temporarily cancelled, by state game officials may already have cost Alaska's tourism industry some $100 million to $150 million in lost revenues, industry leaders say. Surveys by the Alaska Tourism Marketing Council, a joint state-private tour promotion agency, calculate a direct loss of sales of $85.6 million because of a tourism boycott called by U.S. wildlife protection groups. When the secondary impacts of jobs and lost money in the economy is added, the figure climbs to as high as $150 million, according to Bob Dindinger, vice chairman of ATMC, and operator of a Juneau tour company. Dindinger, and other industry officials, presented the statistics at Governor Hickel's recent "wolf summit" in Fairbanks.

Six percent halted Alaska trips

ATMC sampled from among 200,000 people who had contacted the agency between Sept. 1 and Dec. 1 for advice on planning their summer, 1993 trip to Alaska. Nearly six percent of the group surveyed said they would cancel or postpone their travel plans for 1993. One in three surveyed had heard about an Alaska issue concerning wolves, and 20 percent said they knew details about the wolf killing issue.

ATMC did two waves of surveys. The first was before animal rights groups ran national advertising urging a tourism boycott of Alaska, when public opinion would be formed only by news accounts. The second followed the national ads. Signiciantly, the surveys showed postponements to grow by 200 percent, outright cancellations to grow by 50 percent and reconsideration of Alaska travel plans to increase by 75 percent. The scary thing, Dindinger said, was that animal rights groups cancelled the boycott midway between Wave 1 and Wave 2 research, but only 53 percent of Wave 2 respondents had heard the controversial hunt was cancelled.

ATMC , comprised of state officials and industry, will meet in February to consider options. More research will unlikely be done, but the association will also consider targeted media — cable TV, selected direct mail, public relations work with editors — to try and refurbish Alaska's tattered image.

Alaska Wilderness Recreation nd Tourism Assoc., the trade group of some 158 mostly-small Alaska firms specializing in the fast-growing recreation and "eco-tourism" end of the business, reported results of surveys of its members. Forty four, or 28 percent, of AWRTC members responded to the survey, and while only one reported outright cancellations, most firms reported a definite slowdown in reservations during December.

Kirk Hoessle, owner of Alaska Wildland Adventures, reported his sales as of Dec. 31 were 15 percent below sales at that same time in 1991. The company had planned for growth based on prior years' experience, and December's lost sales will cost the company some $115,000, he said. Tom Garrett, an association board member who operates Alaska Discovery Tours, a company that had offered wilderness tours for 22 years in different parts of Alaska, said his company had been booking trips at 50 percent above 1991 during November and early December. From Dec. 13, when news of the wolf hunt hit the national press, until Dec. 30, his company did not book a single tour. Since then inquiries and bookings have returned the earlier levels, but the interruption created real concern among company officials.

"Eco-tour" volume grows fast

Alaska Discovery gave these figures are examples of how small wilderness and wildland tours benefit local economies: The company's seven Arctic National Wildlife Refuge tours in summer, 1992, brought these revenues to Interior Alaska firms: C-Air Charters, $10,522.50; Colville River Mercantile, $1,737.80; Fairbanks Bed & Breakfast, $2,176.08; Frontier Flying Service, $153.25; National Car Rental, $1,153.45; Mike O'Connor, $1,200; Wright Air Service, $15,683.45; Yukon Air Service, $11,613, for a total of $44,239.53. What is more significant is the rate of growth of spending. In 1991, for the same tours, the company spent $31,522. In 1993, some $50,000 is projected.

SB

77

Amendment # 1

OFFERED IN THE HOUSE BY REPRESENATIVE CROFT
TO: CS SB 77 (JUD)

adopted 4/8

1. Page 1, line 8
2. Delete "related to"
3. Insert "based on"

4. Page 1. Line 8
5. Delete "design, or marketing"
6. Insert "or design"

7. Page 1, line 10 after "design,"
8. Insert "a manufacturing defect,"

Cory - Sam wants you to take a quick look & tell him what you think

SB

99

SPONSOR STATEMENT

SENATE BILL 99

"An Act to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate."

This legislation was introduced to end discrimination against members of the Armed Forces in legislative redistricting and insure that future redistricting plans are based on census figures derived from an actual count of every Alaskan.

Senate Bill 99 will eliminate confusion by placing in our statutes clear answers to two major questions as we prepare for the United States census in the year 2000 and the subsequent redrawing of legislative district boundaries. It will end the discriminatory practices of previous redistricting boards and direct that census numbers derived from estimates or adjustments based on statistical sampling will not be used to redraw district lines.

The 1959 Alaska Constitution directed that only the "civilian" population be considered when the boundaries for State House and State Senate districts were drawn. During the 1960s, reapportionment boards ignored the presence of members of the Armed Forces completely, while later boards assigned various percentage values to service members.

In 1970, each soldier, sailor, airman, marine and coast guardsman in Alaska was counted as 11% of a resident, while in the 1980 redistricting they were counted as 35% of other Alaskans. That's even worse discrimination than used before the Civil War when slaves were counted at only 60% of a person for Congressional apportionment. The redistricting board of 1990 was the only one to count members of the military equally with other residents.

Today, Alaskans recognize that occupational discrimination is just as wrong as discrimination based on race, religion, sex, age, color, or national origin and that is why the voters removed the word "civilian" from the Alaska Constitution at the 1998 election. But, court decisions from old legal challenges to previous redistricting boards might still be used as an excuse to undercount our neighbors in the military. Senate Bill 99 will establish a

statutory bar to future redistricting discrimination and insure the men and women serving here in our Armed Forces will not be treated as second-class Alaskans.

SB 99 will also clarify questions regarding which numbers from the United States Bureau of the Census will be used by future redistricting boards to reapportion Alaska's Legislature.

Some people have been actively arguing that statistical sampling and estimates replace the actual head count of every American in the decennial census. Earlier this year, the U.S. Supreme Court prohibited the use of adjusted or estimated figures in reapportioning the seats in the U.S. House of Representatives among the states. But that decision left the door open for the Census Bureau to develop figures through sampling and estimates and make them available to the states along with the results of the traditional count. This bill will close that door in Alaska for purposes of Legislative reapportionment.

If the Census Bureau's report of the decennial census includes more than one set of figures for Alaska, SB 99 will facilitate the work of the redistricting board and avoid litigation over the plan they they produce . SB 99 would prohibit them from using any numbers produced by estimates or sampling adjustments and directs them to use only the results of the actual count of Alaska population, just as the nation has been doing for 210 years.

[redacted]

FISCAL NOTE

N[redacted]

4/12

STATE OF ALASKA
1999 Legislative Session

Bill Version: CSSB 99 (FIN)
(S) Publish Date: 3-22-99

Revision Date: 03/22/99
Title: Redistricting Board/Census Figures

Sponsor: (S) Rules
Requestor: Senate Rules Committee

Dept. Affected Law
BRU Civil Division
Component Government Affairs Section
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY01	FY02	FY03	FY04	FY05
Personal Services	0.0					
Travel	0.0					
Contractual	0.0					
Supplies	0.0					
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
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	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) costs: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared By: SENATE FINANCE COMMITTEE

Sean Parnell

SENATOR SEAN PARNELL, CO-CHAIR

Date: 3/11/99
Phone: 465-2995

SENATOR JOHN TORGERSON, CO-CHAIR

Date: 3/11/99
Phone: 465-2828

I-LS0380\S
Kurtz
4/10/99

4/12

HOUSE CS FOR CS FOR SENATE BILL NO. 99( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act providing for preparation for redistricting before appointment of the Redistricting Board; relating to preclearance under the Voting Rights Act of 1965, as amended; clarifying the meaning of 'decennial census of the United States' in art. VI, Constitution of the State of Alaska; prohibiting discrimination and use of census numbers that are estimates or that have been adjusted based on sampling in the redistricting of the house of representatives and the senate; and prohibiting expenditures of public funds for population surveys or sampling for certain purposes relating to legislative redistricting without an appropriation."

