ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10308 HOUSE JUDICIARY 153

SB

172

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 12, 2001 — FURTHER REFERRALS: Finance

Date of Committee Action: 4·23·01

The JUDICIARY Committee considered: CSSB 172(FIN)

CS FOR SENATE BILL NO. 172(FIN) — COURT SYSTEM ANNUAL REPORT

"An Act relating to an annual report by the court system to the public and the legislature."

Recommends it be replaced with ______CS SB 172 (JUD) [✓] Same Title [ ] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_______

[ ] attach amendments
[ ] add new referral to __________ Committee
[ ] Letter of Intent _____________ Committee

List of Abbrev. For Depts.: ADM, CED, COR, CRT, EED, DEC, DFG, GOV, HSS, LAA, LAW, LWF, MVA, DNR, DPS, REV, DOT, UA

NEW FISCAL NOTES
*For Chief Clerk's Office Use Only

FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN #	Fiscal	Indet.	Zero
CRT	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Berkowitz			✓	
[signature]	Meyer	✓			
[signature]	Coghill	✓			
[signature]	James	✓			
[signature]	Cooksh			✓	
Chair: [signature]	Rokeberg	✓			
Chair:					

CS FOR SENATE BILL NO. 172(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/6/01
Referred: Rules

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to an annual report by the court system to the public and the**
2 **legislature."**

Amendment #1 Adopted

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

delete

4 *** Section 1.** AS 22.20 is amended by adding a new section to article 5 to read:
5 **Sec. 22.20.310. Court system annual report.** The administrative director
6 shall, not later than March 15 of each year, make available to the public and file with
7 the senate secretary and the chief clerk of the house of representatives a report
8 regarding the Alaska Court System. The report must include
9 (1) a profile of the Alaska Court System and its justices, judges, and
10 magistrates;
11 (2) a summary description of the administration of the court system,
12 including detailed descriptions of its facilities, programs, and personnel;
13 (3) average, mean, minimum, and maximum time periods between
14 initial receipt and final disposition of cases classified by courts and by each justice,

1 judge, and magistrate;

2 (4) information identifying each justice, judge, or magistrate who has
3 had salary withheld under the authority of AS 22.05.140(b), AS 22.07.090(b),
4 AS 22.10.190(b), or AS 22.15.220(c) and the number of times and the time periods of
5 the occurrences;

6 (5) other information and data relevant to aiding the public and the
7 legislature in understanding the organization, administration, caseload, disposition of
8 cases, and accomplishments of the court system;

9 (6) the travel expenses and per diem for each justice, judge, or
10 magistrate for the previous calendar year.

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT
COMMITTEE SUBSTITUTE FOR SENATE BILL 172 (FINANCE)

"An Act relating to an annual report by the court system to the public and the legislature"

The Court System has been voluntarily providing annual reports on its administration and activities since 1961. This report has been well received and informative, containing useful data for both the public and legislature to use in analyzing the effectiveness and efficiency of the court system.

Senate Bill 172 insures the future publication of this document by statutorily requiring the Court System to continue producing and distributing the report on an annual basis. The legislation is drafted to maintain the compilation of information currently contained in the report such as the profile of the court system and its justices, summaries of the system's administration, facilities, programs and personnel, and statistical summaries on the filings, dispositions and pending caseloads of the different court levels.

Additionally, this legislation requires the court system to include time periods between the initial receipt and final disposition of the cases and between the final arguments and final disposition of cases for the different classes of courts and specific judges. It also requires the inclusion of information on judges and justices who have had their pay withheld for failure to comply with AS 22.05.140(b), 22.07.090(b), 22.10.190(b) or 22.15.220(c), all of which pertain to disposing of cases within a 6-month timeframe. Finally, it requires that travel of Supreme Court justices, appellate court judges and district court magistrates be included in the report. This would provide all relevant information in one central publication.

This additional information is useful to the legislature and the public in analyzing the effectiveness and efficiency of the court system in general as well as individual judges and justices. The data on individual judges is normally available only for those individuals up for retention elections. Including this information in the annual report provides a more current and accessible source for review.

By placing the requirement for an annual report in statute, the state avoids the possibility of it being eliminated for any reason. Differing politics, philosophies, revenues and numerous other factors can always affect an agency's decision on what type of information to provide. Committee Substitute for Senate Bill 172 (Fin) secures this report's continuation and insures the public retains a consistent source of the valuable information.

DD:dld 4/6/01

FISCAL NOTE

No. 1

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Bill Version: SB 172
(S) Publish Date: 4/6/01

Revision Date/Time (Note if correction)	5-Apr-01	Dept. Affected	
Title	An act relating to an annual report by the court system	BRU	Alaska Court System
		Component	Trial Courts
Sponsor	Senate Finance		
Requester	Senate Finance	Component No	768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS						
Full-time						
Part-time						
Temporary						

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

Prepared by:	C.S. Christensen III, Deputy Administrative Director	Phone	463-4736
Division	Alaska Court System	Date/Time	
Approved by:	Stephanie J. Cole, Administrative Director	Date	4/5/01
Agency	Alaska Court System		

For distribution information, call the Governor's Legislative Office

(Rev 8/2000 OMB)

COMMITTEE CO

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Collateral references. — Validity and application of statute regarding prohibition of judge from practicing law. 17 ALR4th 829.

Sec. 22.05.140. Compensation. (a) Except as provided in (d) of this section, the monthly base salary of the chief justice is $9,203 and for each other justice, the monthly base salary is $9,159.

(b) A salary warrant may not be issued to a justice of the supreme court until the justice has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the justice for opinion or decision has been uncompleted or undecided by the justice for a period of more than six months.

(c) In addition to the monthly salary, each justice is entitled to receive a geographic cost-of-living adjustment under AS 22.35.010, based on the location of the primary office assignment. Retirement contributions and benefits shall be computed only on the monthly base salary not including the geographic cost-of-living adjustment.

(d) Beginning January 1, 1991, if the monthly basic salary for Step E, Range 28, of the salary schedule set out in AS 39.27.011 increases, the monthly base salary of the chief justice and the other justices shall increase by the same percentage. The increase takes effect when the salary increase under AS 39.27.011 takes effect and may be retroactive if consistent with the change in AS 39.27.011. The commissioner of administration shall, by regulation, establish the percentage at which the salary is increased and the increased salary amount. (§ 14 ch 50 SLA 1959; am § 4 ch 115 SLA 1965; am § 2 ch 83 SLA 1967; am § 1 ch 101 SLA 1969; am § 1 ch 193 SLA 1970; am § 1 ch 34 SLA 1974; am § 1 ch 205 SLA 1975; am § 2 ch 148 SLA 1976; am § 3 ch 263 SLA 1976; am § 4 ch 80 SLA 1978; am §§ 3, 18 ch 3 SLA 1980; am §§ 53, 54 ch 59 SLA 1982; am §§ 1, 2 ch 54 SLA 1990; am §§ 1, 2 ch 19 SLA 1991; am § 2 ch 4 1996 FSSLA)

Cross references. — For geographic cost-of-living adjustment, see AS 22.35.010.

Effect of amendments. — The 1996 amendment, effective July 1, 1996, in subsection (a), substituted "$9,203" for "$8,333" and "$9,159" for "$8,292."

Editor's notes. — Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected. Under § 45, ch. 4, FSSLA 1996, the provisions of that act, which amended subsection (a), are not severable, notwithstanding AS 01.10.030.

Sec. 22.05.150. [Renumbered as AS 22.20.300.]

Sec. 22.05.160. Recording districts. [Repealed, § 4 ch 118 SLA 1976. For current law, see AS 44.37.020(b) and 44.37.025.]

Appellate Court Judges

Sec. 22.07.090. Compensation. (a) Except as provided in (c) of this section, the monthly base salary of a judge of the court of appeals is $8,652. The compensation of a judge may not be diminished during the term of office, unless by a general law applying to all salaried officers of the state.

(b) A salary warrant may not be issued to a judge of the court of appeals until the judge has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.

