

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11159 SENATE JUDICIARY

Schedule A

APOC Form 24-3A

You are required to submit a separate Schedule A for each client or employer you represent who is not listed on the **short form for zero reports**. Schedule A summarizes your compensation and expenditure activity for the reporting period.

List your name and the complete business name of the employer who is the subject of the report.

Check the appropriate box for the reporting period.

If you are filing an **amended Schedule A**, check the box provided to show that the Schedule A is an amendment to a previously filed report.

Schedule A reporting is organized into four columns. The first column identifies the contents of each row. The second through the fourth columns are for your reported amounts. Put the figures you are disclosing for the current reporting period in the second column. Put the year-to-date (fourth column) totals from your previous report in the third column. If you are filing your first report for a calendar year, the third column is zero or blank. In the final column put the sum of the second and third columns; these fourth column figures are the total-to-date amounts for the current calendar year.

Disclose **all expenditures accrued in connection with lobbying activities**, whether or not your client or employer has reimbursed you. Show the expenditures in the categories provided on the form. If the expenditure is for something other than food and beverage, living accommodations, or travel, list it under "other expenses" and describe the expenditure in the space provided on the bottom of the form.

Disclose the total amount of compensation accrued on behalf of the client or employer whether or not you have received payment. The law requires you to report all compensation **accrued** during each reporting period. (2 AAC 50.530) If the nature of your compensation is other than fee or salary, indicate the fair market value of the compensation in the space for "other compensation" and describe the nature of the compensation at the bottom of the form.

Remember: Separate Schedule A forms must be submitted for each client or employer you represent.

Employer of Lobbyist Reports

Who must file reports?

Alaska law requires those who employ or retain the services of one or more lobbyists to file quarterly reports disclosing all expenditures **accrued** in connection with lobbying activities for each reporting period.

Employer of lobbyist reports also disclose gifts to public officials and all in-house expenses accrued in connection with lobbying.

What are the reporting periods?

Under AS 24.45.061, employers of lobbyists file quarterly reports based on the calendar quarters. For example, 1st quarter reports cover all activity during January, February and March. Reports must be submitted for each reporting period during which the employer or client retains or employs a lobbyist, even if there is no reportable activity.

Quarterly reports are due on or before the last day of the month following the calendar quarter that is the subject of the reports; thus, first quarter reports are due April 30. If a report's due date falls on a weekend or state holiday, no civil penalty is assessed if the report is filed no later than the first regular work day following the actual due date.

Employer of lobbyist reports may be faxed, mailed, or delivered. If mailed, the postmark is considered to be the date filed. Reports that are received after the due date are subject to a civil penalty assessment of \$10 per day for each day the report is outstanding.

Complete and File the Employer of Lobbyist Report.
Schedule A & Schedule B

APOC Forms 24-4, 24-4A & 24-4B

GENERAL INFORMATION

Provide the company or organization name on each employer of lobbyist report you submit. If your mailing address, phone number or fax number have changed since the lobbyist registration, complete that information also. If you have not changed your mailing address or phone/fax numbers, you do not need to include them on each employer of lobbyist report.

REPORTING PERIOD

Indicate the reporting period covered by your report by marking the appropriate box. You must file a report for each reporting period during which you employ or retain a lobbyist, even if you have no activity to report.

LOBBYISTS

On the lines provided, list the names of all lobbyists retained and/or employed.

SHORT FORM FOR ZERO REPORTS

If there are no **accrued** expenses to report for one or more of your lobbyists, check the left zero report box and list the name[s] of the lobbyist[s]. You do not need to file a Schedule A for the listed lobbyists. If there are no **accrued** Schedule B expenditures, check the right zero report box. If the zero report box for Schedule B expenditures is checked, you do not need to file Schedule B.

GIFTS AND EXCHANGES

The law requires those who employ or retain a lobbyist to disclose the date and nature of any gift exceeding \$100 in value made to any public official. The full name and official position of the gift's recipient must also be disclosed.

Food and beverage consumed in private places are permissible gifts, but must be disclosed if the aggregate value is more than \$100 per calendar year.

Food and beverage consumed in places of public accommodation are not gifts, but are reportable expenditures. If you host a reception or a dinner for public officials, you must report the costs of that activity on Schedule B.

GENERAL DESCRIPTION OF LOBBYING ACTIVITIES

Provide a general description of the official actions you attempted to influence during the reporting period. Include specific bill numbers when appropriate.

NATURE AND INTEREST OF LOBBYIST EMPLOYER

Describe generally the nature of the business or organization employing or retaining a lobbyist.

NOTICE OF TERMINATION

List the name and the last date of lobbying activities for any lobbyist who has terminated lobbying on your behalf during the reporting period. If a lobbyist has ceased all activities that required her or his registration under AS 24.45, you may report their termination. Thereafter, you will not be required to continue filing Employer of Lobbyist Reports on behalf of that lobbyist.

CERTIFICATION BY EMPLOYER OF LOBBYIST

The report must be signed by the person designated to certify it on behalf of the Employer of Lobbyist.

If the report was prepared by someone other than the certifying individual, the preparer must also sign the report and must provide her/his name, mailing address, and title.

Schedule A

APOC Form 24-4A

You are required to submit a separate Schedule A for each lobbyist you employ or retain during each reporting period, unless you file a zero report for that lobbyist. This schedule summarizes the payments accrued to and on behalf of your lobbyists.

List the complete business name of the employer and the complete name of the lobbyist who is the subject of the Schedule A.

Check the appropriate box to indicate the reporting period.

Schedule A reporting is organized into four columns. The first column identifies the contents of each row. The second through the fourth columns are for your reported amounts. Put the figures you are reporting for the current period in the second column. Put the year-to-date totals from your previous report in the third column. If you are filing your first report for a calendar year, the third column is zero or blank. In the final column put the sum of the second and third columns; these fourth column figures are the total-to-date amounts for the current calendar year. These year-to-date amounts in the fourth column are the figures that, on your next report, you will show in column three.

Disclose **all expenditures accrued in connection with lobbying activities**, whether or not you have paid your lobbyist or a vendor on your lobbyist's behalf. Show the expenditures in the categories provided on the form. If the expenditure is for something other than food and beverage, living accommodations or travel, show it under "other expenses" and describe the expenditure in the space provided at the bottom of the form.

Disclose the **total amount of compensation accrued** to the lobbyist whether or not you have paid her or him. The law requires you to report all compensation **accrued** during each reporting period. (2 AAC 50.536) If the nature of the compensation is other than a fee or salary, indicate the fair market value of the compensation in the space for "other compensation" and describe the nature of the compensation in the space provided.

Show the total amounts reported on your last report in the third column. Show the total year-to-date amounts in the fourth column.

Separate Schedule A forms must be submitted for each lobbyist you employ or retain.

Schedule B

APOC Form 24-4B

Schedule B is designed for reporting the information required under AS 24.45.061(b)(3): the total amount of payments, not paid or accrued to lobbyists, made to influence legislative or administrative action during the reporting period.

Schedule B expenditures are all activities that assist or promote the lobbying effort, but that are not paid directly to or on behalf of your registered lobbyist(s). Examples include:

- 1) In-house support for lobbying activities, such as salary and expenses of employees who assist in research, drafting and preparation of materials that further lobbying goals.
- 2) Travel for employees who communicate with or make appearances before public officials concerning administrative or legislative matters connected with lobbying, but who do not meet the four-hour test requiring their registration as lobbyists.
- 3) Promotional activities sponsored in support of lobbying activities, such as advertising campaigns or legislative receptions.
- 4) Entertaining public officials, whether in public or private. If the entertaining is not related to lobbying efforts, then it must be reported on the first page of the report under "Gifts and Exchanges."
- 5) The cost of media support to express your position on issues.
- 6) The cost of conducting surveys or polls related to lobbying efforts.

List the date on which the expenditure was accrued, the complete business name and mailing address of the payee, a general description of the purpose of the expenditure, and the amount of the expenditure. You may attach additional sheets if necessary.

Total all Schedule B expenditures for the current reporting period, show the total from previous reporting periods (the first quarter report each year will not have a figure from previous reporting periods), and give the cumulative total to date for the reporting year.

POSITION PAPER

In October of this year the Alaska State Chamber of Commerce ("ASCC") filed a complaint on behalf of its members in the State Superior Court against the State of Alaska and the Alaska Public Offices Commission ("APOC") asking that the court declare portions of Alaska's Regulation of Lobbying Act (the "Act") and its implementing regulations unconstitutional. As outlined more fully below, certain portions of that Act, and the way in which APOC is implementing them in particular, have proven to unconstitutionally restrict business people from any meaningful contact with legislators or the administration in order to express their support or concern about pending issues. Although we are confident that the lawsuit will be successful, we believe that those portions of the Act and the regulations that are unconstitutional can be more easily remedied in accordance with the original intent of the Act, through the Legislature making revisions to the Act.