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

* **Section 1.** FINDINGS. The legislature finds that

(1) a fair and impartial redistricting requires

(A) the assimilation, compilation, and analysis of large amounts of data

and maps;

(B) complex statistical analysis; and

(C) a thorough consideration of legal issues under the Constitution of the State of Alaska and the Constitution of the United States;

(2) there is an enormous amount of preparatory work that must be done before the appointment of the Redistricting Board if the Redistricting Board is to adopt a fair and impartial plan within 30 days after receiving redistricting data from the United States Bureau of the Census;

(3) Alaska's redistricting plan will be subject to review by the United States Department of Justice under 42 U.S.C. 1973 - 1973l (Voting Rights Act of 1965, as amended);

(4) ensuring that the redistricting plan complies with the provisions of 42 U.S.C. 1973 - 1973l, as amended, will require in-depth analysis of voting patterns over the past decade;

(5) the United States Bureau of the Census has traditionally conducted an actual enumeration of the American people and reported the results of that actual enumeration, without statistical adjustment, to the states for purposes of redistricting;

(6) the United States Bureau of the Census has announced plans to use sampling and estimates to adjust the actual population counts in the 2000 census;

(7) the United States Supreme Court, in Department of Commerce v. United States House, 119 S.Ct. 765 (1999), has interpreted existing federal law to prohibit the use of adjusted or estimated figures in reapportioning the seats in the United States House of Representatives among the states;

(8) the United States Supreme Court, in Department of Commerce v. United States House, 119 S.Ct. 765 (1999), declined to address the constitutionality of the use of sampling and estimates by the census bureau in developing decennial census counts;

(9) the United States Supreme Court's decision in Department of Commerce v. United States House, 119 S.Ct. 765 (1999), did not resolve the issue of whether the census bureau may supply states with adjusted or estimated census figures for use in redistricting;

(10) each decade since statehood, Alaska's redistricting plan has been the subject of expensive litigation;

(11) in the past, Alaska's redistricting boards have sometimes relied on surveys

and population estimates in order to remove Alaska's military population from the decennial census figures in order to comply with the former wording of art. VI, secs. 3 and 5, Constitution of the State of Alaska, which referred to the "civilian population"; and

(12) although recent amendments to the Constitution of the State of Alaska have removed the reference to "civilian" population, court precedent regarding the exclusion of nonresident military personnel and civilian "transients" remains (see Egan v. Hammond, 502 P.2d 856, 869 (Alaska 1972); Groh v. Egan, 526 P.2d 863, 869-874 (Alaska 1974); Carpenter v. Hammond, 667 P.2d 1204, 1210-1213 (Alaska 1983); Hickel v. Southeast Conference, 846 P.2d 38, 54-56 (Alaska 1992)).

* **Sec. 2.** PURPOSE. It is the purpose of the legislature to eliminate confusion in the event the census bureau's report of the decennial census includes more than one population figure for Alaska, to facilitate the work of the Redistricting Board by identifying the appropriate census figures to be used in developing a redistricting plan, to avoid litigation over the board's redistricting plan, to prevent discrimination against any segment of Alaska's population in redistricting, to make necessary preparations for redistricting in a timely, fair, and impartial fashion, and to make tools needed for the task of redistricting available to the Redistricting Board as soon as that body is appointed.

* **Sec. 3.** AS 15.10 is amended by adding new sections to read:

Article 2. Census and Population.

Sec. 15.10.200. Definition of "decennial census of the United States" and use of census numbers by redistricting board. (a) In art. VI, Constitution of the State of Alaska, reference to the official decennial census of the United States is a reference to the census enumeration used to establish apportionment among the several states.

(b) The redistricting plan adopted under art. VI, Constitution of the State of Alaska, may not use census numbers that are estimates or that have been adjusted based on sampling, nor may the redistricting plan exclude or discriminate among persons counted based on race, religion, color, national origin, sex, age, occupation, military or civilian status, or length of residency.

(c) A qualified voter may bring an action in the superior court against the redistricting board to enforce the provisions of (b) of this section.

Sec. 15.10.210. Expenditures for population surveys or sampling prohibited. An expenditure of public funds may not be made for a population survey or sampling conducted for purposes of redistricting the legislature without an express appropriation by the legislature for that purpose.

Sec. 15.10.220. Voting Rights Act review. The independent legal counsel for the Redistricting Board provided for in art. VI, sec. 9, Constitution of the State of Alaska, shall

(1) submit the board's redistricting plan for preclearance to the United States Department of Justice or the United States District Court for the District of Columbia under 42 U.S.C. 1973c; and

(2) represent the state in all matters concerning redistricting until a final plan for redistricting and a proclamation of redistricting have been adopted and all challenges to them brought under art. VI, sec. 11, Constitution of the State of Alaska, have been resolved after final remand or affirmation.

* **Sec. 4.** AS 24.20 is amended by adding a new section to read:

Sec. 24.20.085. Preparation for legislative redistricting. (a) The Alaska Legislative Council may seek assistance as necessary from the Department of Law, the Department of Labor, and the division of elections before the appointment of the Redistricting Board.

(b) The legislative council may make arrangements for office space for the Redistricting Board and its staff before the convening of the Redistricting Board, including the leasing of appropriate facilities and office equipment.

(c) The legislative council shall compile and provide to, or contract with a third party to compile and provide to, the redistricting board the information necessary to implement a successful redistricting plan, including

(1) paper maps or a computer data base received from the United States Bureau of the Census describing all units of census geography;

(2) a computer data base of election and voter registration information from the division of elections to assist the Redistricting Board in determining compliance with 42 U.S.C. 1973-1973l (Voting Rights Act of 1965, as amended) and other statutory and constitutional requirements;

(3) information indicating the location of cultural, economic, geographic, demographic, and trade area factors in the state; and

(4) information or analysis of state and federal court decisions concerning reapportionment.

(d) The legislative council is responsible for developing a computerized system that uses census data and maps to prepare plans for state senate and house districts in conformity with statutory and constitutional criteria and within applicable time constraints. The legislative council may contract for the acquisition of the computer software and hardware and for the provision of computer services that are necessary to prepare for redistricting. The computer system must be developed so that it can be made available for use by the Redistricting Board immediately upon the Redistricting Board's convening.

(e) The legislative council

(1) shall prepare a budget and an accounting procedure for the Redistricting Board; and

(2) may, upon request of the Redistricting Board, prepare and submit supplemental appropriation requests for the work of the board.

* **Sec. 5.** SEVERABILITY. Under AS 01.10.030, if a provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions of the Act that can be given effect without the invalid provision.

1-LS0380\N
Kurtz
4/5/99

never presented

HOUSE CS FOR CS FOR SENATE BILL NO. 99( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act providing for preparation for redistricting before appointment of the Redistricting Board; relating to preclearance under the Voting Rights Act of 1965, as amended; clarifying the meaning of 'decennial census of the United States' in art. VI, Constitution of the State of Alaska; prohibiting discrimination in the redistricting of the house of representatives and the senate; and prohibiting expenditures of public funds for population surveys or sampling for certain purposes relating to legislative redistricting without an appropriation."