(c) Beginning January 1, 1991, if the monthly basic salary for Step E, Range 28, of the salary schedule set out in AS 39.27.011 increases, the monthly base salary of the judges of the court of appeals shall increase by the same percentage. The increase takes effect when the salary increase under AS 39.27.011 takes effect and may be retroactive if consistent with the change to AS 39.27.011. The commissioner of administration shall, by regulation, establish the percentage at which the salary is increased and the increased salary amount. (§ 1 ch 12 SLA 1980; am § 3 ch 54 SLA 1990; am §§ 3, 4 ch 19 SLA 1991; am § 3 ch 4 1996 FSSLA)

Effect of amendments. — The 1996 amendment, effective July 1, 1996, substituted "$8,652" for "$7,833" at the end of the first sentence in subsection (a).

Editor's notes. — Under § 46, ch. 4, FSSLA 1996, the provisions of that act, which amended subsection (a), are not severable, notwithstanding AS 01.10.030.

Sec. 22.10.190. Compensation. (a) Except as provided in (d) of this section, the monthly base salary for each superior court judge is $8,469.

(b) A salary warrant may not be issued to a superior court judge until the judge has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.

(c) In addition to the monthly salary, each superior court judge is entitled to receive a geographic cost-of-living adjustment under AS 22.35.010, based on the location of the primary office assignment. Retirement contributions and benefits shall be computed only on the monthly base salary not including the geographic cost-of-living adjustment.

(d) Beginning January 1, 1991, if the monthly basic salary for Step E, Range 28, of the salary schedule set out in AS 39.27.011 increases, the monthly base salary of the judges of the superior court shall increase by the same percentage. The increase takes effect when the salary increase under AS 39.27.011 takes effect and may be retroactive if consistent with the change to AS 39.27.011. The commissioner of administration shall, by regulation, establish the percentage at which the salary is increased and the increased salary amount. (§ 30 ch 50 SLA 1959; am § 5 ch 115 SLA 1965; am § 4 ch 83 SLA 1967; am § 2 ch 101 SLA 1969; am § 2 ch 193 SLA 1970; am § 2 ch 34 SLA 1974; am § 2 ch 205 SLA 1975; am § 3 ch 148 SLA 1976; am § 4 ch 263 SLA 1976; am § 5 ch 80 SLA 1978; am §§ 4, 19 ch 3 SLA 1980; am §§ 4, 5 ch 54 SLA 1990; am §§ 5, 6 ch 19 SLA 1991; am § 4 ch 4 1996 FSSLA)

Cross references. — For geographic cost-of-living adjustment, see AS 22.35.010.

Effect of amendments. — The 1996 amendment, effective July 1, 1996, substituted "$8,469" for "$7,667" at the end of subsection (a).

Editor's notes. — Chapter 205, SLA 1975, which

Sec. 22.15.220. Compensation. (a) Except as provided in (e) of this section, the monthly base salary for each district court judge is $7,179.

(b) Each magistrate shall receive annual compensation including geographic differential pay to be determined by the supreme court. Salary increases shall be determined on the basis of percentage of pay increase the legislature provides for state employees in the classified service. A magistrate's annual compensation may be payable, at the option of the magistrate, either monthly in 12 equal installments or semi-monthly in 24 equal installments.

(c) A salary warrant may not be issued to a district judge or magistrate until the judge or magistrate has filed with the state officer designated to issue salary warrants, an affidavit that no matter referred to the judge or magistrate for opinion or decision has been uncompleted or undecided by the judge or magistrate for a period of more than six months.

(d) In addition to the monthly salary, each district court judge is entitled to receive a geographic cost-of-living adjustment under AS 22.35.010, based on the location of the primary office assignment. Retirement contributions and benefits shall be computed only on the monthly base salary not including the geographic cost-of-living adjustment.

(e) Beginning January 1, 1991, if the monthly basic salary for Step E, Range 28. of the salary schedule set out in AS 39.27.011 increases, the monthly base salary of the judges of the district court shall increase by the same percentage. The increase takes effect when the salary increase under AS 39.27.011 takes effect and may be retroactive if consistent with the change to AS 39.27.011. The commissioner of administration shall, by regulation, establish the percentage at which the salary is increased and the increased salary amount. (§ 17 ch 184 SLA 1959; am § 1 ch 66 SLA 1962; am § 1 ch 64 SLA 1963; am § 1 ch 137 SLA 1966; am § 5 ch 83 SLA 1967; am § 3 ch 101 SLA 1969; am § 3 ch 193 SLA 1970; am § 1 ch 78 SLA 1971; am § 1 ch 188 SLA 1972; am §§ 3, 4 ch 34 SLA 1974; am § 3 ch 205 SLA 1975; am §§ 4, 5 ch 148 SLA 1976; am § 1 ch 196 SLA 1976; am § 5 ch 263 SLA 1976; am § 6 ch 80 SLA 1978; am §§ 5, 20 ch 3 SLA 1980; am §§ 6, 7 ch 54 SLA 1990; am §§ 7, 8 ch 19 SLA 1991; am §§ 5, 6 ch 4 1996 FSSLA)

Cross references. — For cost-of-living adjustment for district court juges, see AS 22.35.010.

Effect of amendments. — The 1996 amendment, effective July 1, 1996, in subsection (a), substituted "$7,179" for "$6,500" and, in subsection (b), inserted "including geographic differential pay" in the first sentence and deleted the former third sentence, which read "The base salary of a magistrate shall be increased by a percentage equal to three and one-half percent times the number of step increases provided under AS 39.27.020 that a state employee would receive working in the same election district."

Editor's notes. — Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

Under § 45, ch. 4, FSSLA 1996, the provisions of that act, which amended subsections (a) and (b), are not severable, notwithstanding AS 01.10.030.

Sec. 22.20.037. Employment of judicial employees. (a) Judicial employees shall be employed subject to classification and wage plans based on the merit principle and adapted to the special needs of the judiciary, as determined by the administrative director of courts. Except as otherwise provided by law, all employees of the Alaska court system and the judicial council are subject to the general state laws regarding leave, retirement, and travel.

(b) This section does not deprive employees of the judiciary of the right to participate in the state employees retirement system, a group insurance plan, or any other program, benefits, or rights provided by law or personnel rule for state employees in the classified service.

(c) The administrative director of courts shall conduct a salary survey annually to ensure that employees of the Alaska court system receive salaries consistent with those paid to employees in the classified and partially exempt state service.

(d) The administrative director of the court system shall file a travel and compensation report with the legislature by January 31 of each year. The report must contain detailed information for the previous calendar year of the salaries, per diem, travel expenses, relocation expenses, and any additional allowances for

(1) each justice of the supreme court;

(2) each judge of the court of appeals; and

(3) the administrative director of the court system. (§ 2 ch 78 SLA 1971; am § 1 ch 83 SLA 1999)

Effect of amendments. — The 1999 amendment, effective September 27, 1999, added subsection (d).

Opinions of attorney general. — Application to judicial and permanent legislative employees of the general laws of the state covering leave, including the Department of Administration's regulation on terminal leave, does not infringe upon the power of the judicial and legislative branches to supervise, hire, or discharge personnel, or the power to determine employee salaries. April 9, 1985 Op. Att'y Gen.

Chambers of
Dana Fabe
Chief Justice

Supreme Court
State of Alaska

303 K Street
Anchorage, Alaska
99501-2083

(907) 264-0622
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January 31, 2001

The Honorable Dave Donley
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Senator Donley:

Thank you for your letter of January 11, 2001. I apologize for my delay in responding -- I was out of the office last week to attend the mid-year meeting of the Conference of Chief Justices. I am pleased that you found the FY 2000 report interesting and informative.

Thank you for your specific suggestions about additional information that could be included in our annual report. I am also aware that you are contemplating introduction of legislation on this topic. I have forwarded your request to our Administrative Director, Stephanie Cole, whose office prepares and produces our annual report. I will also share your letter with the rest of the court for their input.

Traditionally, our annual report has served as the official statement from the judicial branch of government to the other two branches and to the public. It has included information about our caseload, our projects, our challenges and our achievements. I will ask court staff to examine annual reports from other state courts, so that we may review and compare the type of information that they have determined to be appropriate for inclusion in their annual reports, in contrast to other statistical reports requested by and provided to the legislature.