We are convinced that APOC is wrong in its interpretation of the lobbyist statutes in that it does not follow legislative intent, and we believe that the position that APOC is taking regarding what activities require someone to register as a lobbyist, unconstitutionally impact a business owner's right to meet with legislators or the administration to discuss proposed legislation, regulations or other administrative action that could dramatically impact his or her business.

Background

Currently, under Alaska Statute 24.45.171(8), a "lobbyist" is defined to mean:

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agent with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action; . . . [emphasis added.]

The lobbying statutes were enacted in 1976 and the definition of "lobbyist" has never been revised. Unfortunately, the Legislature did not specifically define "substantial or regular."

Following the enactment of the lobbyist statutes, APOC enacted regulations to implement the statutes. APOC defined several of the terms or phrases contained in the statutes. For instance, "substantial or regular" is defined at 2 AAC 50.545(f) as follows:

“Substantial or regular.” as used in AS 24.45.171(8)(A), means that a person who is not employed specifically for the purpose of influencing legislative or administrative action, or a person whose contractual services are not specifically for the purpose of influencing legislative or administrative action, is considered to be a lobbyist if, within a 30-day period, he spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action as defined in AS 24.45.171(1), (6), (7), and this chapter; when a person becomes a lobbyist upon meeting the tests of this section, he must register in accordance with AS 24.45.041 and must report in accordance with AS 24.45.051 and 2AAC 50. [Emphasis added.]

Assuming a business person works an average of 40 hours a week, or 160 hours a month, four hours in a 30-day period represents only 3% of that person’s time. Under common definitions and understanding, 3% of something would be defined as nominal or incidental rather than meeting any reasonable definition of “substantial.” Further disturbing, however, is that APOC has broadened the interpretation of what activities are included in “influencing legislative or administrative action” to create an even more limiting environment.

A business person, who does not represent him/herself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession (A.S. 24.45.171(8)(B)) can only then be a lobbyist if he/she is employed or receives compensation to communicate with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action. So the question is, “What constitutes a substantial or regular portion of one’s work activities that might trigger one being considered a lobbyist?”

Based on our experience, APOC’s interpretation of the statutory definition of “lobbyist” as contained in these regulations is extremely strained. For instance, APOC considers a social gathering that includes legislators or staffers, to be included within the four-hour limitation, even where there is no discussion or attempt to influence legislation. For example, when APOC read in the newspaper that a prominent businessman was attending a golf tournament with legislators and legislative staffers, it contacted his company, a member of ASCC, to verify that he was registered as a lobbyist. He was not registered as a lobbyist because his company did not believe that his work activities met the definition of a lobbyist. After discussions with APOC about this golf tournament, APOC sent a letter setting out its position in which it states:

Note that the regulations do not require that the activities influence legislative or administration action; they merely have to be directed toward influencing such action. The [golf tournament] was designed by lobbyists and their clients/employers. It may have been a social event, but it was certainly directed towards influencing legislative action. By spending time with legislators and their staffers, lobbyists hope to establish a rapport with them that will help the lobbyists when they later meet with legislators and/or staffers to influence action on legislation of interest to the lobbyists' clients. Sam Kito stated in an interview with a reporter about the purpose of the trip: "You interact with them, you get to know people . . . " See Anchorage Daily News article dated March 8, 2002. . . . participation in the [golf tournament] means that he spent more than four hours in a 30-day period in activities directed toward influencing legislative action.

Under its theory, APOC would likely find that merely accompanying a governor and his/her cabinet on a trade mission constitutes lobbying. More importantly, a business owner or executive talking with agency officials about proposed legislation, regulations or permit applications that would directly affect his/her business could cause a business person to be deemed a lobbyist even though only a nominal amount of the business person's time is spent on activities directed toward influencing such action. Is four hours a month, with all of the other activities that any business person engages in to advance his/her business, a "substantial or regular" portion of what the business pays him/her to do? These examples show that APOC has an extremely strained, incorrect interpretation of the statute and that it was never the intent of the Legislature for the lobbying laws to make such a broad sweep. APOC's application of its regulations makes it virtually impossible, without being deemed a lobbyist, for many business leaders to meet with and to discuss legislative or regulatory activity that would dramatically impact their companies.

Importantly, being deemed a lobbyist by APOC has very burdensome consequences that, as they are being currently applied, violates the constitutional rights of those impacted. Once someone is determined to be a lobbyist, in addition to the requirement to register; pay a fee; provide personal financial information; and make and file periodic reports; the lobbyist is prohibited from several activities outlined in A.S. 24.45.121. Most notably, someone who has been deemed a lobbyist because he/she has spent more than four hours in a 30 day period engaged in what APOC considers lobbying may not;

serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate or otherwise engage in the fund-raising activity of a legislative campaign or a campaign for governor or lieutenant governor if the lobbyist has registered, or is required to register as a lobbyist under this chapter, during the calendar year; this paragraph . . . does not prohibit a lobbyist from making

personal contributions to a candidate as authorized by AS 15.13 or personally advocating on behalf of a candidate.

Although A.S. 15.13.074(g) allows a registered lobbyist to make personal contributions, they are limited solely to contributions to candidates for the Legislature in a district in which the individual is eligible to vote and the lobbyist must report each contribution to APOC. A legislative candidate could be seriously hampered in his/her fund-raising if many of his/her supporters are found by APOC to be lobbyists under the current regulatory framework.

Notably exempted from the statute set out above by A.S. 24.45.161(a)(2) is an elected or appointed state or municipal public officer or an employee of the state or a municipality acting in an official capacity or within the scope of employment.

These state and municipal employees, who are exempt from the Act, are, at least partially, evaluated in their job performance by their success in getting funding for various projects that are important to the agency or governmental entity by whom they are employed. Why should these state employees be exempt when a private business owner essentially doing the same thing is not? Precluding someone who spends as little as four hours in one month in activities which APOC deems to be lobbying from serving as campaign manager or hosting a fund raiser, while at the same time allowing a state employee who is doing the same thing to so act, violates the First Amendment and the equal protection provisions of the Constitution.

The Current Legislation is Not Constitutional

First, the definition of "substantial or regular" in 2 AAC 50.545(f) is inconsistent with the legislative intent of the statute. Substantial or regular could not have been intended to apply to someone who has so little contact and who spends such an insignificant portion of his or her work hours with legislators in a 30 day period and could not have been intended to be applied so broadly to such activities as social gatherings where legislative action is not even discussed. For example, the Alaska State Chamber of Commerce, the Resource Development Council, AOGA, the Alliance and others, have a "fly-in" every year in which board members travel to Juneau and spend a day talking to legislators and administration members about issues. The activities usually include a lunch, reception, dinner or other "social" activities, all of which total more than 4 hours. The isolation of Juneau, in fact, usually requires that a business leader from any other region of the state visiting the capital must spend a day there. Obviously, it is economically more efficient for his/her employer if the employee sees as many legislators and/or administration officials as he/she can in the day spent in Juneau. Certainly that day spent in Juneau does not constitute a "substantial or regular" portion of his/her work activities for that month. Similarly meetings by a business leader with regulators over proposed regulations or other administrative action could take several days, but still not be a "substantial or regular" portion of his/her work activities in a 30-day period. Other examples of the possible application of the current framework includes:

- John Doe, an Alaska business owner, engages in Lobbying Activities with a member of the Alaska Legislature for four (4) hours and one (1) minute on January 1, 2002. The Lobbying Activities occur during Mr. Doe's regular work day. Except as stated above, John Doe does not engage in any other Lobbying Activities during 2002. Under the current framework, APOC would consider John Doe to be a lobbyist. However, Jane Smith, another Alaska business owner, engages in Lobbying Activities with an Alaskan Legislator for three (3) hours and fifty-nine (59) minutes on January 1, 2002, three (3) hours and fifty-nine (59) minutes on February 1, 2002, three (3) hours and fifty-nine (59) minutes on March 1, 2002, and on the first (1st) day of each succeeding month throughout the year of 2002. The Lobbying Activities occur during Ms. Smith's regular work day. Pursuant to APOC's interpretation of the applicable statutes and regulations, Ms. Smith would not be required to register as a lobbyist, even though she spent considerably more time lobbying than did Mr. Doe.