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

*** Section 1.** FINDINGS. The legislature finds that

(1) a fair and impartial redistricting requires

(A) the assimilation, compilation, and analysis of large amounts of data and maps;

(B) complex statistical analysis; and

(C) a thorough consideration of legal issues under the Constitution of the State of Alaska and the Constitution of the United States;

(2) there is an enormous amount of preparatory work that must be done before the appointment of the Redistricting Board if the Redistricting Board is to adopt a fair and impartial plan within 30 days after receiving redistricting data from the United States Bureau of the Census;

(3) Alaska's redistricting plan will be subject to review by the United States Department of Justice under 42 U.S.C. 1973 - 1973l (Voting Rights Act of 1965, as amended);

(4) ensuring that the redistricting plan complies with the provisions of 42 U.S.C. 1973 - 1973l, as amended, will require in-depth analysis of voting patterns over the past decade;

(5) the United States Bureau of the Census has traditionally conducted an actual enumeration of the American people and reported the results of that actual enumeration, without statistical adjustment, to the states for purposes of redistricting;

(6) the United States Bureau of the Census has announced plans to use sampling and estimates to adjust the actual population counts in the 2000 census;

(7) the United States Supreme Court, in Department of Commerce v. United States House, 119 S.Ct. 765 (1999), has interpreted existing federal law to prohibit the use of adjusted or estimated figures in reapportioning the seats in the United States House of Representatives among the states;

(8) the United States Supreme Court, in Department of Commerce v. United States House, 119 S.Ct. 765 (1999), declined to address the constitutionality of the use of sampling and estimates by the census bureau in developing decennial census counts;

(9) the United States Supreme Court's decision in Department of Commerce v. United States House, 119 S.Ct. 765 (1999), did not resolve the issue of whether the census bureau may supply states with adjusted or estimated census figures for use in redistricting;

(10) each decade since statehood, Alaska's redistricting plan has been the subject of expensive litigation;

(11) in the past, Alaska's redistricting boards have sometimes relied on surveys and population estimates in order to remove Alaska's military population from the decennial census figures in order to comply with the former wording of art. VI, secs. 3 and 5,

Constitution of the State of Alaska, which referred to the "civilian population"; and

(12) although recent amendments to the Constitution of the State of Alaska have removed the reference to "civilian" population, court precedent regarding the exclusion of non-resident military personnel and civilian "transients" remains (see Egan v. Hammond, 502 P.2d 856, 869 (Alaska 1972); Groh v. Egan, 526 P.2d 863, 869-874 (Alaska 1974); Carpenter v. Hammond, 667 P.2d 1204, 1210-1213 (Alaska 1983); Hickel v. Southeast Conference, 846 P.2d 38, 54-56 (Alaska 1992)).

*** Sec. 2.** PURPOSE. It is the purpose of the legislature to eliminate confusion in the event the census bureau's report of the decennial census includes more than one population figure for Alaska, to facilitate the work of the Redistricting Board by identifying the appropriate census figures to be used in developing a redistricting plan, to avoid litigation over the board's redistricting plan, to prevent discrimination against any segment of Alaska's population in redistricting, to make necessary preparations for redistricting in a timely, fair, and impartial fashion, and to make tools needed for the task of redistricting available to the Redistricting Board as soon as that body is appointed.

*** Sec. 3.** AS 15.10 is amended by adding new sections to read:

Article 2. Census and Population.

Sec. 15.10.200. Definition of "decennial census of the United States" and use of census numbers by redistricting board. (a) In art. VI, Constitution of the State of Alaska, reference to the official decennial census of the United States is a reference to the census enumeration used to establish apportionment among the several states.

(b) The redistricting plan adopted under art. VI, Constitution of the State of Alaska, may not use census numbers that are estimates or that have been adjusted based on sampling, nor may the redistricting plan exclude or discriminate among persons counted based on race, religion, color, national origin, sex, age, occupation, military or civilian status, or length of residency.

Sec. 15.10.210. Expenditures for population surveys or sampling prohibited. An expenditure of public funds may not be made for a population survey or sampling conducted for purposes of redistricting the legislature without an express appropriation by the legislature for that purpose.

Sec. 15.10.220. Voting Rights Act review. The independent legal counsel for the Redistricting Board provided for in art. VI, sec. 9, Constitution of the State of Alaska, shall

(1) submit the board's redistricting plan for preclearance to the United States Department of Justice or the United States District Court for the District of Columbia under 42 U.S.C. 1973c; and

(2) represent the state in all matters concerning redistricting until a final plan for redistricting and a proclamation of redistricting have been adopted and all challenges to them brought under art. VI, sec. 11, Constitution of the State of Alaska, have been resolved after final remand or affirmation.

* **Sec. 4.** AS 24.20 is amended by adding a new section to read:

Sec. 24.20.085. Preparation for legislative redistricting. (a) The Alaska Legislative Council may seek assistance as necessary from the Department of Law, the Department of Labor, and the division of elections before the appointment of the Redistricting Board.

(b) The legislative council may make arrangements for office space for the Redistricting Board and its staff before the convening of the Redistricting Board, including the leasing of appropriate facilities and office equipment.

(c) The legislative council shall compile and provide to, or contract with a third party to compile and provide to, the redistricting board the information necessary to implement a successful redistricting plan, including

(1) paper maps or a computer data base received from the United States Bureau of the Census describing all units of census geography;

(2) a computer data base of election and voter registration information from the division of elections to assist the Redistricting Board in determining compliance with 42 U.S.C. 1973-1973l (Voting Rights Act of 1965, as amended) and other statutory and constitutional requirements;

(3) information indicating the location of cultural, economic, geographic, demographic, and trade area factors in the state; and

(4) information or analysis of state and federal court decisions concerning reapportionment.

(d) The legislative council is responsible for developing a computerized system that uses census data and maps to prepare plans for state senate and house districts in conformity with statutory and constitutional criteria and within applicable time constraints. The legislative council may contract for the acquisition of the computer software and hardware and for the provision of computer services that are necessary to prepare for redistricting. The computer system must be developed so that it can be made available for use by the Redistricting Board immediately upon the Redistricting Board's convening.

(e) The legislative council

(1) shall prepare a budget and an accounting procedure for the Redistricting Board; and

(2) may, upon request of the Redistricting Board, prepare and submit supplemental appropriation requests for the work of the Board.

* **Sec. 5.** SEVERABILITY. Under AS 01.10.030, if a provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions of the Act that can be given effect without the invalid provision.

SB 100

1-LS0560\K
Luckhaupt
5/16/99

5/17 adopted

HOUSE CS FOR CS FOR SENATE BILL NO. 100(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to services of representation for indigent persons and to the payment by indigent persons for legal services and related costs."

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

*** Section 1.** AS 18.85.100(a) is amended to read:

(a) An indigent person who is under formal charge of having committed a serious crime and the crime has been the subject of an initial appearance or subsequent proceeding, or is being detained under a conviction of a serious crime, or is on probation or parole, or is entitled to representation under the Alaska [SUPREME COURT] Delinquency or Child in Need of Aid Rules, or is detained under an order issued under AS 18.15.120 - 18.15.149, or against whom commitment proceedings for mental illness have been initiated, is entitled (1) to be represented, in connection with the crime or proceeding, **at the level and to the extent required under the United States Constitution and the Constitution of the State of Alaska** [BY AN ATTORNEY TO THE SAME EXTENT AS A PERSON RETAINING AN

ATTORNEY IS ENTITLED;] and (2) to be provided with the necessary services and facilities of this representation, including investigation and other preparation, **at the level and to the extent required under the United States Constitution and the Constitution of the State of Alaska**.