In the meantime, I can assure you that we are committed to providing the legislature with any information about court system operations that we have available. As you know, we are somewhat hampered at the present by the state of our current computer system, which cannot easily produce all of the types of data in

which you are interested. We sincerely hope that our new case management system will allow us to provide you with more timely and accurate data and statistics.

Again, I do appreciate that you have taken the time to review our current annual report. I enjoyed our recent meeting, and would like to continue an open dialogue, as appropriate, with you and other members of the legislature. And I am following up on the suggestion that an informal meeting with legislators would be a good adjunct to my presentation of the State of the Judiciary. You will soon be receiving an invitation that I am sending to all legislators, inviting them to an informal reception and continental breakfast on February 23. I believe we will all benefit from more open lines of communication. I hope you will continue to contact the court system about your concerns and needs.

Sincerely,

Dana Fabe
Chief Justice

DF:jd

Supreme Court Justice, Appellate Court Judges, Court Administrative Director
Out-of-State Travel 1999 - 2000

Judge	Date	Purpose	Destination	Conf. Fees	Transp.	M&IE	Lodging	Other Reimb Exp	Total
Fabe, Dana									
	7/30/00 - 8/03/00	Conference of Chief Justices	Rapid City, SD	450.00	894.01	68.00	492.48		1,904.49
	10/12/00 - 10/17/00	Law Clerk Interviews	Seattle San Francisco Los Angeles		481.66	70.00	[illegible].36	58.75	1,281.77
	10/18/00 - 10/22/00	Nat'l Ass'n of Women Judges	Los Angeles	375.00	345.52	92.00	935.20	16.02	1,763.74
	1/15/99 - 1/21/99	Conference of Chief Justices	Washington D.C	450.00	1,241.00	55.00	756.00		2,502.00
	10/12/99 - 10/17/99	Nat'l Assoc Women Judges Ann'l Conf	Miami, FL	350.00	888.00	73.00	563.00		1,874.00
Bryner, Alexander									
	10/15/00 - 10/20/00	Law Clerk Interviews	New Haven, Cambridge, D.C.		1,966.82	260.00	701.39	1.57	2,929.78
	8/22/99 - 8/26/99	Judicial Quinto Conf	Gleneden, OR	275.00	544.00	144.00	477.00		1,440.00
Carpeneti, Walter									
	10/12/99 - 10/20/99	Recruiting Trip	Seattle, Portland, Berkely		1,561.00	250.00	412.00		2,223.00
Cole, Stephanie									
	5/20/00 - 5/24/00	Conf of State Ct Admin. Western Reg'l Mtg	Portland, OR			136.00	381.78		517.78
	7/29/00 - 8/03/00	Conf of State Ct Admin/ Conf of Chief Justices	Rapid City SD	4505.00	767.78	113.00	507.60		5,893.38
	12/6/00 - 12/8/00	Conf of State Ct Admin Mid-year Meeting	Phoenix, AZ	100.00	652.98	100.00	476.49		1,329.47
	7/30/99 - 8/06/99	COSCA Leadership Sem, COSCA/CCJ Annual Mtg	Williamsburg, VA	450.00	1,044.00	154.00	1,087.00		2,735.00
	9/30/99 - 10/1/99	Conf of State Ct Admin. Western Reg'l Mtg	Phoenix AZ	100.00	243.00	75.00	207.00		625.00
	12/2/99 - 12/5/99	Conf of State Ct Admin Mid-year Meeting	Carmel, CA		956.00	139.00	621.00	2	1,718.00
Eastaugh, Robert									
	10/14/00 - 10/19/00	Law Clerk Interviews	Detroit, Chicago		1,049.60	214.00	1,313.87		2,577.47
	10/11/99 - 10/13/99	Law Clerk Interviews	Detroit, Chicago		1,907.00	126.00	335.00	8	2,376.00
	8/20/99 - 8/24/99	Judicial Quinto Conf	Salishan, OR	275.00	636.00	70.00	318.00	1	1,300.00
Matthews, Warren									
	8/01/00 - 8/05/99	Conference of Chief Justices	Williamsburg, VA	450.00	2,204.00	98.00	679.00		3,421.00
	10/11/99 - 10/15/99	Law Clerk Interviews	Boston, MA		2,035.00	168.00	314.00		2,517.00
Rabinowitz, Jay									
Rabinowitz,	7/22/99 - 7/26/99	Conf. Comm. On Uniform State Law Mtg	Denver, CO	400.00	1,048.00	201.00	626.00		2,275.00
Rabinowitz,	8/27/99 - 8/28/99	Justice Maddison Retirement Dinner	Whitehorse, YK		360.00	89.00	97.00		546.00

Source: "Schedule of Compensation for Alaska Court System Supreme Court Justices, Appellate Court Judges and Administrative Director" Calendar Years 1999 and 2000, provided by Doug Wooliver, Alaska Court System

Distributed by Senator Donley with Senate Bill 172 (CourtTravel.xls)

Alaska Court System

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13. Chief Justices — 52
14. Extras for requests — 50

Chambers of Commerce and Chiefs of Police upon request.

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[1] Combination of Magistrates

Provided by Doug Wooliver, Alaska Court System

SB

176

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: May 6, 2001 — FURTHER REFERRALS:

Date of Committee Action: 5-6-01

The JUDICIARY Committee considered: — CSSB 176(L&C) am

CS FOR SENATE BILL NO. 176(L&C) am — DISTRIBUTORSHIPS

"An Act prohibiting certain coercive activity by distributors; relating to certain required distributor payments and purchases; prohibiting distributors from requiring certain contract terms as a condition for certain acts related to distributorship and ancillary agreements; allowing dealers to bring certain court actions against distributors for certain relief; and exempting from the provisions of the Act franchises regulated by the federal Petroleum Marketing Practices Act, situations regulated by the Alaska gasoline products leasing act, and distributorship agreements relating to motor vehicles required to be registered under AS 28.10."

Recommends it be replaced with H CS for CSHB 176 (JUD) [X] Same Title [✓] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR______

[ ] attach amendments
[ ] add new referral to _________ Committee
[ ] Letter of Intent ___________ Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
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DOT
UA

NEW FISCAL NOTES
*For Chief Clerk's Office Use Only

FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN #	Fiscal	Indet.	Zero
CED	1.			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Berkowitz			✓	
[signature]	Meyer	✓			
[signature]	Coghill	✓			
[signature]	Kookesh			✓	
[signature]	JAMES	✓			
Chair: [signature]	Rokeberg	✓			
Chair:					

All conceptual -

PROPOSED AMENDMENTS TO CS FOR SENATE BILL NO. 176 (L&C) am

Amendment #1

Page 3, Line ~~16~~ 22

withdrawn

Insert the words "without cause" following "terminates a distributorship agreement..."

(see Note 1)

Amendment #2

Page 3, Line ~~20~~ 26

not offered

Insert the words "good will," following "including"

Amendment #3 -

Page 6, Line ~~2~~ 11

Adopted

Delete the words "a written agreement" valid agreement enforceable

Insert the words "an agreement, whether express, implied, oral, or written," [illegible]

(see Note 2)

NOTE 1: There is plenty of case law which defines "without cause" so that term should not require a definition. It would also place the responsibility for deciding a contested issue in a court of law.

NOTE 2: In regard to the implied, express or oral agreement section, many dealers operate with written contracts that are modified to varying degrees by oral agreements. In some cases, the manufacturer asks the dealer to build a new structure to showcase or house the product. In others, they demand that the dealer merge with a competitor in order to remove the competition. Other requirements are asked for, which seem innocuous to begin with. One stark example involves Alaska Rubber, which contracted with a manufacturer many years ago to distribute its product. That manufacturer advised that if Alaska Rubber purchased a particular product from them rather than from a less expensive competitor, Alaska Rubber would receive a rebate for the difference. Specific procedures were laid out in the agreement as to what documentation was required and what steps were necessary to obtain the rebate. After the first month, the manufacturer's representative called to complain about the extensive quantity of paperwork that had arrived. Alaska Rubber was asked verbally to provide the information on a single sheet of paper from then on. This practice was followed for the next fifteen or so years. When the manufacturer decided to yank the agreement because another entity had promised them better performance (even though nationally, Alaska Rubber ranked in the top twelve), they filed criminal charges (using the RICO statute since the reports were filed by U.S. mail) against Alaska Rubber in an attempt to intimidate them into caving in. Alaska Rubber has fought successfully in court ever since, but each decision granted in their favor is appealed. The case is currently in federal court, and has cost Alaska Rubber in excess of $1.2 million dollars.