- Susan Jones, an Alaska business owner, earns a salary of \$125,000 per year, based on a requirement that she work 2,500 hours per year. On a per hour basis, Susan Smith earns \$50 per hour. On January 1, 2002, Susan Smith engages in Lobbying Activities with an Alaskan Legislator for four (4) hours and one (1) minute during working hours. For the time spent engaged in Lobbying Activities, Susan Smith earned a salary of \$200 (equaling 0.16% of her annual salary). Except as stated above, Susan Smith does not engage in any other Lobbying Activities during 2002. Nevertheless, pursuant to APOC's interpretation of the applicable statutes and regulations, Susan Smith would be required to register as a lobbyist. On the other hand, Michael Thomas, an Alaska business owner, earns \$125,000 per year and is required to work 2,500 hours per year. Mr. Thomas' per hour salary is also \$50. On January 1, 2002, Mr. Thomas engages in lobbying activities with an Alaskan Legislator for three (3) hours. On February 1, 2002, Mr. Thomas engages in lobbying activities with an Alaskan Legislator for three (3) hours. On March 4, 2002, Mr. Thomas engages in lobbying activities with an Alaskan Legislator for three (3) hours. Mr. Thomas engages in the same lobbying activities on the first day of each month for the remainder of the year making a total of 36 hours of lobbying activities during the year which would equate to 1.4% of Mr. Thomas' salary. Under this scenario, based on APOC's interpretation of the relevant statutes and regulations, even though a larger percentage of Mr. Thomas' compensation is being paid to him for the purpose of performing activities aimed at influencing legislation, Mr. Thomas would not be required to register as a lobbyist.

- Rebecca Dole is an employee of the Municipality of Anchorage. Ms. Dole's principal job is to Lobby for increased funding for the Anchorage School District. During the course of 2002, Ms. Dole spends eighty (80%) percent of her work time engaged in lobbying activities with Alaska legislators and their staffs. Ms. Dole's annual salary is \$75,000. For her lobbying activities, Ms. Dole receives compensation of \$60,000, plus an additional \$20,000 as payment for expenses incurred for her lobbying activities. Based on APOC's interpretation of the applicable statutes and regulations, Ms. Dole would not be required to register as a lobbyist.

Since one who is deemed a lobbyist is precluded from the political activities outlined above, we believe this regulation is unconstitutional because it impacts the right of free speech and the right of political expression and association. In Sweezy v. State of New Hampshire, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957), the United States Supreme Court emphasized the importance of these freedoms:

Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.

Sweezy, 77 S.Ct. at 1211.

Similarly, the U.S. District Court of Alaska has held that:

the right of association is a basic constitutional freedom, that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of free society. Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)(internal quotations and citations omitted). The First and Fourteenth Amendments to the United States Constitution protect the rights of political expression and association . . . In view of the fundamental nature of the right to associate, governmental action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny . . . Id. at 25, 96 S.Ct. 612 (internal quotations and citations omitted).

Jacobus v. Alaska, 182 F.Supp.2d 881 (D.Alaska 2001). In reaching its conclusion in Jacobus that, (among other things) the restriction on donating volunteer professional services was unconstitutional, the U.S. District Court of Alaska relied on a case from Wisconsin entitled Barker v. State of Wisconsin Ethics Board, 841 F.Supp. 255 (W.D. Wisc. 1993). In Barker, six lobbyists contested a Wisconsin regulation that precluded them from providing volunteer services to political campaigns as violative of their First Amendment right of association and expression. The lobbyists argued that the statute imposed an unconstitutional burden on their First Amendment right of association and expression because it was overbroad and not narrowly drawn to advance a compelling state interest. The State Ethics Board did not dispute that the

statute burdened plaintiffs' First Amendment rights, but argued that the statute should be upheld because it was narrowly drawn to prevent corruption while interfering only marginally with rights under the First Amendment.

In addressing these issues, the Wisconsin court first stated the following:

There is no question but that [the statute] implicates a fundamental right: 'Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association,' which 'right was enshrined in the First Amendment of the Bill of Rights.' Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S.Ct. 1203, 1212, 1 L.Ed.2d 1311 (1957). Associational rights include activities pursued in the cause of a campaign for public office. Elrod v. Burns 427 U.S. 347, 370-71, 96 S.Ct. 2673, 2688, 49 L.Ed.2d 547 (1976). The freedom of political association 'is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it. . . .' Griswold v. Connecticut, 381 U.S. 479, 483, 85 S.Ct. 1678, 1681, 14 L.Ed.2d 510 (1965). The United States Supreme Court has long recognized that when government regulates political expression and association 'the importance of First Amendment protections is 'at its zenith.' Meyer v. Grant 486 U.S. 414, 425, 108 S.Ct. 1886, 1894, 100 L.Ed.2d 796 (1973). An interference with association rights may be constitutional if the statutory infringement is no broader than it needs to be to accomplish its purpose or, in other words, if it is narrowly tailored. See, e.g., Austin v. Michigan State Chamber of Commerce, 494 U.S. 652, 657, 110 S.Ct. 1391, 1396, 108 L.Ed.2d 652 (1990)(citing Buckley v. Valeo, 424 U.S. 1, 44-45, 96 S.Ct. 612, 647, 46 L.Ed.2d 659 (1976).

Barker, 841 F.Supp at 258; see also Shrink Missouri Government PAC v. Maupin, 922 F.Supp 1413 (E.D.Mo 1996) (It is well established that the right to free speech (including political speech) and the right to free association (including political association) are fundamental activities protected by the First Amendment. Discussion of public issues and debate on qualifications of candidates are integral to the operation of the system of government established by our Constitution . . . the First Amendment protects political association as well as political expression.)

The lobbyists in Barker argued that the "narrowly tailored" standard outlined in Buckley required the state to demonstrate a compelling state interest and that it must employ means closely drawn to avoid unnecessary abridgement of associational freedoms. The State Ethics Board, on the other hand, argued that the statute should be upheld so long as the regulations promote a substantial government interest that would be achieved less effectively absent the regulation. The State Board asserted that the state had a compelling interest in avoiding the specter of corruption that would arise from the sight of lobbyists participating in political campaigns.

The Wisconsin Supreme Court rejected the Board's arguments and ruled that the statute at issue was unconstitutional. In dicta, the court also made another important statement. In Wisconsin the statute defining who is a lobbyist is seemingly even broader than the statute in Alaska. Under Wisconsin law, a "lobbyist" is any person "employed by a principal . . . who makes lobbying communications on each of at least 5 days within a reporting period of 6 months." Plaintiffs argued that this statute was overly broad because it took fewer than one lobbying communication a month to transform an ordinary citizen into a lobbyist under Wisconsin law. Although the defendants did not address this argument and it was not an issue for the court to decide, the court noted that, "an independent review of the statute suggests that plaintiffs' portrayal of the prohibition's extensive reach is accurate." Barker, 841 F.Supp. At 261.

Finally, the Barker court concluded that:

Wisconsin's lobby law overreaches insofar as it prohibits lobbyists from volunteering personal services to political campaigns because it does not provide an answer that relates sufficiently to the elimination of the dangers of corruption and the appearance of corruption.

Barker, 841 F.Supp. at 263.

The Alaska lobbying statute states as its purpose at A.S. 24.45.011 as follows:

The Legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions; and that the people are entitled to know the identity; income, expenditures and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action. (Emphasis added.)

The definition of "substantial or regular" is not narrowly tailored to meet this purpose and improperly imposes an unconstitutional burden on many citizens' First Amendment rights as outlined by the courts in Jacobus and Barker.

Second, the definition of "substantial or regular" is overly broad because anyone who spends 4 hours and 1 second on January 1 in communication with legislators or staffers, and has no further communication for the rest of the year, would nonetheless be considered a lobbyist for the entire year and precluded from making certain contributions, hosting political fundraisers, etc., for the remainder of the calendar year. Again, this restriction is not narrowly tailored to fit the purposes of the statutes.

Finally, while the statute prohibits business owners, for instance, from spending more than 4 hours per month in contact with legislators for fear of being deemed a lobbyist, employees of the state are not similarly precluded. A state employee, acting in his/her official capacity or within the scope of his/her employment has no restriction on the amount of time he/she can spend influencing legislation and is not limited by any of the lobbyist prohibitions. This unequal treatment clearly violates the equal protection provisions of the constitution.

A similar issue was addressed by the District Court in New York. In Commission on Independent Colleges and Universities v. The New York Temporary State Commission on Regulation of Lobbying, 534 F.Supp. 489 (N.D.N.Y. 1982), one of the issues addressed was the plaintiffs' claim that New York's lobbying law violated the equal protection clause of the Fourteenth Amendment because it classified independent colleges who engaged in direct contact with legislators and administrative agencies as lobbyists while exempting their counterparts at SUNY and CUNY because they are state universities. In addressing this issue, the New York court noted that:

The Fourteenth Amendment guarantee of equal protection is designed to ensure that persons similarly situated are treated equally in terms of benefits conferred or duties imposed . . . Village of Belle Terre v. Borass, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974) . . . The traditional standard of review employed by the courts is whether the law in question is wholly arbitrary or without a rational basis. [citations omitted.] When fundamental constitutional rights are involved, however, it is necessary to find a compelling state interest to validate the law making the classification. [citations omitted.]

Commission, 534 F.Supp. at 503. We cannot think of any compelling state interest that would support the discrimination between state and non-state employees.