* **Sec. 2.** AS 18.85.120(c) is amended to read:

(c) **The** [UPON THE PERSON'S CONVICTION, THE] court may enter a judgment that a person for whom counsel is appointed pay for services of representation and court costs **in a criminal proceeding or in a proceeding under the Alaska Delinquency Rules**. [ENFORCEMENT OF A JUDGMENT UNDER THIS SUBSECTION MAY BE STAYED BY THE TRIAL COURT OR THE APPELLATE COURT DURING THE PENDENCY OF AN APPEAL OF THE PERSON'S CONVICTION.] Upon a showing of financial hardship, the court (1) shall allow a person subject to a judgment entered under this subsection to make payments under a payment schedule; **and** (2) shall allow a person subject to a judgment entered under this subsection to petition the court at any time for remission, reduction, or deferral of **only** the unpaid portion of the judgment [; AND (3) MAY REMIT OR REDUCE THE BALANCE OWING ON THE JUDGMENT OR CHANGE THE METHOD OF PAYMENT IF THE PAYMENT WOULD IMPOSE MANIFEST HARDSHIP ON THE PERSON OR THE PERSON'S IMMEDIATE FAMILY]. Payments made under this subsection shall be paid into the state general fund.

* **Sec. 3.** AS 18.85.120 is amended by adding a new subsection to read:

(e) Judgments entered under (c) of this section shall be imposed in accordance with rules adopted by the supreme court, in consultation with the Public Defender Agency and the office of public advocacy, that establish schedules setting the costs for the services of representation and court costs for trial and appellate courts. The schedules shall be reviewed at least biennially and, when appropriate, adjusted to reflect changes in the costs for services of representation and court costs. A trial court schedule must include provisions to impose additional costs in cases where paid expert witnesses are called on behalf of the defendant.

* **Sec. 4.** AS 47.12.120(e) is amended to read:

(e) **Except to the extent that court costs are actually paid by a person**

against whom a judgment for court costs has been entered under AS 12.85.120, the [THE] department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that result in the release of the minor.

Barbara Jo COOPER, Appellant,

v.

STATE of Alaska, Appellee.

In re R. J. M., a Minor.

Christopher K. COOPER, Appellant,

v.

Barbara Jo COOPER, Appellee.

Nos. 4906, 4970.

Supreme Court of Alaska.

Dec. 24, 1981.

Mother and father appealed from orders entered by the Superior Court, Third Judicial District, Anchorage, S. J. Buckalew and Victor D. Carlson, JJ., refusing to award costs or fees to either party in child in need of aid proceeding, dismissing father's petition for modification of child custody, and awarding mother full costs and fees requested against father in child custody proceeding. The Supreme Court, Connor, J., held that: (1) mother's motion for costs and attorney fees in child in need of aid proceeding was properly denied; (2) even assuming that judge had authority to grant mother's motion to dismiss father's petition for modification of custody, which motion had been previously denied by another judge to whom case was assigned for motions, it was error to dismiss petition "with prejudice"; and (3) trial court abused its discretion in custody proceeding in awarding mother costs and attorney fees representing carry-over of substantial portion of costs and fees incurred in child in need of aid proceeding.

Affirmed in part, reversed in part and remanded.

1. Costs ⇐173(1)

General authority to make costs and attorney fee awards derives from statute governing costs allowed prevailing party. AS 09.60.010.

2. Infants ⇐205

Court has power to appoint counsel, at public expense, to represent minor or parents, in certain situations, in child in need of aid proceedings. AS 47.10.010 et seq., 47.10.050; Children's Procedure Rule 15(a).

3. Infants ⇐212

Neither civil rule governing award of attorney fees to prevailing party in action seeking recovery of money judgment nor statute governing award of attorney fees during pendency of divorce or annulment action applies to actions governed by children's rules. AS 09.55.200, 47.10.010 et seq. Rules Civ.Proc., Rule 82; Children's Procedure Rule 1(b).

4. Infants ⇐212

Mother's motion for costs and attorney fees in child in need of aid proceeding was properly denied. AS 09.55.200, 47.10.010 et seq.; Rules Civ.Proc., Rule 82; Children's Procedure Rule 1(b).

5. Infants ⇐212

Parent who successfully challenges child in need of aid petition is not a "public interest litigant" entitled to award of costs and attorney fees. AS 47.10.010 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

6. Infants ⇐212

Any benefit to public as result of mother's challenge to state's child in need of aid petition was too attenuated to justify award of costs and fees on such basis. AS 47.10.010 et seq.

7. Parent and Child ⇐2(16)

Assuming that judge had authority to grant mother's motion to dismiss father's petition for modification of custody after another judge, to whom case was assigned for motions, had denied mother's motion, it was error to dismiss petition "with prejudice." AS 09.55.205.

8. Infants ⇐19.3(5)

Statute authorizing court to modify or vacate order for custody of or visitation with minor child during minority of child precludes superior court from denying mo-

tion for change in custody "with prejudice." AS 09.55.205.

9. Infants ⇐19.3(5)

Motion to modify custody may be made at any time during minority of child and superior court has obligation to consider such request. AS 09.55.205.

10. Infants ⇐19.3(5)

Court may deny any particular request for modification of custody so long as it does not abuse its discretion in doing so, but it cannot preclude future requests for change in custody. AS 09.55.205.

11. Infants ⇐19.3(5)

Modification of custody must generally rest upon some substantial change in circumstances. AS 09.55.205.

12. Infants ⇐19.3(4)

Parties' relative economic situations and earning powers are relevant to determining whether to order award of attorney fees in custody proceeding.

13. Infants ⇐19.3(4)

Factors to be considered in determining whether to award attorney fees in custody proceeding are whether equal amount of fees has been expended by parties, whether equal amount of time and effort has been expended and whether party can plainly be designated as prevailing party.

14. Infants ⇐19.3(4)

Decision whether to make award of attorney fees in custody proceeding is committed to sound discretion of trial court.

15. Parent and Child ⇐2(16)

Trial court abused its discretion in custody proceeding in awarding mother attorney fees which represented carry-over of substantial portion of costs and fees incurred by her in child in need of aid proceeding. AS 47.10.010 et seq.

16. Infants ⇐19.3(4)

In making award of attorney fees in custody proceeding, court is limited to making award to enable other party to prosecute or defend "the action." AS 09.55.200(a)(1); Rules Civ.Proc., Rule 82(a)(1).

17. Infants ⇐19.3(4)

Phrase "the action" in provisions authorizing limited award of attorney fees to enable other party to prosecute or defend "the action" necessarily refers to case in which the award is made and does not authorize awards for costs or fees incurred in any other action, no matter how closely related issues might be. AS 09.55.200(a)(1); Rules Civ.Proc., Rule 82(a)(1).

See publication Words and Phrases for other judicial constructions and definitions.

Wayne Anthony Ross, Anchorage, for appellant-appellee Barbara Cooper.

David T. LeBlond, Asst. Atty. Gen., Anchorage, and Avrum M. Gross, Atty. Gen., Juneau, for appellee State of Alaska.

Jeanne Ames Riley, guardian ad litem for R. J. M.

Max F. Gruenberg, Jr., Gruenberg & Frenz, Anchorage, for appellant Christopher K. Cooper.

Before RABINOWITZ, C. J., CONNOR, and MATTHEWS, JJ., and GERALD VAN HOOMISSEN and WARREN W. TAYLOR, Superior Court Judges.*

OPINION

CONNOR, Justice.

These cases raise the issues of whether the superior court erred in denying a parent her costs and attorney's fees in a child in need of aid proceeding,[1] or in awarding substantially the same costs and fees on a carry-over basis in a subsequent custody proceeding.

* Van Hoomissen and Taylor, Superior Court Judges, sitting by assignment made pursuant to article IV, section 16 of the Constitution of Alaska.

1. *See* AS 47.10; Alaska Rules of Children's Proceedings.

Barbara Jo Cooper (now Tanner) and Christopher K. Cooper were married in February, 1974, and divorced in January, 1978. During their marriage the couple cared for three children, two of whom, R.J.M. and F.J.C., were Barbara Tanner's natural children by former marriages. Only K.M.C. was a natural child of this marriage. The parties' petition for dissolution of their marriage stated that they had agreed that custody of K.M.C. was to be with Barbara Tanner, and that the father, Christopher Cooper, was to have reasonable visitation rights. The petition was silent as to R.J.M. and F.J.C.