Provided by Deborah Luper
a witness to SB176

ALASKA STATE LEGISLATURE
House of Representatives

Committee Assignments:

Judiciary Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Economic Development, Member

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REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 5·6·01

TO: Terri Banister

FAX: 2029 **VOICE:**

RE: Final CS for SB 176 (JUD)

MESSAGE: Please create a Judiciary CS for SB 176 with the following amendment.

Page 6, Line 11

Delete: "a written agreement"

Insert: "an agreement, whether express, implied, oral or written"

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 1

This is a conceptual amendment to put it back the way originally drafted.

-Heather
x4990

PROPOSED SPONSOR STATEMENT
Alaska Small Business Protection Act

The proposed Alaska Small Business Protection Act bill is necessary to level the playing field between large, well-financed manufacturers and distributors, and small businesses in Alaska. Passage of this legislation will protect Alaska's small businesses from unreasonable manipulation by manufacturers and distributors, foster economic growth and development, and keep capital in Alaska.

Alaska is one of the few states without a law addressing distributorship agreements. This bill fixes gross inequities that occur as Alaskan businesses develop markets for products and services based upon specific product lines under distributorship agreements.

As small businesses invest capital and commit to growth and infrastructure based on distributorship agreements, they inherently become dependent upon those product lines. In many cases, this dependency allows manufacturers to unilaterally force changes in distribution contracts to the detriment of Alaskan businesses, and ultimately, the employees and other entities with whom they have committed in order to fulfill obligations under the original contract.

In many cases, if Alaska's businesses do not agree with new contract terms demanded by the manufacturer/distributor, they are terminated and left with inventory they are unable to sell and which typically, manufacturers/distributors refuse to buy back. This loss of capital ranges from $500 to $500,000 or more, depending upon the business and the amount of inventory required to fulfill the terms of the original agreement. Additionally, many of these contracts make it possible to unilaterally terminate the distributorship agreement if a small business owner wishes to sell his or her business, thereby eliminating much or all of the goodwill value established over years of service.

While businesses are free to sue to recover losses, making claims in civil court is extremely cost prohibitive, especially for a business that may have had its entire income stream cut off. In one prominent 1995 Anchorage case, the small business was selling approximately $2.0 million per year in product. It had $700,000 invested in inventory at the time of termination that the manufacturer/distributor refused to repurchase. However, after the Alaskan business successfully won its case in court, the manufacturer/distributor appealed the outcome. The case continues to date, with legal fees and court costs in excess of one million, and climbing. Many Alaskan small business distributors cannot afford the massive legal costs to pursue these claims through the courts, and still remain in business.

SECTIONAL ANALYSIS
Alaska Small Business Protection Act

An Act relating to distributorships; and amending Rule 65(b), Alaska Rules of Civil Procedure.

The proposed Alaska Small Business Protection Act bill is necessary to level the playing field between large, well-financed manufacturers and distributors, and small businesses in Alaska. Passage of this legislation will protect Alaska's small businesses from unreasonable manipulation by manufacturers and distributors, foster economic growth and development, and keep capital in Alaska.

Section 1. Amends AS 45.45 by adding new sections dealing with distributorships, and agreements between distributors and dealers. It evens out the playing field between large, well-financed distributors/manufacturers and Alaska's small businesses, requiring fair play in regard to distributorship agreement relationships through specified rules and courses of action.

Alaska is one of the few states without a law specifically addressing distributorship agreements. This bill fixes gross inequities that occur as Alaskan businesses develop markets for products and services based upon specific product lines under distributorship agreements.

As small businesses invest capital and commit to growth and infrastructure based on distributorship agreements, they inherently become dependent upon those product lines. In many cases, this dependency allows manufacturers to unilaterally force changes in distribution contracts to the detriment of Alaskan businesses, and ultimately, the employees and other entities with whom they have committed in order to fulfill obligations under the original contract.

In many cases, an Alaskan business serves a particular field, such as the oil or fishing industry, and is "locked in" to specific product or service lines dictated by industry need. Arbitrary loss of a product line or right to provide goods or services can spell the end for many of these businesses, with economic upheaval suffered by employees and other businesses entities dependent upon the dealer.

Sec. 45.45.700. Prevents coercion of a dealer to perform certain acts by using duress or threats to terminate distributorship agreement or another agreement between the distributor or the dealer. Defines "certain acts" as (1) the purchase or delivery of merchandise that has not been ordered by the dealer; (2) the assignment, sale or disposal of a contract or property; or (3) the expenditure of money.

Sec. 45.45.710. Defines actions constituting unfair termination of a distributorship as (1) termination without due regard to the value of the dealer's business, or without just provocation; or (2) by making or causing substantial change to the economic position of the dealer in a way that is detrimental to that dealer.

While businesses are free to sue to recover losses, making claims in civil court can be extremely cost prohibitive, especially for a business that may have had its entire income stream cut off. In one prominent 1995 Anchorage case, the small business was selling approximately $2.0 million per year in product under a distributorship agreement. It had $700,000 invested in inventory at the time of termination that the distributor refused to repurchase. However, after the Alaskan business successfully won its case in court, the distributor appealed the outcome. The case continues to date, with legal fees and court costs in excess of one million, and climbing. Many Alaskan small business distributors cannot afford the massive legal costs to pursue these claims through the courts, and still remain in business.

Sec. 45.45.715. Provides for civil action in court by the dealer if a distributor violates Sections 700 or 710 above. (1) Allows the dealer to recover damages suffered as a result of the termination; (2) enjoins the distributor from terminating the distributorship agreement; (3) enjoins the distributor from making or causing a substantial change in the economic position of the dealer that is detrimental to the dealer; and (4) provides that an injunction may be obtained by the dealer provided the dealer demonstrates there is a reasonable likelihood that the termination will result in a loss of goodwill for the dealer's business or a decline in the value of that business.

In many cases, if Alaska's businesses do not agree with new contract terms demanded by the manufacturer/distributor, they are terminated and left with inventory they are unable to sell and which typically, manufacturers/distributors refuse to buy back. This loss of capital ranges from $500 to $500,000 or more, depending upon the business and the amount of inventory required to fulfill the terms of the original agreement.

This bill also provides legal protections in the case of the dealer's death. The loss of life is always traumatic – in the very least, financially, and emotionally. By setting out specific rules in Alaska law, the settling of the estate in regard to the distributorship agreement and the financial disposition of the dealer's business is less likely to result in expensive legal battles and additional strain to the deceased's heirs.

Additionally, many of these contracts make it possible to unilaterally terminate the distributorship agreement if a small business owner wishes to sell his or her business, thereby eliminating much or all of the goodwill value established over years of service.

Sec. 45.45.720. Provides for disposition of merchandise purchased from the distributor, and remaining in dealer's inventory upon contract termination. Requires the distributor to pay the dealer for merchandise held as of the date of contract termination if the dealer does not wish to keep said merchandise. This section also provides that the distributor will pay 100 percent of original cost of current and unused merchandise, and return transportation charges; or 85 percent of the current net price for repair parts, including superceded parts; and 5 percent of the current net price of repair parts to cover the handling, packing and transportation of those repair parts back to the distributor. If a repair part is not listed, then the current net price is the higher of the original purchase price or the latest price published by the

distributor for the repair part, if the dealer has actual proof of purchase of the repair part from the distributor, and if the repair part was purchased within ten years before the termination.

Once payment has been made, title to merchandise passes to the distributor making the payment, and the distributor is entitled to possession of said merchandise.

Sec. 45.45.725. Requires distributor to make payment to dealer no later than three months following termination of agreement. Also requires a final, detailed statement of account for the merchandise.

Sec. 45.45.730. Provides remedy if distributor fails or refuses to make payment for merchandise as provided in above sections. The dealer is entitled to bring action in court for the amount of the payments.

Sec. 45.45.735. Provides, upon death of the dealer, for repurchase of merchandise by the distributor if the distributorship agreement is not continued from the personal representative, heirs, or devisees of the dealer. The same repurchase terms apply as noted in Sections 720(a) and (c), 725 and 730.