These are important issues that dramatically effect the rights and interests of Alaska businesses. For business owners, or CEO's of businesses to be precluded from discussing legislation or a regulation that directly impacts their companies without the risk of being deemed a lobbyist and losing their right of free association regarding political campaigns is inappropriate. While some companies may be financially able to hire professional lobbyists, many others are not. Moreover, many company owners and management level employees know and understand better than a hired lobbyist, the impact of proposed legislation on his/her company.

Before closing, we want to emphasize a few important points. First, our proposed legislation would provide a more reasonable level of access for Alaska business men and women to their elected representatives, their staffers, and state agency personnel. Our proposal would not change the rules for professional lobbyists. Those individuals who are in the business of lobbying on behalf of clients and those who hold themselves out to be professional lobbyists would not have a reduced level of scrutiny under our proposed legislation.

Second, the principal problem with the current system is APOC's definition of the terms "substantial or regular" which are found in the definition of "lobbying" at A.S. 25.45.171. It was the Legislature which enacted the statutory definition of the term "lobbying", including the use of the terms "substantial or regular". Therefore, the Legislature should define those terms in order to protect its intent. Essentially, by allowing APOC to define those terms, we believe that the Legislature has allowed APOC to subvert the original intent of the legislation. Given the fact that the Legislature convenes in Juneau, it has historically worked hard to increase access by ordinary citizens, including Alaska's business men and women. The APOC definition of the terms "substantial or regular" flies in the face of the Legislature's efforts to increase, rather than restrict, access to state government.

Finally, our proposed legislation offers a simple fix to the current problem which we believe is absolutely consistent with the intent of the original lobbying legislation. Alaska's business men and women should not be branded as lobbyists based merely on four hours of communications with legislators, staffers, members of the administration, or personnel of state agencies.

The current system not only harms Alaska businesses, but it also harms the Legislature, the administration and state agencies by denying them access to important information which is available from business men and women. In short, the current system simply can't work.

Attached are proposed amendments to the current lobbying statute which would resolve this issue.

Enclosures

AS 24.45.171(8)(A) is amended as follows [amendment underlined]:

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action where "substantial" means in excess of 80 hours in a 30 day period and "regular" means more than 60 days while the legislature is in session; or

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The Alaska State Chamber of Commerce Supports House Bill 106

The Alaska State Chamber of Commerce, representing approximately 700 business members and 35 chambers of commerce throughout Alaska, is convinced that the Alaska Public Offices Commission (APOC) is wrong in its interpretation of the lobbyist statutes. We believe their interpretation does not follow legislative intent and that it unconstitutionally impacts a business owner's right to meet with legislators or the administration to discuss proposed legislation, regulations or other administrative action that could dramatically impact his or her business.

What the Law Says

"Lobbyist" is defined in Alaska Statute 24.25.171(8):

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agent with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action;...[emphasis added.]

What APOC Says

"Substantial or regular" as defined by APOC regulation in 2 AAC 50.545(f):

"Substantial or regular," as used in AS 24.45.171(8)(A), means that a person who is not employed specifically for the purpose of influencing legislative or administrative action, or a person whose contractual services are not specifically for the purpose of influencing legislative or administrative action, is considered to be a lobbyist if, within a 30-day period, he spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action as defined in AS 24.45.171(1), (6), (7), and this chapter; when a person becomes a lobbyist upon meeting the tests of this section, he must register in accordance with AS 24.45.041 and must report in accordance with AS 24.24.052 and 2 AAC 50.

The Change Proposed by House Bill 106

HB 106, as proposed by the House Judiciary Committee, establishes the definition of "regular" and "substantial" in the law, thereby clarifying legislative intent. The new language says:

"in this subparagraph,

- (i) "regular" means, as to legislative action, more than 30 days while the legislature is in regular or special session; and
- (ii) "substantial" means, as to legislative or administrative action, or both, more than 40 hours in a 30 day period; ..."

FACTS TO CONSIDER REGARDING HB 106:

- 2½ percent of something is ordinarily defined as nominal or incidental, rather than substantial. Assuming a businessperson works an average of 40 hours a week, or 160 hours a month, 4 hours in a 30-day period represents 2½ percent of that person's time. HB 106 establishes "substantial" as 25 percent of a person's time.
- Per Webster's Dictionary:
Substantial means "of ample or considerable amount, quantity, size, etc."
Regular means "usual; normal; customary" or "recurring at fixed or uniform intervals."
- Business people are the only ones limited to 4 hours of contact a month with public officials or legislative employees. Public employees are exempt from this provision of the law, so they and registered lobbyists have unlimited access to the legislature and the administrative agencies. Business people do not.
- Social gatherings that include legislators or staffers, even where there is no discussion or attempt to influence legislation, are included within the four-hour limitation. APOC's position is that "...the regulations do not require that the activities influence legislative or administration action; they merely have to be directed toward influencing such action." Dinners, receptions, and golf tournaments fall within the strict time limitation set by APOC.
- Being deemed a lobbyist has burdensome consequences that, as applied by APOC, violate the constitutional rights of those impacted.

Lobbyists must:

1. Pay a registration fee;
2. Provide personal financial information for public scrutiny;
3. Make and file regular reports and be subject to significant fines for failure to do so in a timely manner.

Lobbyist may not:

1. Serve as a campaign manager or director;
2. Serve as a campaign treasurer on a finance or fund-raising committee;
3. Host a fund-raising event;
4. Directly or indirectly collect contributions for, or deliver contributions to, a candidate or otherwise engage in the fund-raising activity of a legislative campaign or a campaign for governor or lieutenant governor;
5. Contribute to legislative candidates in any district other than the one in which the lobbyist is eligible to vote.

Precluding someone who spends as little as four hours in one month in activities which APOC deems to be lobbying from serving as a campaign manager or hosting a fund raiser, while at the same time allowing a state employee who is doing the same thing to so act, violates the First Amendment and equal protection provisions of the Constitution.

Looking Out For Business...

A report from the Alaska State Chamber of Commerce - The Voice of Alaska Business

The laws and regulations enacted by Alaska's public policy makers have significant impact on how businesses operate in Alaska and what their costs of operation will be.

It is not uncommon for business people to travel to Juneau for a few days during the legislative session to talk with legislators or administration officials about issues affecting their business. Nor is it uncommon for them to accompany administration officials or legislators on trade missions, or talk to them at conferences and other events.

The Alaska Public Offices Commission (APOC) has determined that these activities, which may be a very small part of what an individual does for his business or company, make a businessperson a lobbyist.

Alaska law requires that anyone for whom a substantial or regular portion of their job is to influence legislation or administrative action, or anyone who contracts or is in the profession of lobbying, must register as a lobbyist. The Alaska State Chamber of Commerce recognizes the importance of regulating lobbying so the public knows the identity, income, expenditures and activities of professional lobbyists, and the Chamber has no problem with the current law.

However, in the regulations APOC has defined "substantial or regular" as just four hours in a 30-day period. The State Chamber believes this unjustly restricts business people who are not paid as lobbyists

"The State Chamber believes our state will benefit by providing business owners greater access to state government, not by further limiting their access."

from talking freely with the government. The State Chamber has requested that the legislature develop a new definition that, while continuing to regulate professional paid lobbyists, will not restrict business people who are not in the business of

"The APOC regulation unjustly restricts business people who are not paid as lobbyists from talking freely with the government."

lobbying and for whom lobbying is not part of their job.

If a businessperson exceeds the four-hour limit, they must pay a \$100 fee to register and then file

monthly, quarterly, and annual reports, and there are

stiff penalties associated with the reporting requirements. The businessperson must also disclose the source and amount of their income. They are also precluded from engaging in many political activities, such as active participation in political

campaigns and contributing to the candidates of their choice, which is a restriction of their first amendment rights.

This is an important issue to business and particularly troublesome for small businesses who can't afford paid lobbyists. It leaves them the choice of hiring someone to speak on their behalf or giving up some of their constitutional rights.

The media and state or municipal employees, by the way, are exempt from the law. News editors and columnists can write unlimited opinion pieces, with the intent of influencing legislative or administrative action, and not have to register or lose any personal rights. Public officials or employees can lobby unlimited hours, day in and day out, for laws and regulations that increase the cost of government, for which business pays, or increase the cost of doing business.

House Bill 106, which has the support of the State Chamber, defines "substantial" as 40 hours in a 30-day period, (one-quarter of a full-time employee's 160 hours a month) and "regular" as 30 days, or one quarter, of a 120-day legislative session.

The State Chamber believes our state will benefit by providing business owners greater access to state government, not by further limiting their access.