Six months after the dissolution, in July, 1978, Christopher filed a motion in the superior court seeking custody of all three children, alleging in part that he was the "psychological parent" of R.J.M. and F.J.C. Christopher made no further filings in the custody action until July, 1979, when he opposed Barbara's motion to dismiss.

Before the custody action actually went forward, however, R.J.M.'s circumstances changed. In June, 1978, upon the recommendation of the Alaska Community Mental Health Clinic, Barbara agreed to place R.J.M. in the Alaska Psychiatric Institute (API). Subsequent to R.J.M.'s admission, the staff at API advised Barbara that the dispute between her and Christopher over custody of R.J.M. was disturbing R.J.M.'s treatment. The staff advised Barbara that R.J.M. should be insulated from that dispute, and that the best means of accomplishing this would be to make R.J.M. a ward of the state so that he could be placed in a temporary foster home. According to Barbara, the API staff assured her that regaining custody of R.J.M. would be a simple matter. Based on these assurances, Barbara acquiesced and, in October, 1978, the state filed a petition to adjudicate R.J.M. a child in need of aid. *See* AS 47.10.010(a)(2)(A). Shortly thereafter the court entered an order granting the petition, based on Barbara's acquiescence.

Approximately four months later, in March, 1979, the state filed a notice of its intent to transfer custody of R.J.M. to Christopher. Barbara objected by filing a motion to set aside the child in need of aid adjudication, contending that she misunderstood the consequences of stipulating to state custody of R.J.M. On the same day Christopher moved to intervene, seeking to obtain physical custody of the child but leaving legal custody of R.J.M. in the state. The court allowed Christopher's participation in the matter, although apparently it did not actually rule on his intervention motion. After an evidentiary hearing on April 6, 1979, Barbara's motion was granted, returning legal and physical custody of R.J.M. to her.

Thereafter, on April 10, 1979, the state filed a new, or amended, petition urging adjudication of R.J.M. as a child in need of aid. Christopher also participated in this hearing. The hearing on that petition lasted twenty days, and resulted in an order, on May 7, 1979, denying the state's petition.[2] Barbara moved for costs of $967.50 and attorney's fees of $15,507.75 on the ground that she was the prevailing party. Christopher filed a cross motion for his costs of $15.00 and attorney's fees of $11,146.50. The court ruled against both motions, refusing to award costs or fees to either party. Barbara appeals from this decision.

Following the conclusion of the child in need of aid proceeding, Barbara moved to dismiss Christopher's July, 1978, motion for custody. She argued in part that res judicata and collateral estoppel precluded granting him custody of R.J.M. R.J.M.'s guardian ad litem supported the motion to dismiss. Christopher's opposing pleadings stated that he no longer sought custody of R.J.M., but rather merely the implementation of his rights of visitation regarding R.J.M., and the other two children, K.M.C. (his natural daughter) and F.J.C.

On July 26, 1979, Barbara moved to peremptorily disqualify Judge Buckalew. Judge Carlson, apparently as acting presid-

2. Findings of fact and conclusions of law were entered July 27, 1979, specifying that custody of R.J.M. was with Barbara, and granting Christopher reasonable visitation rights.

ing judge, denied the motion on the ground that Judge Buckalew had spent three weeks on the related child in need of aid case. The next day Judge Buckalew, apparently acting presiding judge for that day, vacated Judge Carlson's order and assigned the case to Judge Ripley for motions only. That same day, July 27, 1979, Judge Ripley denied Barbara's motion to dismiss and ordered the case to go forward on the limited issue of Christopher's visitation rights.

Four days later, on July 31, 1979, Barbara renewed her motion to dismiss. The memorandum attached to that pleading indicates that neither Barbara nor her attorney were aware, at that time, of Judge Ripley's order denying the dismissal motion. That same day Judge Carlson granted Barbara's motion, and dismissed the case with prejudice. Christopher appeals from this dismissal.

Approximately one week later, on August 8, 1979, Barbara moved in the custody proceeding (No. 4970) for costs of $967.50 and attorney's fees of $16,892.75. All of these costs and a substantial portion of these fees were sought in the child in need of aid proceeding. Barbara's basic argument was that costs and fees should carry over, because the issues and proofs in the child in need of aid action and in the custody action were "so closely interrelated" as to "be almost totally indistinguishable" and, therefore, her costs and fees should be recoverable pursuant to Civil Rule 82. In opposition, Christopher argued that the costs and fees in the two cases were separable, that the issue of costs and fees was res judicata based on the court's denial of costs and fees in the earlier action, that there was no jurisdiction for the court to award costs or fees from the prior case, that Civil Rule 82 does not apply to dissolution actions, and that equity did not require an award of costs and fees. On September 14, 1979, the court awarded Barbara the full costs and fees requested against Christopher. Christopher appeals from this ruling.

A. Costs and Fees In The Child In Need of Aid Proceeding

The first issue we must address is whether the superior court has authority to award costs and fees in a child in need of aid proceeding, and, if so, whether it abused its discretion in failing to do so. On appeal Barbara presents several theories in support of her argument that the superior court should have awarded her costs and fees against both the state and Christopher.[3]

Barbara's first argument is that the character of the litigation under AS 47.10 (children in need of aid) is similar to that in adoption proceedings, *see* AS 20.15; and in custody proceedings, *see* AS 09.55.205; and that since costs and attorney's fees are available in those actions, *see Adoption of V. M. C.*, 528 P.2d 788, 795-96 (Alaska 1974); AS 09.55.200(a)(1); that it would, therefore, be inconsistent to not allow costs and fees in a child in need of aid proceeding. Thus she argues that Civil Rule 82,[4] or AS 09.55.200,[5] should apply, and that the trial court erred in not awarding her costs and fees.

3. Barbara's original motion was treated by the parties as seeking fees against both Cooper and the state.

Apart from the general issue of whether costs and attorney's fees can be awarded in an AS 47.10 proceeding, there are subsidiary issues of whether such fees are available against the state, as a sovereign, or against Christopher Cooper, as an alleged intervenor. Because we conclude that the superior court lacked power to award fees, we do not reach these specific issues.

4. Civil Rule 82(a) states, in part:

"(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein, as part of the costs in the action allowed by law...

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court as a part of the costs of the action, in its discretion, in a reasonable amount."

5. AS 09.55.200 states, in part:

"(a) During the pendency of the action [for divorce or annulment], the court may provide by order

(1) that one spouse pay an amount of money as may be necessary to enable the other spouse to prosecute or defend the action ...."

Barbara concedes that children's proceedings under AS 47.10 are governed by the Rules of Children's Procedure, *see* Children's Rule 1(b),[6] and that these rules contain no provision for the award of attorney's fees. She argues, however, that Children's Rule 1(d) allows the superior court to utilize other authorizations for such an award. Children's Rule 1(d) states:

> "*Situations Not Covered by Rule.* Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, not inconsistent with children's statutes or these rules, which appears most likely to achieve the aims and purposes of such statutes and these rules."

Thus, Barbara's argument is that the phrase "in any lawful manner" encompasses Civil Rule 82, or, alternatively, AS 09.55.200. The guardian ad litem adopts these arguments.