Sec. 45.45.740. Prohibits termination of existing agreement by the distributor if the termination is based upon (1) a change of management or ownership of the dealership, unless the distributor can show that said change would be detrimental to the representation or reputation of the distributor's products; (2) refusal by the existing dealer to purchase or accept delivery of merchandise or a service, unless necessary for the operation of the distributor's merchandise that is sold by the dealer; (3) the fact that the existing dealer owns, has an interest in, participates in the management of, or holds another distributor agreement for the sale or lease of line-make merchandise in the same facilities where the dealer sells or leases the distributor's merchandise; or (4) refusal by the existing dealer to participate in a national advertising campaign or contest, to purchase promotional products or display devices, or to display decoration or materials at the expense of the existing dealer.

Sec. 45.45.745. Requires the distributor to purchase that portion of the dealer's business adversely affected if the distributor wants to terminate the distributorship agreement, or wants to substantially change or actually changes the competitive situation of the distributor's dealer. Purchase would include good will, assets, and machinery, at commercially reasonable business valuations.

The following sections prohibit a distributor from requiring a dealer "sign away his or her rights" in the distributorship agreement, obligate him or herself to pay the distributor's legal fees, or from otherwise circumventing Alaska law in regard to distributorship agreements. It allows a common sense approach to dispute resolution, as long as the distributor does not dictate the terms of conflict resolution via binding arbitration in the agreement before a conflict arises.

Sec. 45.45.750. Prohibits a distributor from requiring a dealer to agree to any of the following terms in a distributorship agreement, or in another agreement that is ancillary to a distributor agreement, as a condition of an offer, grant, or renewal of a distributorship or ancillary agreement: (1) a requirement that the dealer waive a trial by jury in court cases involving the distributor; (2) a requirement that disputes between the distributor and the dealer be submitted to binding arbitration or to any other binding alternative dispute resolution procedure, unless agreed to by both parties at the time of the dispute; (3) a requirement that the dealer pay the attorney fees of the distributor; (4) a requirement that prohibits a firearms dealer from selling legal firearms merchandise not manufactured or distributed by the distributor, or (5) a requirement that the agreement be subject to the laws of any state other than Alaska.

This section also provides that the provisions of this section do not apply to an agreement where a lease or sale of real property is the main purpose of the agreement.

Sec. 45.45.750. Provides exemptions where these sections do not apply – specifically, (1) a distributor agreement that would be considered a franchise regulated by 15 USC 2801-2841 (Petroleum Marketing Practices Act); and (2) a situation regulated by AS 45.50.800 – 45.50.850; or (3) a distributor agreement for the sale, repair, or servicing of motor vehicles that are required to be registered under AS 29.10.

Sec. 45.45.790. Defines "dealer" to mean a person who enters into a distributorship agreement, and who, under the agreement, receives (purchases) merchandise or services from a distributor.

"Distributor" is defined as a person who enters into a distributorship agreement, and who, under the agreement, provides (sells) merchandise or services to a dealer. The term "distributor" also includes a wholesaler, a manufacturer, a person that is a parent corporation or an affiliated corporation of a person identified as a wholesaler or manufacturer, or a field representative, an officer, and agent, or another direct or indirect representative of a person identified as a "distributor."

A "distributor agreement" means an agreement, whether express, implied, oral or written, between two persons by which a person receives the right to (1) sell or lease merchandise or services at retail or wholesale; or (2) use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol; and (3) in which the parties to the agreement have a joint interest, whether equal or unequal, in the offering, selling, or leasing of the merchandise or services.

"Merchandise" includes parts and accessories.

"Terminate" means failing to renew.

Section 2. This section adds a new section to the uncodified law of the State of Alaska, and amends Rule 65(b), Alaska Rules of Civil Procedure, by specifying the type of damages that must be shown in order to receive an injunction, which may be interpreted to include a temporary restraining order.

Section 3. Provides for an effective date for applicability of this Act – on or after the effective date of this Act, or on or after January 1, 2001, if the distributorship agreement is still in effect on the effective date of this Act. Provides that AS 45.45.715 and AS 45.45.745 only apply to a distributorship agreement entered into on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 176
(S) Publish Date: 4/25/01

Revision Date/Time (Note if correction): 04/16/2001 2:35p.m.
Title: An act relating to Distributorships
Sponsor: Senate Labor & Commerce By Request
Requester: Senate Labor and Commerce

Dept. Affected: DCED
BRU: Banking, Securities &
Component: Corporations
Component Number: 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

This Legislation has no fiscal impact on this Department.

Prepared by: Franklin Terry Elder, Director
Division: Banking, Securities & Corporations
Phone: 907-465-2521
Date/Time: 04/16/2001 2:35p.m.

Approved by: Commissioner Deborah B. Sedwick
Agency: Department of Community & Economic Development
Date: 4/16/2001

For distribution information, call the Governor's Legislative Office

(Rev 2/7/2001 OMB)

Subject: Amendments (SB176)
Date: Sun, 6 May 2001 05:16:52 EDT
From: DeborahLuper@aol.com
To: Heather_Nobrega@legis.state.ak.us, john@acfm.com
CC: Annette_Kreitzer@legis.state.ak.us

Hello,

Here are the proposed amendments to SB 176 for the Judiciary hearing. I wanted to fax them down to you, but my fax machine is not working properly.

The proposed amendments are below, and are also attached as a Word document. Please note that I had to use the version that was amended in L&C since the amended version is not available just yet. Therefore, the page and line numbers will have changed.

Thank you!
Deborah
~~~~~~~~~~~~~~~~~~~~

PROPOSED AMENDMENTS TO CS FOR SENATE BILL NO. 176 (L&C) am

Page 3, Line 16

Insert the words "without cause" following "terminates a distributorship agreementâ•¦"

(see Note 1)

Page 3, Line 20

Insert the words "good will," following "including"

Page 6, Line 2

Delete the words "a written agreement"

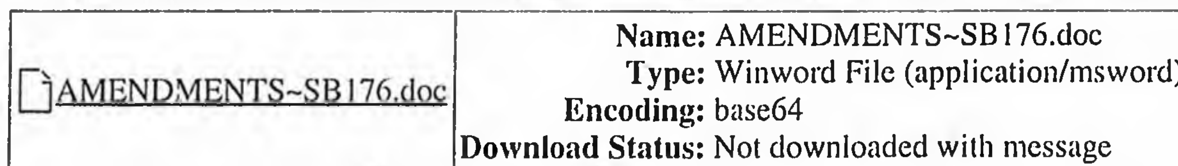
Insert the words "an agreement, whether express, implied, oral, or written,"

(see Note 2)

NOTE 1: There is plenty of case law which defines "without cause" so that term should not require a definition. It would also place the responsibility for deciding a contested issue in a court of law.

NOTE 2: In regard to the implied, express or oral agreement section, many dealers operate with written contracts that are modified to varying degrees by oral agreements. In some cases, the manufacturer asks the dealer to build a new structure to showcase or house the product. In others, they demand that the dealer merge with a competitor in order to remove the competition. Other requirements are asked for, which seem innocuous to begin with. One stark example involves Alaska Rubber, which contracted with a manufacturer many years ago to distribute its product. That manufacturer advised that if Alaska Rubber purchased a particular product from them rather than from a less expensive competitor, Alaska Rubber would receive a rebate for the difference. Specific procedures were laid out in the agreement as to what documentation was required and what steps were necessary to obtain the rebate. After the first month, the manufacturer's representative called to complain about the extensive quantity of paperwork that had arrived. Alaska
~~~~~~~~~~~~~~~~~~~~

Rubber was asked verbally to provide the information on a single sheet of paper from then on. This practice was followed for the next fifteen or so years. When the manufacturer decided to yank the agreement because another entity had promised them better performance (even though nationally, Alaska Rubber ranked in the top twelve), they filed criminal charges (using the RICO statute since the reports were filed by U.S. mail) against Alaska Rubber in an attempt to intimidate them into caving in. Alaska Rubber has fought successfully in court ever since, but each decision granted in their favor is appealed. The case is currently in federal court, and has cost Alaska Rubber in excess of $1.2 million dollars.