ConocoPhillips

*Proud to be the 2003 Diamond Partner of
the Alaska State Chamber of Commerce*



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GREATER * FAIRBANKS CHAMBER OF COMMERCE

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e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

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

RESOLUTION 03-05112

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE SUPPORTING AN AMENDMENT IN ALASKA STATE LAW CLARIFYING THE DEFINITION OF LOBBYIST AND SUCH TERMS THAT DESCRIBE LOBBYIST ACTIVITY

WHEREAS In the definition of the term "Lobbyist" in Alaska Statute 24.25.171(8), it states that a lobbyist is a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, who communicates directly or through the person's agent with any public official for the purpose of influencing legislative or administrative action if a *substantial or regular* portion of the activities for which the person receives consideration; and

WHEREAS the Alaska Public Offices Commission (APOC) had defined in 2 AAC 50.545(f) "substantial or regular" to mean that a person is considered a lobbyist if, within a 30-day period, the person spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action; and

WHEREAS this strict interpretation could require anyone who travels to Juneau during the legislative session for one day to discuss legislative issues, and is reimbursed by their company or business, to register as a lobbyist; and

WHEREAS public employees are exempt from this provision; and

WHEREAS registering as a lobbyist is burdensome and contains many stipulations; and

WHEREAS this interpretation would hamper the volunteer members of the Greater Fairbanks Chamber of Commerce, and other non-profit agencies, from engaging in regular communication with our local legislators; and



GREATER * FAIRBANKS CHAMBER OF COMMERCE

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website: www.fairbankschamber.org

WHEREAS many annual "fly-ins" to Juneau would not take place as most participants would be required to register as a lobbyist; and

WHEREAS the Greater Fairbanks Chamber of Commerce does not believe the APOC interpretation follows legislative intent; and

WHEREAS the Greater Fairbanks Chamber of Commerce supports fair and reasonable regulations governing lobbyists.

NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce strongly supports passage of an an amendment in Alaska State Law clarifying the definition of lobbyist and broaden such terms that describe lobbyist activity to allow business owners and other non-profits agencies to communicate with our elected officials.

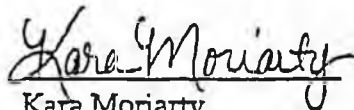
BE IT FURTHER RESOLVED that this resolution be distributed to:

Senator Ralph Seekins
Interior Delegation
Governor Frank Murkowski

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



Terry Aldridge
Board Chairman



Kara Moriarty
President/CEO





Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on SB 89 Date March 5, 2003
bill # / subject

I OPPOSE SB 89.

This Legislation clearly benefits both lobbyists and Legislators at the expense of Alaskan citizens. Any citizen wishing to lobby as a private citizen has never been restricted from doing so. Only people receiving compensation from a corporation or another individual are restricted in any way.

The current restrictions are clearly designed to put lobbyists on a more level playing field with private citizens and to make information available to the citizens regarding lobbying efforts. This legislation will make the remaining regulations ineffective.

The proposed change simply accomplishes two goals:

1. It limits the information available to Alaskan citizens regarding the lobbying efforts of corporate and special interest lobbyists.
2. It allows lobbyists to give campaign contributions to legislative candidates (which will most likely benefit "their" favored incumbent benefactor) following the legislative session.

If you support this legislation you should simply strike down all the laws relating to election contributions, lobbyists, and corporate contribution restrictions. This legislation effectively does much the same, while allowing the system to remain in place, thus promoting the false pretense that there's been no major change....

This current legislation favors incumbents and restricts information currently available to the people relating to the lobbying efforts in Juneau. This legislation transfers more power and influence to special interests, while diminishing the influence of the private citizens within the state. Please uphold the current regulations and oppose SB 89!

Signed: Laurie Churchill Laurie Churchill
Testifier

Private citizen

Representing (optional)

PO Box 7043, Nikiski, AK 99635

Address

907-776-3499

Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on SB 89 Date March 5, 2003
bill # / subject

SB-89 represents special interest legislation of the worst kind. It clearly favor lobbyists over Alaskans, and will enable politicians to accept campaign contributions from most of them, which is currently prohibited. This promotes special interest legislation for the highest bidder. This is a very a BAD deal for the majority of Alaskans!

State law should not be relaxed, making it easier for lobbyists to influence our legislators. Every boondoggle that gets funded through the efforts of lobbyists, municipal representatives, or special interest groups takes limited resources away from essential government services. The public has a right to know the truth about everyone paying to obtain our legislators' favor. Alaskan laws should protect the public's interest, not give the trail of influence that rewards cooperation between lobbyists and politicians.

Our legislature intentionally limited public debate to a minimum number of committee hearings. Few people outside of the government/lobbyist circle will have the opportunity to testify in opposition to this legislation. While this may be a clever maneuver on the part of legislators and lobbyists pushing this bill, it has not gone unnoticed by the public.

This is clearly BAD legislation favoring a few privileged players in Juneau, at the expense of every Alaskan. Putting special interest groups and big campaign contributors before our citizen's best interests is bad public policy. The Legislature's focus must shift toward public NEEDS, instead of special interest wants.

Please vote against SB-89.

Signed: James Price James Price
Testifier

Self
Representing (optional)

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Address

907-776-3481
Phone number

**AKPIRG**

MAR 25 2003

ALASKA PUBLIC OFFICE COMMISSION

AKPIRG.ORG

PO Box 101093 • Anchorage, Alaska 99510-1093 • Ph: (907) 278-3661 • Fax: (907) 278-9300 • email: akpirg@akpirg.org

Testimony on SB 89 – Amending Lobbying Regulations

AkPIRG wishes to express its opposition to SB 89 which will gut the Regulation of Lobbying Act. This bill will allow many professional lobbyists to avoid registering as lobbyists, which will allow them to continue lobbying and more importantly to back that lobbying up with campaign contributions. In addition, the overly broad definitions of lobbyists in this bill will allow both professional and in-house lobbyist to spend one half of the entire legislative session as a lobbyist without having to register as a lobbyist. This will ultimately mean that lobbying activities will be divided up among individuals who will back up their speech with cash.

This bill is bad public policy and will further erode the public's trust in the political system by increasing the influence of lobbyists on Alaska lawmakers by shielding them from public view. This bill would erode the great work that the Alaska Public Office Commission has done since it was charged with monitoring lobbying in 1976.

There appears to be substantial misunderstanding about what constitutes lobbying. We believe that small businesses are being misinformed about what is lobbying and the regulations of the lobbying industry. These frequent misunderstandings form the basis of most support for the bill. Further testimony cited the onerous and draconian burdens placed on small businesses, but after reviewing the 33 pages of employers with lobbyists, I find few if any small businesses. Fines for breaking the law were also deemed "significant," though they are \$10 a day.

Since statehood, Alaska has had a law regulating lobbyists, and this bill will put large loopholes in that regulation through which many lobbyists will jump. This current legislation would override a 26 year-old regulation. To be able to transparently see who is attempting to influence our legislators is something the public has come to depend on. This bill will greatly decrease that transparency and expand the power of special interests over our political system.

Since this bill addresses a law that has been extant since 1978, one needs to wonder why this sudden call for a change in definition. Currently, registered lobbyists are not able to host fundraisers, nor are they able to donate to candidates outside their legislative district. There are two ways to attempt to get around that. First, one could attempt to directly remove the prohibition on such fundraisers or donations. Second, one could attempt to alter who is considered a lobbyist, and by so doing eliminate the effect of the fundraiser and donation ban. This legislation appears to be an attempt at the latter, that is, an effort to exempt certain people from having to register as a lobbyist, thus exempting them from the fundraiser and donation ban.

The threshold of who is and who is not a lobbyist is adequate and should not be changed. Alaska has an inordinate amount of lobbyists for its population, many of whom are from outside the state. Alaskans need all the information on lobbyists that APOC can continue to provide.

SB 89 is bad public policy and AkPIRG urges your strong opposition to its passage.

Steve Cleary
Executive Director, AkPIRG

Please enter into the record the following testimony to the Senate Judiciary Committee
on SB 89 / Definition of Lobbying Date: March 19, 2003

ALASKA VOTERS ORGANIZATION

RESOLUTION 2003-05

A Resolution to the 23rd Alaska State Legislature in OPPOSITION to significant changes to, or elimination of, the Alaska Public Offices Commission (APOC).