The state, on the other hand, argues that given our holding in *Kodiak Western Alaska Airlines, Inc. v. Bob Harris Flying Service, Inc.*, 592 P.2d 1200, 1204–05 (Alaska 1979), to the effect that Civil Rule 82 is inapplicable to actions governed by the Appellate Rules, it would be inconsistent to now apply Civil Rule 82 to actions governed by the Children's Rules. Further, the state argues that the provision in Children's Rule 1(d) applies solely to procedural matters and, it asserts, since the award of costs and attorney's fees is not a procedural matter, subsection (d) is inapplicable. As regards AS 09.55.200, the state argues that the statute, by its own terms, applies *solely* during the pendency of a divorce or annulment action, neither of which are involved in case No. 4906, which was a child in need of aid proceeding. Finally, it argues that the superior court cannot award costs and fees except when the legislature, or this court by rule pursuant to AS 09.60.010, has determined to allow such awards. *See State v. Smith*, 593 P.2d 625, 630–31 (Alaska 1979). Since no specific authority exists, it asserts that the superior court properly denied Barbara's motion for costs and fees. Christopher adopts these arguments.

[1–4] We are persuaded by the state's arguments. The general authority to make costs and attorney's fees awards derives from AS 09.60.010. *Stepanov v. Gavrilovich*, 594 P.2d 30, 37 (Alaska 1979). That section states:

> "*Costs allowed prevailing party.* Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case."

There is no statute authorizing such awards in child in need of aid proceedings, nor have we promulgated any rule or order authorizing such an award.[7] Civil Rule 82 does not apply to actions governed by the Children's Rules, *see e.g., Kodiak Western*, 592 P.2d at 1204–05; nor is AS 09.55.200 applicable. Absent any applicable authorization, the superior court properly denied Barbara's motion for costs and attorney's fees in the child in need of aid proceeding.[8]

This result is supported by strong policy considerations advanced by the state. Children in need of aid proceedings are intended to promote an important public interest: the welfare of children. Exposing the state to costs and attorney's fees when a child is ultimately determined not to be in need of aid would significantly chill the state's willingness to commence protective proceedings for children. Such a result is inconsistent with the purposes underlying children's proceedings. Accordingly, we reject Barbara's argument that the court erred in denying recompense for her costs and fees.

6. Children's Rule 1(b) states: "The procedure in children's matters shall be governed by these rules."

7. The court does have the power to *appoint* counsel, at public expense, to represent the minor or the parents, in certain situations, in child in need of aid proceedings. *See* AS 47.10.050; Children's Rule 15(a).

8. Given this resolution we decline to address the parties' arguments concerning who, under Civil Rule 82, the prevailing party may have been in No. 4906.

As alternative grounds for reversal, Barbara urges certain equitable bases for an award, namely, that the state's alleged bad faith in the litigation provides a basis for an award of costs and attorney's fees, or that she is entitled to her expenses, on the ground that the proceeding was one "imbued with the public interest." The superior court, however, specifically rejected a proposed finding that the state acted in bad faith by misleading Barbara and, therefore, the "bad faith" basis for an award was inapplicable on the facts.

[5, 6] Nor are we persuaded that a parent who successfully challenges a child in need of aid petition is a "public interest litigant." In *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977), we articulated three factors which determine whether a case is one in the public interest. These are: first, whether the action effectuated strong public policies; second, whether numerous people received benefits from the plaintiff's litigation success; and third, whether only a private party could have been expected to bring the action. *Id.* at 991. Barbara argues the public was benefited in that the state will no longer "rush into court" without a better examination of the child's existing family situation. We disagree with her basic argument. Barbara was seeking to vindicate her own interests, as well as those of R.J.M. Any benefit to the public as a result of her challenge to the state's petition is too attenuated to justify an award of costs and fees on this basis.

There is no authority for an award of attorney's fees in a child in need of aid proceeding and thus the superior court's denial of costs in No. 4906 is affirmed.

B. The Custody Dispute

1. Dismissal With Prejudice

The first issue in Christopher's appeal is whether the superior court erred in dismissing "with prejudice" his petition for modification of custody. Judge Ripley, to whom the case was assigned for motions, denied Barbara's motion to dismiss Christopher's petition and ordered the case to proceed on the question of visitation. Subsequently, Judge Carlson dismissed the petition with prejudice.

[7] The order of dismissal and the setting in which it was entered were quite irregular. Christopher, however, does not challenge Judge Carlson's authority to have granted the motion. Rather, he attacks the "with prejudice" provision. Even assuming that Judge Carlson had such authority, we hold that it was error to dismiss the petition with prejudice.

AS 09.55.205 clearly contemplates that parties may seek modification of custody or visitation orders. That section states, in part:

> "In an action for divorce or for legal separation the court may, ... during the pendency of the action, or at the final hearing *or at any time thereafter during the minority of the child of the marriage*, make an order for the custody of or visitation with the minor child which may seem necessary or proper *and may at any time modify or vacate the order.*" (emphasis added).

[8–11] We think this section precludes a superior court from denying a motion for a change in custody "with prejudice." A motion to modify custody may be made at any time during the minority of the child involved, and the superior court has an obligation to consider such a request. *See Deivert v. Oseira*, 628 P.2d 575, 578 (Alaska 1981); *Sherry v. Sherry*, 622 P.2d 960, 965 (Alaska 1981). The court may, of course, deny any particular request for modification so long as it does not abuse its discretion in doing so. But it cannot preclude future requests for a change in custody. *Sherry*, 622 P.2d at 965. Of course, modification must generally rest upon some substantial change in circumstances. *Deivert*, 628 P.2d at 577–78. The order dismissing the modification motion with prejudice is reversed. We note that no jurisdictional issue is raised in this case as both parties and the child still reside in Alaska.

2. Costs and Fees In The Custody Dispute

Christopher's other argument on appeal is that the superior court erred in awarding Barbara her costs of $967.50 and attorney's fees of $16,892.75 in the custody proceeding. He points out that the award clearly encompasses the costs and fees incurred by Barbara in her defense of the child in need of aid petition, and argues that the carry-over was error on grounds: (a) that the denial of costs and fees in No. 4906 was the "law of the case" and therefore precluded the subsequent award; or (b) that the denial in No. 4906 is res judicata or collaterally estops the subsequent award; or (c) that the court abused its discretion, under AS 09.55.200(a)(1), in awarding any costs and fees. Barbara, on the other hand, argues that the issues in the two proceedings were interwoven, and therefore asks us to hold that the costs and fees in the children's proceeding "carried over" to the custody action and are authorized by either AS 09.55.200(a)(1) or Civil Rule 82.

[12–14] We have previously held that in divorce or dissolution actions attorney's fees are not to be awarded solely on the basis of which party is regarded as the prevailing party. *Johnson v. Johnson*, 564 P.2d 71, 76–77 (Alaska 1977); *Burrell v. Burrell*, 537 P.2d 1, 6 (Alaska 1975). The parties' relative economic situations and earning powers are relevant to determining whether to order an award of attorney's fees, *Johnson*, 564 P.2d at 76; *Burrell*, 537 P.2d at 7. Further factors to be considered in this context are whether an equal amount of fees has been expended by the parties, and whether an equal amount of time and effort has been expended. *Johnson*, 564 P.2d at 76–77. Although often there is no party who can plainly be designated as the prevailing party, in other cases, such as the present one, one party clearly has prevailed and that factor too may be weighed in the balance. Finally, the decision of whether to make any award is committed to the sound discretion of the trial court. *Id.*

[15] The superior court in this case did not specify its reasons for awarding Barbara all the costs and fees she sought. Even so, in awarding her a total of $17,860.25, we conclude that it abused its discretion. Barbara concedes that this award amounts to a carry-over of a substantial portion of the costs and fees incurred in the child in need of aid proceeding. In that proceeding she requested a total of $16,475.25. The difference between that figure and the award in the custody proceeding is $1,385.00; this figure reflects Barbara's actual costs and attorney's fees in the custody proceeding. We can find no authority for the carry-over of the costs and fees of the earlier proceeding,[9] nor do we accept Bar-

9. The sole authority Barbara relies on is the following language from *United States v. Equitable Trust Co.*, 283 U.S. 738, 51 S.Ct. 639, 75 L.Ed. 1379 (1931):

> "The district court apparently included some [fees from] services in other litigation ... But the circuit court of appeals excluded them, and we think its action was right. The nature of the other litigation was such that it could neither disturb the prosecution of this suit nor affect the outcome."