SB

178

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 26, 2001 — FURTHER REFERRALS:

Date of Committee Action: 4.28.01

The JUDICIARY Committee considered: — SB 178

SENATE BILL NO. 178 — DETENTION OF DELINQUENT MINORS

"An Act relating to the detention of delinquent minors and to temporary detention hearings; amending Rule 12, Alaska Delinquency Rules; and providing for an effective date."

Recommends it be replaced with ______CS________________________(______) [ ] Same Title [ ] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR______

[ ] attach amendments
[ ] add new referral to _________ Committee
[ ] Letter of Intent ____________Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES
*For Chief Clerk's Office Use Only

FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN #	Fiscal	Indet.	Zero
CRT	2			✓
HSS	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Berkowitz			✓	
[signature]	Meyer	✓			
[signature]	Coghill	✓			
[signature]	James	✓			
Chair: [signature]	Rokeberg	✓			
Chair:					

Alaska State Legislature

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Senate District Q

Senate

Senate Bill 178 "An Act relating to the detention of delinquent minors and to temporary detention hearings; amending Rule 12, Alaska Delinquency Rules; and providing for an effective date."

SPONSOR: Senator Gene Therriault

SPONSOR STATEMENT:

The State of Alaska receives federal formula grant funding to implement the mandates of the Juvenile Justice and Delinquency Prevention Act of 1974. The four mandates of the Act include:

- Deinstitutionalization of status offenders
- Sight and sound separation of juveniles from adult offenders
- Removing juveniles from adult jail and lockup facilities
- Addressing disproportionate minority confinement

Alaska funds a variety of community based delinquency response services to meet these mandates including electronic monitoring programs, attendant care shelters and non-secure hold services, mentoring and community accountability courts.

Alaska stands to lose $168,000 of these federal formula funds because of the number of youth temporarily held in rural and remote adult jails throughout Alaska prior to an initial court hearing and transport to a youth facility. This noncompliance could mean that Alaska will also lose discretion on how $504,000 of federal money may be used. Federal law will require these funds to be rerouted and used to bring the state into compliance.

When a juvenile commits a serious offense in a rural or remote community, they may need to be detained upon arrest in order to protect the public. There are only 6 juvenile detention centers throughout Alaska, so serious juvenile offenders in remote communities often end up in village adult lockup facilities awaiting relocation to a juvenile facility. Federal regulations require that juveniles in adult facilities be held for no more than 24 hours; however, the regulations also allow a state to extend those time limits because of adverse weather, limited transportation options, and other conditions. Such an extension is only available in states where the juvenile must make an initial appearance in court within 24 hours of their arrest.

SB 178 would require an initial appearance in court within 24 hours for juveniles placed in an adult jail or lockup and would place the federal regulation exception language into state statute. This change would give Alaska the ability to claim certain exceptions to the federal mandates, preserve the state's eligibility for 100% of the federal formula grant allocation, but would not allow juveniles to be held in adult facilities any longer than is absolutely necessary.

Email: Senator_Gene_Therriault@legis.state.ak.us

Alaska State Legislature

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Senate District Q

Senate

SB 178

Briefing Paper

- Alaska exceeds the number of violations associated with excessive time limits for juveniles held in adult jails or lockups. This jeopardizes Alaska's continued receipt of federal formula delinquency prevention grant funds.
  - Federal Formula Grant totals $672.0
  - Grant funds support: attendant care shelters; mentoring programs; electronic monitoring; youth and elders courts.

- The Juvenile Justice and Delinquency Prevention Act of 1974 creates 4 primary mandates, including the removal of juveniles from adult jails. The regulations for the Act allow a state to claim certain exceptions to specified time limits if the state enacts a 24 hour arraignment for juveniles held in adult jails or lockups.
  - Senator Stevens Alaska Exemption to the 24 hour arraignment rule for juveniles in adult jails and lockups expire September, 2002.

- SB 178 established a 24 hour arraignment requirement for juveniles arrested and held in rural and remote adult jails and holding facilities and puts the federal regulation time exception language in the Delinquency statutes.

- SB 178 would not extend the periods of time for which juveniles might be held in adult lockups. Officials would continue to move juveniles from remote locations into regional juvenile detention centers as quickly and safely as possible. SB 178 simply gives Alaska access to regulatory time exceptions which lower violation rates and preserve federal funding.

- Youth held in juvenile detention centers would continue to be arraigned within 48 hours as provided under the current statute.
  - Establishing a two level delinquency arraignment system minimizes the fiscal impact and preserves Alaska's eligibility for full federal formula grant funding.
  - There were 2,728 juveniles detained in FY 2000. 222 of these were held for various periods of time in adult jails or lockups, most were moved to juvenile detention facilities within allowable time limits.
  - The violation rate can not be more than 9 "non-conforming" holds per 100,000 population. This would put Alaska's rate at 19.5. In FY 1998 we had a violation rate of 29.5 and in FY 1997 the violation rate was 38.2. These violations would be under the 19.5 rate if Alaska could claim the exceptions provided through enactment of a 24 hour arraignment for juveniles held in adult jails or lockups.

Email: Senator_Gene_Therriault@legis.state.ak.us

DETENTION EPISODES FOR FY2000

Offenses Under Jurisdiction of DJJ

Offense	Total Detained State Wide	Juveniles held in adult jails or lockups
Arson	5	1
Assault	412	18
Burglary	120	15
Concealment	11	7
Crim. Misch	72	2
Crim Trespass	23	3
Disorderly Conduct	20	3
Forgery	5	0
Harassment	1	0
Kidnap	1	1
MIW	24	0
MICS	74	14
Prob. Viol.	590	16
Resisting Arrest	18	
Rioting	1	
Robbery	13	
Sale of Alcohol	1	
Sexual Assault	17	2
Sex. Abuse Minor	22	3
Theft	198	9
Viol Valid Ct Ord	11	1
Viol Conditions Rel	108	
Murder	9	1
Bench Warrant - PV	96	
Weapons	2	
Mtr Vehicle Theft	36	1
Escape	3	
Terroristic Threat	8	2
Crim Neg Burning	1	
Crim Chg. Unspecified	1	
False Information	2	
Attempted Murder	1	
Unlawful Evasion	2	
Out of State Cr Warrant	1	
Coercion	1	
Viol DV Restraining ord	4	
Possession Stolen Prop	1	
Indecent Viewing	1	
Domestic Viol Assault	77	17
DJJ Subtotal:	1993	**116**

Note: The projected number of detention episodes occurring between Friday 3 p.m. and Midnight of FY2000 potentially requiring a weekend arraignment is 31 cases.

DETENTION EPISODES FOR FY2000

Offenses Under District Court Jurisdiction

Offense	Total Detained State Wide	Juveniles held in adult jails or lockups
Offense	Totals	
Bench Warrant -FTA	62	6
Bench Warrant -Traffic	1	0
DWOL	17	2
DWLS	8	8
DWI	40	12
FTA	14	0
Reckless Driving	11	3
Serve Time	8	3
Traffic Criminal	17	17
Dist Court Subtotal:	178	51

Miscellaneous Categories

Prg. Discipline	43	
Medical Transfer	3	
Transfer from other fac.	28	
On Pass	3	
INS Hold	2	
INS Hold for deportation	2	2
Prerelease Pgm	1	
Miscellanesous Subtotal:	82	2

Total:	2253	135

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 178
( ) Publish Date:

Revision Date/Time (Note if correction):
Title: Relating to the Detention of Minors
Sponsor: Sen. Therriault
Requester: Senate (HES)

Dept. Affected: Health & Social Services
BRU: Juvenile Justice
Component: Delinquency Prevention
Component Number: 248

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Full-time						
Part-time						
Temporary						

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

Alaska receives approximately $670,000 per year through the Juvenile Justice and Delinquency Prevention Act (Act) formula grant program which supports activities related to the four mandate areas under the Act: 1. Deinstitutionalization of status offenders, 2. Separation of juveniles from adult offenders, 3. Removing juveniles from adult jail and lockup facilities, and 4. Disproportionate minority confinement. If a state fails to comply with standards set for each of these four mandates, a grant withholding penalty of 25% is assessed against the formula grant total for each mandate in which the state is found to be in non-compliance. Additionally, failure to correct areas of non-compliance will require all remaining funds be directed to efforts to bring the state into compliance with the Act.