WHEREAS, the Alaska Public Offices Commission began as the Alaska Election Campaign Commission (AECC) in 1974; and

WHEREAS, the incentive for campaign disclosure resulted from the Watergate scandal and a successful citizen initiative effort, which convinced our State Legislature to pass the Alaska Campaign Disclosure Law; and

WHEREAS, that same year, another initiative effort succeeded in placing Alaska's Public Official Financial Disclosure Law on the ballot, where it was approved by over 71% of the voters and became law in January 1975; and

WHEREAS, in 1976, the legislature revised state lobbying reporting by passing Alaska's Lobbying Law, with responsibility for its enforcement assigned to the AECC, which was renamed the Alaska Public Offices Commission (APOC), to reflect its newly expanded mission; and

WHEREAS, in 1990, the legislature responded to an increased demand for ethics regulation and disclosure by expanding its previous reporting requirements under the Conflict of Interest Law in the form of a new act, Alaska's Legislative Ethics Disclosure Law, which created the Select Committee on Legislative Ethics to hear ethics violations; and

WHEREAS, the 1997 Alaska Campaign Disclosure Law was a response by the legislature to a citizens' initiative effort in 1996, which revised Alaska's 20 year-old campaign disclosure law to include stricter limitation and disclosure measures, including the prohibition of corporate and out-of-state group contributions to state and local candidates; and

WHEREAS, in 2003, legislation proposed by Governor Murkowski and members of the State Legislature, have put party politics ahead of good honest public policy; and

WHEREAS, attempts to significantly reduce lobbyists reporting requirements or to eliminate the non-partisan Alaska Public Offices Commission (APOC), violates the will of Alaskan voters, who spoke out on three separate occasions to create the very agency and regulations currently being threatened with elimination; and

WHEREAS, the unfettered access to information is the foundation of a democratic society; and

WHEREAS, the public has a right to know the truth about all funds paid to influence Alaska's legislature; and

WHEREAS, Governor Murkowski and the legislature's attempts to weaken or eliminate APOC, promote bad public policy that will further erode the public's trust in our government; and

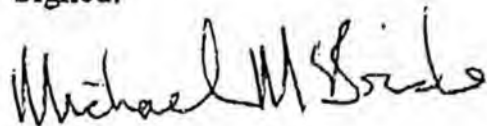
WHEREAS, the citizens of Alaska have spoken loud and clear, "state laws should not be relaxed to make it easier for lobbyist to influence our elected officials";

NOW, THEREFORE, BE IT RESOLVED by the Alaska Voters Organization, Board of Directors, that we support existing Alaska statutes governing campaign disclosure and registration of lobbyists; and be it

FURTHER RESOLVED, that we oppose all efforts to reduce the effectiveness or existence of the Alaska Public Offices Commission (APOC).

Adopted by the Alaska Voters Organization Board of Directors,
This 19th Day of March 2003.

Signed:



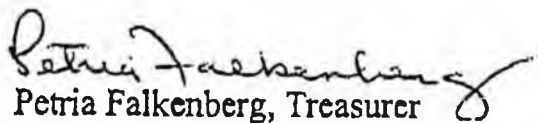
Michael McBride, President



Barbara Mullin, Vice President



Laurie Churchill, Secretary



Petria Falkenberg, Treasurer

Alaska Voters Organization, Inc.

www.akvoters.org

PO Box 2016

Kenai, Alaska; 99611-2016

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LOAN FOR USE

is the gratuitous grant of an article to another for use, to be returned *in specie*, and may be either for a certain time or indefinitely, and at the will of the grantor.

Loan for use (called "*commodatum*" in the civil law) differs from a loan for consumption (called "*mutuum*" in the civil law), in this: that the *commodatum* must be specifically returned; the *mutuum* is to be returned in kind. In the case of a *commodatum*, the property in the thing remains in the lender; in a *mutuum*, the property passes to the borrower.

Loan participation. Loan provided by a group of lenders to a single borrower, which spreads the default risk of the loan among all lenders in the group.

Loan ratio. The ratio, expressed as a percentage, of the amount of a loan to the value or selling price of real property. Usually, the higher the percentage, the greater the interest charged. Maximum percentages for banks, savings and loan, or government insured loans, is set by statute. See also Loan-to-value ratio.

Loansharking. Practice of lending money at excessive and usurious interest rates, with the threat or employment of extortionate means to enforce repayment of the loan. Such activities are termed "extortionate credit transactions" under Federal Criminal Code. 18 U.S.C.A. § 891 *et seq.*

Loan societies. In English law, a kind of club formed for the purpose of advancing money on loan to the industrial classes.

Loan-to-value ratio. The percentage of purchase price to be financed with a mortgage. Common ratios are 80 and 90 percent. A down payment covers the rest of the purchase price.

Loan value. The maximum amount which can be safely lent on property or life insurance consistent with the lender's rights to protection in the event of the borrower's default.

Lobbying. All attempts including personal solicitation to induce legislators to vote in a certain way or to introduce legislation. It includes scrutiny of all pending bills which affect one's interest or the interests of one's clients, with a view towards influencing the passage or defeat of such legislation. *Thiles v. County Board of Sarpy County*, 189 Neb. 1, 200 N.W.2d 13, 18. Federal, and most state, statutes require that lobbyists be registered. See Lobbying acts.

Lobbying acts. Federal and state statutes governing conduct of lobbyists; e.g. Federal Regulation of Lobbying Act requires that lobbyists register with House and Senate and file quarterly reports of amount and source of payments received for lobbying activities. See 12 U.S.C.A. § 261 *et seq.*

Lobbyist. One who makes it a business to procure the passage or defeat of bills pending before a legislative body. See also Lobbying; Lobbying acts.

L'obligation sans cause, ou sur une fausse cause, ou sur cause illicite, ne peut avoir aucun effet /lõwbligasyõwn sõn kõwz, ùw sår (y)ùwn fõws kõwz, ùw sår

kõwz ilisyt nã pyùwt õwwar owkyùwn afëy/. An obligation without consideration, or upon a false consideration (which fails), or upon unlawful consideration, cannot have any effect.

Local. Relating to place, expressive of place; belonging or confined to a particular place. Distinguished from "general," "personal," "widespread" and "transitory."

As to *local* Allegiance; Customs; Government; Tax and Venue, see those titles.

Local act. See Local law.

Local actions. Term embraces all actions in which the subject or thing sought to be recovered is in its nature local. Action which must be brought in jurisdiction of act or subject matter, as opposed to transitory action. Actions are "local" when the transactions on which they are based could not occur except in some particular place. One wherein all principal facts on which it is founded are of a local nature; as where possession of land is to be recovered, or damages for an actual trespass, or for waste affecting land, because in such case the cause of action relates to some particular locality, which usually also constitutes the venue of the action. A "transitory action" may be brought in any court of general jurisdiction in any district wherein defendant can be found and served with process, whereas in a "local action" the plaintiff must bring suit in the court designated, if not statutorily required to do otherwise. *Moreland v. Rucker Pharmacal Co.*, D.C.La., 59 F.R.D. 537, 540. Compare Transitory action.

Local affairs. The "local affairs" over which regulation, management and control are delegated to cities are affairs within the jurisdiction of the city by the law of its being. *Robia Holding Corporation v. Walker*, 136 Misc. 358, 239 N.Y.S. 659, 662.

Local agent. An agent at a given place or within a definite district. *Sharp & Dohme v. Waybourne, Tex. Civ.App.*, 74 S.W.2d 413. An agent may be a general agent as to his powers, although he represents the company only in a particular locality or within a limited territory, and in the latter aspect is called a "local agent". *Prudential Ins. Co. of America v. Jenkins*, 290 Ky. 802, 162 S.W.2d 791, 795. An agent placed in charge of corporation's local business for purpose of winding it up. One appointed to act as the representative of a corporation and transact its business generally (or business of a particular character) at a given place or within a defined district. One who represents corporation in promotion of business for which it was incorporated, in county in which suit is filed. *National Hardware & Stove Co. v. Walters, Tex.Civ.App.*, 58 S.W.2d 146. One who stands in shoes of corporation in relation to particular matters committed to his care and represents corporation in its business in either a general or limited capacity. A "local agent" to receive and collect money means an agent residing either permanently or temporarily within the state for purpose of his agency. *McDonald Service Co. v. Peoples Nat. Bank of Rock Hill, S.C.*, 218 N.C. 533, 11 S.E.2d 556, 558. By statute or court rule in most states, service of process on a foreign

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CS FOR SENATE BILL NO. 89(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as
2 it applies in the act setting standards of conduct for legislators and legislative
3 employees."

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

5 * Section 1. AS 24.45.171(8) is amended to read:

6 (8) "lobbyist" means

7 (A) a person who is employed and receives payments, or who
8 contracts for economic consideration, including reimbursement for reasonable
9 travel and living expenses, to communicate directly [OR THROUGH THE
10 PERSON'S AGENTS] with any public official for the express purpose of
11 introducing new legislation or administrative action or for influencing
12 pending or existing legislation or administrative action for more than 40
13 hours in any calendar month; in this subparagraph, "communicate
14 directly" means speaking on the telephone or meeting face-to-face with a

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legislator, legislative employee, or public official [LEGISLATIVE OR ADMINISTRATIVE ACTION IF A SUBSTANTIAL OR REGULAR PORTION OF THE ACTIVITIES FOR WHICH THE PERSON RECEIVES CONSIDERATION IS FOR THE PURPOSE OF INFLUENCING LEGISLATIVE OR ADMINISTRATIVE ACTION]; or

(B) a person who represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

Amendment # 1

Add:

^{with} () "communicate directly" means to speak on the telephone with or face-to-face or to communicate electronically with a legislator, legislative employee or public official;

Change:

(6) "Influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action.