283 U.S. at 746, 51 S.Ct. at 642, 75 L.Ed. at 1385.

Drawing on this language, she argues that: "The clear negative inference of this holding is that where the nature of another litigation is such that it could disturb the prosecution of a subsequent suit or affect its outcome, legal services rendered in said other litigation might properly be allowed as attorney's fees in the subsequent suit."

She then argues that the litigation in *In re R. J. M.*, the child in need of aid proceeding, "clearly disturbed the prosecution of this action and clearly affected its outcome" in that the prior action vested custody in her, and had the effect of changing Christopher's original petition from one for custody to one for visitation. We disagree with the proffered negative inference and, in any case, with Barbara's analysis. The child in need of aid proceeding involved a custody dispute, as it regarded R.J.M., between Barbara and the state. The custody proceeding, on the other hand, involved a custody dispute between Barbara and Christopher, and extended to R.J.M., F.J.C., and K.M.C. Barbara's success against the state did not per se preclude Christopher's success in the custody proceeding. In the former, the central issue was whether Barbara was a fit and suitable parent. *See* AS 47.10. In the latter, however, the issue is broader: which parent should have custody in light of the child's best interests. *See* AS 09.-

bara's argument that such an award is "proper and justifiable" on policy grounds.

[16, 17] In making the award of attorney's fees the court is limited to making an award to enable the other spouse to prosecute or defend "the action." *See* AS 09.55.-200(a)(1); Civil Rule 82(a)(1). The phrase "the action" necessarily refers to the case in which the award is made. It plainly does not authorize awards for costs or fees incurred in any other action, such as a child in need of aid proceeding, no matter how closely related the issues might be. Absent such an authorization the award cannot stand. Further, allowing such a carry-over would have the effect of making Christopher liable for Barbara's defense of litigation commenced by the state. Notwithstanding the evidence that the state intended to eventually place R.J.M. with Christopher, the state initiated and prosecuted the action. Given Christopher's limited role in the proceedings,[10] it would be manifestly unjust to hold him liable for Barbara's defense costs and fees. Christopher, at most, can be ordered to pay that amount which was necessary for Barbara to defend in case No. 4970, the continued dissolution and custody action between those two parties. The award of costs and attorney's fees in No. 4970 is vacated and the case is remanded for the superior court to exercise its discretion in determining what award of costs and fees, if any, to make to Barbara [11] for her defense in No. 4970.

AFFIRMED in part, REVERSED in part, and REMANDED.

BURKE and COMPTON, JJ., not participating.

55.205. It is possible that Barbara can be a fit parent yet that a child's *best* interests compel that custody be placed in Christopher. Even if the interrelation between the issues was complete, the award of costs and fees must still rest upon some statute, court rule, or recognized rule of equity, not on inferences from language in an unrelated decision from another jurisdiction.

10. The court did not officially grant Christopher's motion to intervene, although it did allow him to participate in the proceeding. Even so, he did not initiate or prosecute the action. His participation was limited; he did not testify or offer any witnesses.

11. We reject Christopher's arguments that the denial of fees in the child in need of aid proceeding precludes an award of fees, under theories of the "law of the case," res judicata, or collateral estoppel, in a dissolution action. The two actions are distinct and, further, as we have ruled today, fees are unavailable as a matter of law in the former but statutorily authorized in the latter. Logically, therefore, a denial of fees in the former can in no manner compel the same result in the latter proceeding.

George Gary FARNSWORTH and Sandra Kay Farnsworth, Appellants,

v.

H. J. STEINER, Personal Representative of the Estate of Michael R. Steiner, Deceased, Appellee.

No. 5345.

Supreme Court of Alaska.

Dec. 24, 1981.

Plaintiff won a jury verdict in personal injury suit. Before trial, defendant had made an offer of judgment pursuant to Civil Rule 68, which defendant rejected. Since the Superior Court, Fourth Judicial District, Fairbanks, Warren W. Taylor, J., found defendant's offer to have been in excess of plaintiff's recovery, it awarded defendant costs and attorney fees from the time of his offer through the date of verdict. Upon an appeal and cross appeal, the Supreme Court, 601 P.2d 266, affirmed as to all matters except the award of attorney fees and interest, and remanded for recomputation of those awards. On remand, the Superior Court, Taylor, J., entered a judgment from which plaintiff appealed, objecting to the court's denial of postjudgment interest during the pendency of his initial appeal. The Supreme Court, Burke, J., held that: (1) inclusion of prejudgment interest as Rule 68 "costs" to be denied plaintiff offeree was incorrect; rather, since pre-

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POSITION PAPER

To: House Judiciary Committee
From: Jennifer Rudinger, Executive Director
Date: Thursday, May 13, 1999

Re: CSSB 100 (An Act relating to the payment by indigent persons for legal services and related costs.)

The Alaska Civil Liberties Union is a non-profit, non-partisan organization dedicated to preserving and defending the principles of individual liberty guaranteed in the U.S. Bill of Rights and in the Alaska Constitution. We urge you not to pass SB 100 out of the House Judiciary Committee, because it infringes the right to counsel guaranteed by the Sixth Amendment and Article 1, Section 11 of the Alaska Constitution.

Senate Bill 100 actually requires the court to order a person for whom counsel is appointed to repay court costs and legal service fees regardless of whether the person is convicted of a crime! Only after this judgment has been entered does any opportunity to demonstrate financial hardship arise, but SB 100 does not guarantee such a hearing. SB 100 does not explicitly provide the defendant with notice and opportunity to be heard on the issue of financial hardship, nor does it provide any standards for the court to apply in making that determination. Perhaps the most offensive element of SB 100 is its application to people who are wrongly haled into court in the first place, are found not guilty, or for whom the charges are ultimately dropped by the State. SB 100 will have the effect of coercing indigent people into plea bargaining or waiving their right to counsel, even if they are innocent, for fear of going bankrupt and putting their families out on the street if they try to defend themselves.

The landmark Supreme Court ruling which established the fundamental right of indigent people accused of crimes to have court-appointed counsel provided for their defense is *Gideon v. Wainwright*, 372 US 335 (1963). The Court based its ruling on the Sixth Amendment's guarantee of counsel and observed that reason, logic and fundamental fairness require that any person haled into court by the government must be afforded the opportunity to be represented by counsel. Senate Bill 100 flies in the face of the spirit of *Gideon v. Wainwright* by treating court-appointed counsel as a luxury which must be bought rather than as a necessity or a fundamental right.

It is true that eleven years later, the Supreme Court upheld a recoupment formula which conditioned probation on repayment to the state of the costs of a free legal defense, where the defendant had in fact gained a subsequent ability to pay. *Fuller v. Oregon*, 417 US 40 (1974). However, it was critical in that case that the defendant had at least been convicted of a crime! In *Fuller*, the defendant tried to make the reverse argument of what we are making to you today. Mr. Fuller argued that it was an Equal Protection violation

to require him to repay his legal fees as a condition of probation when defendants who were acquitted were not required to reimburse the state for the costs of their defense. Not only did the Supreme Court reject Mr. Fuller's argument that this constituted invidious discrimination, but the Court actually lauded the decision of the Oregon legislature to exempt innocent people from the repayment obligation as an "effort to achieve elemental fairness" in the judicial system. *Fuller*, 417 US at 50.