Prepared by: George Buhite, Director — Phone 465-1385
Division: Juvenile Justice — Date/Time 3/14/01 7:58 AM
Approved by: Elmer A. Lindstrom, Special Assistant — Date 4/12/01 4:44 PM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

Alaska has difficulty meeting the established compliance standards related to the removal of juveniles from adult jails and lockup facilities. Because of Alaska's expansive geography, limited transportation services in many rural parts of the state, adverse weather conditions which impact transportation, and the fact there are only 6 youth detention facilities in Alaska, the state stands to lose approximately $168.0 in federal grant receipts due to non-compliance with jail removal mandates under the JJDP Act.

The Act allows a state to receive full formula grant funding if, through application of certain compliance exceptions, the number of violations remain below the limits set by federal regulation. In order to take advantage of the jail removal compliance exceptions the state must have a law requiring that juveniles placed in an adult facility be brought before the court within 24 hours of their placement. These exceptions provide a set of allowable circumstances under which a juvenile may be held in an adult facility without incurring a non-compliance violation of the jail removal mandate of the Act. These exceptions allow a juvenile to be held for longer periods as a result of limited transportation services, adverse weather conditions or other circumstances which contribute to delays in moving juvenile offenders out of inappropriate adult facilities into youth detention facilities. This bill proposal would enact a 24 hour arraignment in these juvenile cases, places the mandate exceptions provided in the federal regulations in state statute, and would preserve Alaska's ability to claim full funding of the federal grant award under the Act.

FISCAL NOTE

STATE OF ALASKA **BILL NO.** SB 178
2001 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) Revised 4/24/01 Dept. Affected
Title Detention of Juveniles BRU Alaska Court System
Component Trial Courts
Sponsor Senator Therriault
Requester Senate Health and Social Services Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

Section 3 of SB 178 reduces the amount of time allowed between detention and arraingnment of a juvenile housed in an adult correctional facility. The current law requires the juvenile to be brought before the court within 48 hours; this bill reduces that time to 24 hours. This change will require more juvenile arraignment hearings to be held on the weekend. The Division of Juvenile Justice estimates that had this provision been in effect in FY 2000 there would have been 31 additional weekend hearings. Although this number is too small to generate a fiscal note, the steady increase in weekend court proceedings will eventually become significant enough to warrant additional funding.

Prepared by: Douglas Wooliver Phone 463-4750
Division Alaska Court System Date/Time 4/24/01 9:30 a.m.
Approved by: Stephanie Cole Date
Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

(Rev 8/2000 OMB)

Alaska Juvenile Justice Advisory Committee (AJJAC)

APR 27 2001

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Joe Pruitt
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Christine Smith
Pepsi Souksi
Jaime M. Zellhuber

April 27, 2001

Honorable Norm Rokeberg
Chair of the House Judiciary Committee

RE: Written Testimony for Senate Bill 178

Dear Representative Rokeberg:

On behalf of the Alaska Juvenile Justice Advisory Committee (AJJAC), I ask that you and the House Judiciary Committee support Senate Bill 178. Please consider this letter as written testimony in support of SB 178. The AJJAC is a non-partisan citizens' advisory board for the juvenile justice system in Alaska. We are comprised of volunteers throughout Alaska who have experience with youth and the juvenile justice system.

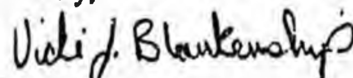
Alaska currently receives money from the federal government through the Juvenile Justice and Delinquency Prevention Act (JJDPA). This money is used for prevention and intervention programs throughout Alaska. In order to receive this money, states must comply with four core mandates to the Act. Alaska has met all of the mandates except one. This mandate requires any juvenile held in an adult facility to be arraigned within 24 hours of being arrested. Alaska law currently allows 48 hours. Senator Stevens was able to obtain an exemption to the federal Act for Alaska, but only until September 2002. We must change our state law to comply with federal law in order to continue receiving funds for these important programs.

Senate Bill 178 would amend Alaska's law to comply with the federal Act. SB 178 establishes a 24 hour arraignment requirement for juveniles arrested and held in adult jails and holding facilities and puts the federal regulation time exception language in the Delinquency statutes. SB 178 mirrors the federal law in that it also gives a rural exception if there are no roads and/or bad weather and allows them more time to get the youth to court. SB 178 would not extend the periods of time for which juveniles might be held in adult facilities. With SB 178, youth held in juvenile facilities (not adult facilities) would continue to be arraigned within 48 hours as provided under the current statute.

I am not aware of any department within the state that is opposed to this change in law. I believe we all see the need for prevention and intervention programs and it is critical that we continue receiving federal money for this purpose.

Thank you for your consideration of SB 178 and we hope you support it.

Sincerely,



Vicki J. Blankenship, AJJAC Chair

SB 183

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 28, 2001 FURTHER REFERRALS:

Date of Committee Action: 5.1.02

The JUDICIARY Committee considered: SB 183

SENATE BILL NO. 183 ATTY FEES:APPORTIONMT/PUBLIC INT.LITIGANT

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

Recommends it be replaced with ______CS________________________(______) [ ] Same Title [ ] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_______

[ ] attach amendments
[ ] add new referral to __________ Committee
[ ] Letter of Intent ____________Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*For Chief Clerk's Office Use Only

FN# *	List by Dept(s):	Fiscal	Indet.	Zero
	LAW			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN #	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Meyer			✓	
[signature]	Coghill			✓	
[signature]	JAMES	✓			
[signature]	Kookesh			✓	
Chair: [signature]	ROKEBERG	✓			
Chair:					

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT

SENATE BILL 183

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

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

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

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

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

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

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

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

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

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

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Sectional Analysis

SB 183

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

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

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

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

DD/bc

Provided By Senator Donley's Office

Additional Information on SB 183

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

Definition of statute is included for clarity purposes

AS 09.17.900. Definition.

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

Provided By Senator Donley's Office

Additional Information on SB 183

Alaska Rules of Civil Procedure

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party. Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

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

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

(A) the complexity of the litigation;

(B) the length of trial;

(C) the reasonableness of the attorneys' hourly rates and the number of hours expended;

(D) the reasonableness of the number of attorneys used;

(E) the attorneys' efforts to minimize fees;

(F) the reasonableness of the claims and defenses pursued by each side;

(G) vexatious or bad faith conduct;

(H) the relationship between the amount of work performed and the significance of the matters at stake;

(I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter
similarly situated litigants from the voluntary use of the courts;
(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

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

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

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

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

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

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

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

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

Provided By Senator Donley's Office

Additional Information for SB 183

ALASKA CONSTITUTION
Article IV

The Judiciary

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

SECTION 2. SUPREME COURT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

MEMORANDUM

TO: Senator Dave Donley

FROM: Bill Church Bill
Legislative Aide

DATE: March 19, 2001

RE: Department of Law Public Interest Litigant Payments

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

The breakdown is as follows:

FY	Criminal Division	Civil Division	Number of PIL
95	$82,047	$1,231,439	20
96	$147,717	$146,392	11
97	$85,958	$144,483	11
98	$53,922	$215,611	9
99	$56,734	$603,859	8
00	$51,018	$37,724	3
01	$209,415	$211,320	8
	$686,811	$2,590828	70

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

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

January-May: STATE CAPITOL • JUNEAU, AK • 99801 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 West Fourth Avenue • Suite 400 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

MEMORANDUM

TO: Senator Dave Donley

FROM: Bill Church
Legislative Aide

DATE: April 30, 2001

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

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

The breakdown is as follows:

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

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

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

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

Co-Chair: Senate Finance Committee
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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

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

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

For distribution information, call the Governor's Legislative Office

(Rev 11/2000 OMB)

COMMITTEE CC[illegible]

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. SB 183 #1

ANALYSIS CONTINUATION

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

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

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

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

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

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

(1) Is the case designed to effectuate strong public policies?

(2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?

(3) Can only a private party have been expected to bring the suit?

(4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

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

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

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

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

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

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

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

IV. CONCLUSION

The decision of the superior court is AFFIRMED.