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly with any public official for the express purpose of influencing legislative or administrative action for more than 40 hours in any calendar month; or

(B) a person who represents oneself as engaging in the business, occupation, or profession of influencing legislative or administrative action.

SENATE BILL NO. 89

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR SEEKINS

Introduced: 2/28/03

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as
 2 ~~it applies in the act setting standards of conduct for legislators and legislative employees,~~
 3 to define 'regular' and 'substantial' as those terms describe activities for which a person
 4 receives consideration for the purpose of influencing legislative or administrative
 5 action."

??
 MUST BE
 [LAW
 ERROR]

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

7 * Section 1. AS 24.45.171(8) is amended to read:

8 (8) "lobbyist" means

9 (A) a person who is employed and receives payments, in whole or in part ^{income} ~~or who~~
 10 ~~contracts for~~ ^{other} economic consideration, including reimbursement for reasonable
 11 travel and living expenses, to communicate directly or through the person's
 12 agents with any public official for the purpose of influencing legislative or
 13 administrative action if a substantial or regular portion of the activities for

1 which the person receives consideration is for the purpose of influencing
2 legislative or administrative action; in this subparagraph.

3 ~~(i) "regular" means, as to legislative action, more~~
4 ~~than 60 days while the legislature is in regular or special session;~~
5 ~~and~~

6 ~~(ii) "substantial"~~ ^{or "regular"} means, as to legislative or
7 administrative action, or both, more than ¹⁶ ~~24~~ hours in a 30-day
8 period, ^{or} ~~or~~ ^{in direct communication with a public official or legislative} ~~or~~ ^{employee;}

9 (B) a person who ^{engages} ~~represents~~ ^{as} ~~engaging~~ in the ^{service}
10 influencing of legislative or administrative action as a business, occupation, or
11 profession;

SB

93

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23-LS0518VX
Kurtz
5/2/03

CS FOR SENATE BILL NO. 93()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to limitations on actions to quiet title to, eject a person from, or recover
2 real property or the possession of it; relating to adverse possession; and providing for an
3 effective date."

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

5 * Section 1. AS 09.10.030 is amended to read:

6 Sec. 09.10.030. Actions to recover real property [IN 10 YEARS]. (a)
7 Except as provided in (b) of this section, a [A] person may not bring an action for
8 the recovery of real property [,] or for the recovery of the possession of it unless the
9 action is commenced within 10 years.

10 (b) An action may be brought at any time by a person whose ownership
11 interest in real property is recorded under AS 40.17 to

12 (1) quiet title to that real property; or

13 (2) eject a person from that real property.

14 (c) An action may not be maintained under this section [FOR THE

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23-LS0518\X

1 RECOVERY] unless it appears that the plaintiff, an ancestor, a predecessor, or the
2 grantor of the plaintiff was seized or possessed of the premises in question at some
3 time [WITHIN 10 YEARS] before the commencement of the action.

4 * Sec. 2. AS 09.45.052(a) is amended to read:

5 (a) The uninterrupted adverse notorious possession of real property under
6 color and claim of title for seven years or more, or the uninterrupted adverse
7 notorious possession of real property for 10 years or more because of a good faith
8 but mistaken belief that the real property lies within the boundaries of adjacent
9 real property owned by the adverse claimant, is conclusively presumed to give title
10 to the property except as against the state or the United States. For the purpose of this
11 section, land that is in the trust established by the Alaska Mental Health Enabling Act
12 of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

13 * Sec. 3. AS 09.45.052 is amended by adding new subsections to read:

14 (c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use of
15 real property by a public utility for utility purposes for a period of 10 years or more
16 vests in that utility an easement in that property for that purpose.

17 (d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use,
18 including construction, management, operation, or maintenance, of private land for
19 public transportation or public access purposes, including highways, streets, roads, or
20 trails, by the public, the state, or a political subdivision of the state, for a period of 10
21 years or more, vests an appropriate interest in that land in the state or a political
22 subdivision of the state.

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

25 APPLICABILITY. AS 09.10.030, as amended in sec. 1 of this Act, applies to actions
26 that have not been barred before the effective date of this Act by AS 09.10.030 as it read
27 before the effective date of this Act.

28 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Paul Costello

From: Paul Costello
Sent: Monday, May 05, 2003 4:53 PM
To: Linda Anderson; David Leone
Cc: Bea Hagen
Subject: SB 93 Comments May 5, 2003

Linda,

Here are my comments in response to the changes made to SB93. Thank you for your help.

SB 93 - Adverse Possession-Comments by the Fairbanks North Star Borough-May 5, 2003

The Fairbanks North Star Borough, Department of Land Management, has reviewed the working draft dated 5.2.2003 CSSB 93. In addition, we have had a chance to discuss the legislation with Jon K. Tillinghast, representative of its supporters, in response to our comments which were e-mailed to members of the interior delegation on Friday and Saturday, May 2&3, 2003. Our comments were intended to ask questions about the legislation. The doctrine of adverse possession has been around for 800 years, and any state law essentially doing away with most of it by eliminating the statute of limitations only for the record owners, should be thoroughly evaluated for its larger implications.

It appears that our concerns regarding the impact on our municipality, from a municipal land management perspective, have been abated by this version and therefore we have no further comment on SB 93 as a municipality unless there are further amendments. The apparent impact of this version of the new law on municipalities is merely neutral, other than the litigation it may spawn regarding interpretation.

Thank you for this opportunity to comment.

Paul Costello, SRWA, Director
Department of Land Management

To: BRIAN HOVE
465-3717

SENATE BILL 93-ADVERSE POSSESSION

Background: As of April 30, 2003, this draft legislation proposes to amend Alaska statute and essentially eliminate the doctrine of adverse possession. Adverse possession is a doctrine in law which allows a person to assert a claim to another person's land. The law requires that the possession must have been continuous and uninterrupted, the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner, and the possession must have been reasonable visible to the record owner. The period of possession must be for at least 10 years, or for more than 7 years if the person has some paperwork that supports their claim. The claimant must assert his rights in court, where the property owner has the right to defend his title. This process is most often used to settle boundary disputes between neighbors when one person may have built his garage two feet over the line on his neighbors property. It is also used by Municipalities and the State to clear title to road right of ways.

The proposed legislation would create confusion among those individuals, entities and agencies who use the doctrine to clear title and creates some constitutional questions in the process. It needs further and more detailed study.

The proposed legislation appears to have been sponsored by Sealaska Corporation, which is concerned about persons adversely possessing their ANCSA corporate land. It is unclear why native corporations need this additional protection, because Section 43 USC 1636(d)(1)A was specifically written to grant these large landowners protection from claims of adverse protection and similar claims based upon estoppel.

Statement: The Fairbanks North Star Borough, Department of Land Management, has reviewed the proposed legislation and has a number of questions and concerns regarding its intent and implementation. We recommend that prior to further action by the legislature, the impact of the legislation be considered in detail. If passed in its current form SB 93 may create more uncertainty and litigation than it is intended to prevent. The Borough is speaking as a large landowner holding title to some dedicated right of ways and has concerns for its resident private landowners who may be impacted by this proposed legislation.

As a testifier pointed out on March 11, 2003, the equitable doctrine of adverse possession has evolved over hundreds of years through English common law and the case law of the United States. We would like to emphasize that in the past 100 years it has evolved through Alaska case law into a well-defined legal structure that allows people to assert their claims and landowners to protect their interests. The Alaska Supreme Court's interpretation of the statutory and common law of the doctrine is a known quantity. It is unclear to us why there is a need to change this clearly defined law and doctrine to even more favor landowners of record over landowners that may have equitable title. We agree with the DOT&PF representative who testified at a March 11, 2003 Senate Labor & Commerce meeting, that "Its [the doctrine of adverse possession] purpose is to provide a practical and efficient means of clearing title."

Why is the legislature considering legislation – apparently for the benefit of certain large landowners – that already have the protection of federal law? 43 USC 1636(d)(1)A grants these large landowners protection from claims of adverse protection and similar claims based upon estoppel. If such landowners believe that they do not have protection under state law, why not

introduce legislation that mirrors federal law in this regard? This has been done to benefit their interests in terms of property taxation (AS 29.45.030(m)).

Why is it necessary, when the other 49 states have statutes similar to the current Alaska statutes, to amend ours at this time? Any landowner, regardless of the size of their holdings, already has the ability under existing law to initiate eviction action against trespassers or squatters.

The language proposed to protect the state, municipalities, and utility companies in proposed AS 09.45.052(c) may protect public uses, but it also may raise constitutional questions. The proposed language would appear to permit an entity such as a municipality to expand their title interest from an easement to full fee under this process. Would that action be considered a taking? Proposed AS 09.45.052(c) apparently means that private utility companies have rights of adverse possession to easements along with government entities, but other businesses and individuals do not. Is that a constitutional distinction on these facts?