In defense of the Oregon legislature's limitation of the repayment obligation to only those people who have ultimately been found guilty of a crime, the Court wrote, "A defendant whose trial ends without conviction or whose conviction is overturned on appeal has been seriously imposed upon by society without any conclusive demonstration that he is criminally culpable. His life has been interrupted and subjected to great stress, and he may have incurred financial hardship through loss of job or potential working hours. His reputation may have been greatly damaged." *Fuller*, 417 US at 50. Thus, while the state may demand repayment from convicted people who can later afford to pay (under a theory of retribution), the state has no justification for demanding payment from people who are wrongfully haled into court in the first place or who ultimately are found not guilty of the crime with which they are charged. SB 100, however, would add insult to injury by forcing the court to enter a judgment against people whose only "crime" is not being able to afford an attorney.

The defendant in *Fuller* was in fact convicted of a crime, as we have pointed out. The Supreme Court has not been faced with a case in which an indigent person who was acquitted challenged such a recoupment statute. Likewise, to our knowledge, no Court of Appeals has been faced with such a case. However, the dicta in *Fuller* cited above clearly indicate that the state's interest is much weaker and the liberty interest of the individual is much stronger where the defendant is acquitted of all charges.

In fact, a group of acquitted indigent defendants successfully challenged the statute passed by the Oregon legislature after *Fuller*, and the statute was struck down on the grounds that the statute impermissibly chilled indigent defendants' exercise of their Sixth Amendment right to counsel and that it violated the due process clause. *Fitch v. Belshaw*, 581 F.Supp. 273 (1984). Although District Judge Panner did not issue a broad ruling in *Fitch* that a recoupment statute is per se unconstitutional when applied to acquitted defendants, the particular defects in the Oregon statute which were found to violate the Sixth Amendment are also present in the scheme proposed by SB 100. In striking down the statute, Judge Panner pointed out that "[d]espite the constitutional success of Oregon's recoupment formula for convicted defendants, the Oregon Legislature enacted [the statute in question] in 1979 with none of the safeguards approved in *Fuller* ..." *Fitch*, 581 F.Supp. at 276. The missing *Fuller* safeguards Judge Panner was referring to which are also lacking in SB 100 are: (1.) restriction of repayment requirements to only convicted defendants, (2.) specific standards for courts to apply in determining whether a defendant is able to pay, and (3.) assurance that a defendant unable to make payments may demonstrate that the default was not attributable to an intentional refusal to obey the order of the court or due to bad faith on his part. *Id.* This last point is supported by Section 5-6.2 of the A.B.A. Standards for Criminal Justice,

which recommends that payment be sought only where defendants have made fraudulent representations concerning indigency in order to obtain free counsel. The commentary to the Standard states that reimbursement requirements "may serve to discourage defendants from exercising their right to counsel." American Criminal Procedure: Cases and Commentary (4th Ed.). Ed. By Stephen A. Saltzburg and Daniel J. Capra, (St. Paul, West Publishing Co., 1992), P. 636.

The Alaska Constitution generally has been interpreted to provide greater protections for civil liberties than the U.S. Constitution. The Alaska Supreme Court has held that the due process clause of the Alaska Constitution guarantees the right to counsel not only in criminal cases but in some civil cases as well, such as: child custody cases [*Flores v. Flores*, 598 P.2d 893 (Alaska 1979)]; civil contempt proceedings [*Flores*, 598 P.2d at 895, citing *Otton v. Zaborac*, 525 P.2d 587 (Alaska 1974)]; and paternity suits [*Flores*, 598 P.2d at 895, citing *Reynolds v. Kimmons*, 569 P.2d 799 (Alaska 1977)]. It is true that the Alaska Supreme Court has upheld Rule 39 recoupment in the case of convicted indigent defendants. *State v. Albert*, 899 P.2d 103 (Alaska 1995). However, there appears to be no case exactly on point in Alaska with respect to recoupment from **acquitted** defendants, and SB 100 does not provide the safeguards approved in *Fuller* which the *Fitch* court deemed to be essential. The AkCLU believes that in the case of acquitted defendants, Article 1, Section 11 would be interpreted to provide at least the same level of protection for the right to counsel as the Sixth Amendment under which the Oregon recoupment statute was struck down in *Fitch*. The Alaska Supreme Court has stated, "[W]e are under a duty to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage." *Baker v. City of Fairbanks*, 471 P.2d 386, 401-402 (Alaska 1970) (extending the constitutional right to a jury trial).

We therefore urge the House Judiciary Committee to kill SB 100 in committee. Please feel free to call me at (907) 258-0044 if you wish to discuss this matter further. Thank you for your careful consideration.

year in which the defendant qualifies for a dividend until the judgment is paid in full.

(B) Defendant may oppose entry of judgment by filing a written opposition within 10 days after the date of notice, as defined in Criminal Rule 32.3(c), of the court's intent to enter judgment. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline.

(C) If no opposition is filed within the time specified in section 39(c)(1)(B), the clerk shall enter judgment against defendant for the amount shown in the notice. If a t mely opposition is filed, the court may set the matter for a hearing and shall have authority to enter the judgment.

(D) The judgment must be in writing. A copy of the judgment shall be mailed to defendant's address of record. The judgment shall bear interest at the rate specified in AS 09.30.070(a) from the date judgment is entered.

(2) *Collection.*

(A) The judgment has the same force and effect as a judgment in a civil action in favor of the prosecuting authority and is subject to execution.

(B) All proceedings to enforce the judgment shall be in accordance with the statutes and court rules applicable to civil judgments. The judgment is not enforceable by contempt. Payment of the judgment may not be made a condition of a defendant's probation. Default or failure to pay the judgment may not affect or reduce the rendering of services on appeal or any other phase of a defendant's case in any way. A defendant does not have a right to be represented by appointed counsel in connection with proceedings under subparagraph 39(c) or any proceedings to collect the judgment.

(C) Upon showing of financial hardship, the court shall allow a defendant subject to a judgment under this rule to make payments under a repayment schedule. A defendant may petition the court at any time for remission, reduction or deferral of the unpaid portion of the judgment. The court may remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the defendant or defendant's immediate family.

(D) Notwithstanding section 39(c)(2)(B), a defendant may be held in contempt for failing to comply with an order under this rule to apply for a permanent fund dividend.

(3) *Appeal.*

(A) If defendant appeals the conviction, enforcement of the judgment may be stayed by the trial court or the appellate court upon such terms as the court deems proper.

(B) If defendant's conviction is reversed, the clerk shall vacate the judgment and order the prosecuting authority to repay all sums paid in satisfaction of the judgment, plus interest at the rate specified in AS 09.30.070(a).

(d) **Schedule of Costs.** The following schedules govern the assessment of costs of appointed counsel under paragraph 39(c). If a defendant is convicted of more than one offense in a single dispositive court proceeding, costs shall be based on the most serious offense of which the defendant is convicted. If a defendant is otherwise convicted of more than one offense, costs shall be separately assessed for each conviction. For good cause shown, the court may waive the schedule of costs and assess fees up to the actual cost of appointed counsel, including actual expenses.

Misdemeanors

Trial	$500.00
Change of plea	200.00
Post-conviction relief or contested probation revocation proceedings in the trial court	250.00

Felonies

	Class B & C	Class A and Unclassified (Except (Murder)	Murder in the 1st and 2nd Degrees
Trial	$1,500.00	$2,500.00	$5,000.00
Change of plea after substantive motion work and hearing and before trial commences	1,000.00	1,500.00	2,500.00
Change of plea post-indictment but prior to substantive motion work and hearing	500.00	1,000.00	2,000.00
Change of plea prior to indictment	250.00	500.00	750.00
Post-conviction relief or probation revocation proceeding in trial court	250.00	500.00	750.00