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

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E. Public Interest Litigant Status

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

DISPOSITION

Reversed in part, affirmed in part and remanded.

OPINION FOOTNOTES

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

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

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

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

In **Southeast Alaska Conservation,** this court stated:

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Appendix E

Attorney's Fees in Alaska Public Interest Litigation

Public Interest Litigation Resulting in Judgments Against the State of Alaska Total Costs, Fees, and Interest, FY'89-FY'93*

	FY'89	FY'90	FY'91	FY'92	FY'93	Total
Carlson v. State			750.00			750.00
Anderson v. ADF&G				5,963.77		5,963.77
Dot Lake v. State			6,983.45			6,983.45
Finkelstein v. Elections	12,364.01					12,364.01
Carpenter v. Hammond	25,829.26					25,829.26
Chambers v. State		34,269.79				34,269.79
Newman v. State			36,663.98			36,663.98
AK/Environment v. DNR				42,242.02		42,242.02
Kenai Pen. Borough v. State	54,596.31					54,596.31
McDowell v. State		13,350.79	3,250.52	100,094.64		116,695.95
Cleary v. Smith	34,695.81	48,065.93	59,358.32	25,687.71		167,807.77
Katie John v. State				195,928.61		195,928.61
Bobby v. State			196,681.64			196,681.64
Trustees/AK v. State	69,124.57	41,045.38		63,307.51	67,401.58	240,879.04
Kenaitze Indian Tribe v. State				334,281.75		334,281.75
FY'93 Reapport						
Demientieff					43,159.50	43,159.50
AK Democratic					130,251.22	130,251.22
SE Conference					189,488.69	189,488.69
Mat-Su					173,290.30	173,290.30
Leavitt					137,632.06	137,632.06
Total	196,609.96	136,731.89	303,687.91	767,506.01	731,223.35	2,135,759.12

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

G. Public Interest Litigation

1. Different Standards for Public Interest Cases

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

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

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

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

[384] *Id.* at 201.

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

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

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

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

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

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

[389] 526 P.2d 1131 (Alaska 1974).

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

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

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

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

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

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

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[391] *Gilbert*, 526 P.2d at 1136.

[392] 512 P.2d 575, 587.

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

[394] 568 P.2d 986 (Alaska 1977).

[395] *Id.* at 993.

[396] *Id.* at 991.

[397] *Id.*

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

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

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

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

2. Criteria for Public Interest Status

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

[400] *McCabe*, 568 P.2d at 994.

[401] *Hickel*, 868 P.2d at 924 (citations omitted).

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

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

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

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

H. Appellate Review of Fee Awards

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

1. Appellate Review of Trial Court Awards

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

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[405] *Anch. Daily News*, 803 P.2d at 404.

[406] *See Mobil Oil v. Local Boundary Comm'n*, 518 P.2d 92, 104 (Alaska 1974).

[407] *See Anch. Daily News*, 803 P.2d at 404.

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

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

[410] *Id.* at 38 n.142.

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

April 30, 2001

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

Via Facsimile No.: 907-465-2040

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

Re: SB 183: Attorneys Fees of Public Interest Litigants

Dear Representative Rokeberg:

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

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

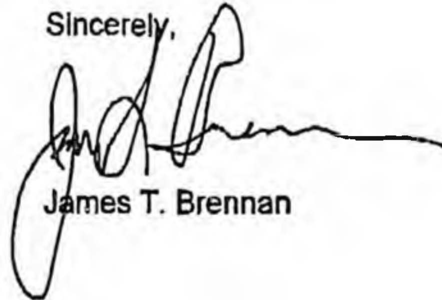
Where a public interest litigant prevails, the decision, by definition, is in the "public interest." The law should encourage, rather than discourage outcomes which serve the public interest.

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

04/30/01 15:38 907 278 0877 H B H & C 002/003

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

Sincerely,



James T. Brennan

JTB:dp

Jtbgen\Legislature Ltr

04/30/01 15:38 907 278 0877 H B H & C 003/003

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type–Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

POSITIONS	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Full-time						
Part-time						
Temporary						

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

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

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

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

(Revised 9/2001 OMB)

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB 183

ANALYSIS CONTINUATION

Passage of this legislation will have no impact on the Department of Law's operating budget. However, each year the department seeks supplemental funding to pay judgments and claims against the state, including public interest litigant attorney's fee awards. Total attorney's fee awards under the public interest litigant exception to Rule 82 included in judgments against the state for the last five years are as follows: FY97, $134.3; FY98, $186.4; FY99, $413.9; FY00, $34.7; FY01 $298.4. (These numbers represent fees only, and do not include costs, pre-judgment or post-judgment interest.)

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

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

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

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

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

Hon. Norman Rokeberg, House Judiciary Committee Chair

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

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

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

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

Rep. Rokeberg,

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

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

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

Thankyou for your thoughtful consideration.

POM for Representative Rokeberg

From: Ms. Carolyn F Nickles Telephone: 345-3224
13116 Beach Cir

Anchorage, AK 99515 NON Constituent Registered Voter: V
Email:

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

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

Entered in ANC on 5/04/01 POMID: 2663 Stored Distribution: 60

Main Menu . Store All . Store This One . Prev POM . Next POM

Message 1 out of 3.

Subject: [Fwd: SB 183 Comments]
Date: Fri, 08 Feb 2002 08:44:36 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: SB 183 Comments
Date: Fri, 08 Feb 2002 06:49:28 -0900
From: Elyse Guttenberg <elyseg@mosquitonet.com>
To: Representative_Norman_Rokeberg@legis.state.ak.us, Representative_Jeannette_James@legis.state.ak.us, Representative_Ethan_Berkowitz@legis.state.ak.us, Representative_John_Coghill@legis.state.ak.us, Representative_Albert_Kookesh@legis.state.ak.us, Representative_Kevin_Meyer@legis.state.ak.us, Heather_Nobregac@legis.state.ak.us, Representative_Scott_Ogan@legis.state.ak.us

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

FEB 1 1 2002

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

May 4, 2001

Dear Anchorage Daily News:

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

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

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

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

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

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

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

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

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

Very truly yours,

Larry J. Houle
General Manager
Alaska Support Industry Alliance

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

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

Hon. Norman Rokeberg, House Judiciary Committee Chair

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

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

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

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

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

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

Subject: Wev Shea's follow-up on Public Interest Litigation - SB183
Date: Tue, 12 Feb 2002 09:49:06 -0900
From: "Wev Shea" <wws@alaskalife.net>
To: "Representative John Coghill" <Representative_John_Coghill@legis.state.ak.us>
CC: "Scott Ogan" <Representative_Scott_Ogan@legis.state.ak.us>,
"Norm Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>,
"Kevin Meyer" <Representative_Kevin_Meyer@legis.state.ak.us>,
"Jeannette James" <Representative_Jeannette_James@legis.state.ak.us>,
"Ethan Berkowitz" <Representative_Ethan_Berkowitz@legis.state.ak.us>,
"Albert Kookesh" <Representative_Albert_Kookesh@legis.state.ak.us>

The Honorable John Coghill
Alaska State House
Juneau, Alaska

Dear John:

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

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

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

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

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

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

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

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

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

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

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

Respectfully and Best Wishes,

Wev

Wevley William Shea

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

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

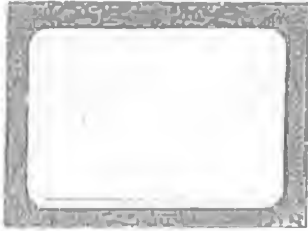
Dear Representative Rokeberg,

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

Judy Rae Smith

P.O. Box 81071

Fairbanks, AK 99708



Fairbanks Economic Development Corporation

February 19, 2002

FEB 2_ 2002

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

To Whom It May Concern:

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

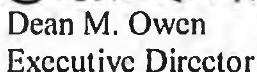
Under current law, special interest groups routinely oppose the permitting of resource development projects, because they have no risk or expense. These frivolous lawsuits delay projects, costing additional time and money.

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

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

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

Respectfully,



Dean M. Owen
Executive Director

515 Seventh Avenue, Suite 320, Fairbanks, Alaska 99701 (907) 452-2185 Fax: (907) 451-9534