In any case the effect of the proposed legislation on a landowner's constitutional right to due process and for compensation are not clear. This sows seeds of doubt and litigation into the future.

Also, proposed AS 09.45.052(c) appears to allow a municipality on the basis of some claim of use, to claim title to an interest in land by virtue of a "conclusive presumption" without contemplating the specific legal process by which the affected underlying landowner may defend their title or obtain compensation. I suspect that the owner of the servient parcel could still defend against the "conclusive presumption" by controverting the "uninterrupted" and "notorious" and "possession" elements, so how does the new subsection really change existing law? Also, some of the words are ambiguous in context and would need court definition through litigation. For example, what is the intended definition of the word, "necessary" in proposed AS 09.45.052(c)?

This legislation applies to small landowners as well as large landowners. Large landowners often have the managerial and legal capability to patrol and prosecute adverse possession. On the other hand, doing away with the legal defense of adverse possession eliminates an important equitable protection for individuals who are unintentionally occupying the land of another for a long period of time. In other words, eliminating adverse possession in Alaska may impact real property law in ways not intended by the legislation.

The price and responsibility of property ownership is vigilance; this legislation proposes to take that responsibility from the landowner unnecessarily.

The old adage of "if it ain't broke, don't fix it" comes to mind here. This legislation needs more clarification and thought before it goes forward.

CS FOR SENATE BILL NO. 93()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limitations on actions to quiet title to, eject a person from, or recover
2 real property or the possession of it; relating to adverse possession; and providing for an
3 effective date."

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

5 * Section 1. AS 09.10.030 is amended to read:

6 Sec. 09.10.030. Actions to recover real property [IN 10 YEARS]. (a)
7 Except as provided in (b) of this section, a [A] person may not bring an action for
8 the recovery of real property [,] or for the recovery of the possession of it unless the
9 action is commenced within 10 years.

10 (b) An action may be brought at any time by a person whose ownership
11 interest in real property is recorded under AS 40.17 to

12 (1) quiet title to that real property; or

13 (2) eject a person from that real property.

14 (c) An action may not be maintained under this section [FOR THE

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RECOVERY] unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question at some time [WITHIN 10 YEARS] before the commencement of the action.

(d) The provisions of (b) of this section may not prevent a utility, as that term is defined in AS 42.05.990, from obtaining a prescriptive easement under the provisions of (a) of this section.

* Sec. 2. AS 09.45.052 is amended by adding a new subsection to read:

(c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious possession by the state or a political subdivision of the state of a public transportation or public access right-of-way or other interest in land necessary for the construction, management, operation, or maintenance of a public transportation or public access right-of-way for a period of 10 or more years is conclusively presumed to give title to the right-of-way to the state or the political subdivision, as appropriate, except as against the United States.

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

APPLICABILITY. AS 09.10.030, as amended in sec. 1 of this Act, applies to actions that have not been barred before the effective date of this Act by AS 09.10.030 as it read before the effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

April 10, 2003

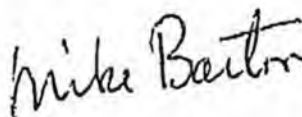
The Honorable Thomas Wagoner
Alaska State Legislature
State Capitol, Room 427
Juneau, AK 99801-1182

Dear Senator Wagoner:

Thank you for taking the time to meet with Deputy Commissioner John MacKinnon and I last week regarding Senate Bill 93. I appreciate you hearing our concerns and accommodating language changes to the bill to address them. With the addition of the language protecting the state's interest, the department no longer has any objection with the passage of the bill.

Thank you again for working with us. I look forward to working with you again.

Sincerely,



Mike Barton
Commissioner



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

VICE-CHAIR, SENATE RESOURCES COMMITTEE

CS for Senate Bill 93

Sponsor Statement

“An Act relating to limitations on actions to quiet to, eject a person from, or recover real property or the possession of it; relating to adverse possession; and providing for an effective date.”

Adverse possession, or “squatters rights”, is the doctrine in which a person may receive the title to property simply by possessing it. The Doctrine of Adverse Possession was born hundreds of years ago during the Middle Ages, but incredibly still applies in the State of Alaska.

The current doctrine places undue hardships on Alaska’s private landowners by charging them with the impossible task of policing their large or remote property. SB 93 would repeal the Doctrine of Adverse Possession, giving private property owner’s security in knowing their property can not be taken by squatters. This bill does not affect any existing rights that one may have already acquired through adverse possession.

Senate Bill 93 gives the state, or political subdivisions, the right to claim land through adverse possession for public transportations or public access right-of-ways. This will enable the Department of Transportation to continue providing maintenance and upgrades on roads with minimal complications.

Under existing law, a person is prohibited from taking government property by adverse possession. SB 93 simply accords equal dignity and protection to private land ownership rights.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 93
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Adverse Possession BRU Community Assist. & Econ. Dev. (405)
 Component Community & Business
 Sponsor Senator Wagoner Development
 Requester Senate Labor & Commerce Component No. 2486

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation would change current adverse possession law so that title holders of real property under AS 40.17 would no longer be required to initiate eviction processes within a ten-year limit to preclude adverse possession. A property owner could initiate an eviction process at any time. This legislation has no fiscal impact on this division.

Prepared by: Gene Kane, Acting Director Phone 907-269-4578
 Division Community & Business Development Date/Time 3/11/03 9:17 AM
 Approved by: Edgar Blatchford, Commissioner Date 3/11/2003
 Agency Department of Community & Economic Development



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

CS for Senate Bill 93

Sectional Analysis

Section 1. Amends AS 09.10.030 by inserting a new subsection (a) which sets out an exception.

Amends by inserting new subsection (b), which is referenced as the "exception" in subsection (a); specific language stating that action may be brought at any time by a property owner that has property rights recorded under AS 40.17.

Amends by inserting new subsection (c), which is conforming language regarding the application of the new subsections;

Amends by deleted specific time frame of "within 10 years" and replacing with "at some time".

Section 2. Amends AS 09.45.052 by adding a new subsection (c) that gives the state or political subdivisions the ability to get title to land of a public transportation or public access right-of-way through adverse possession if occupied for at least 10 years.

Section 3. Amends by inserting new section in the uncodified laws, stating that as long as court action has not been taken to bar the proceeding, action to quiet title is now allowed.

Section 4. This is the effective date of the act – which is immediate.

Title 09. CODE OF CIVIL PROCEDURE

Chapter 09.10. LIMITATIONS OF ACTIONS

Sec. 09.10.010. General limitations on civil actions.

A person may not commence a civil action except within the periods prescribed in this chapter after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

Sec. 09.10.020. When action commenced. [Repealed, Sec. 1 ch 27 SLA 1966. For present law, see Civ. R. 3].

Repealed or Renumbered

Sec. 09.10.030. Actions to recover real property in 10 years.

A person may not bring an action for the recovery of real property, or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the action.

Sec. 09.10.040. Action upon judgment or sealed instrument in 10 years.

(a) A person may not bring an action upon a judgment or decree of a court of the United States, or of a state or territory within the United States, and an action may not be brought upon a sealed instrument, unless the action is commenced within 10 years.

(b) [Repealed, Sec. 54 ch 132 SLA 1998].

Sec. 09.10.050. Certain property actions to be brought in six years.

Unless the action is commenced within six years, a person may not bring an action for waste or trespass upon real property.

Sec. 09.10.053. Contract actions to be brought in three years.

Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040, or as otherwise provided by law, or, except if the provisions of this section are waived by contract.

...

Chapter 40.17. RECORDING OF DOCUMENTS

- Sec. 40.17.010. Place of recording and access to records.
- Sec. 40.17.020. Recording conveyances.
- Sec. 40.17.030. Formal requisites for recording.
- Sec. 40.17.035. Recording criteria.
- Sec. 40.17.040. Indexing.
- Sec. 40.17.050. Incorporation of master form.
- Sec. 40.17.060. Documents executed under former law.
- Sec. 40.17.070. Duties of recorder: time recording is effective.
- Sec. 40.17.075. Account.
- Sec. 40.17.080. Effect of recording on title and rights: constructive notice.
- Sec. 40.17.090. Conveyances and recorded documents as evidence.
- Sec. 40.17.100. Recording a reconveyance.
- Sec. 40.17.110. Documents eligible for recording.
- Sec. 40.17.120. Recording memorandum of lease.
- Sec. 40.17.130. Action against recorder and state.
- Sec. 40.17.900. Definitions.

Alaska State Legislature

Session:
State Capitol, Room 427
Juneau, AK 99801-1182
Phone: (907) 465-2828
Fax: (907) 465-4779



Interim:
145 Main Street Loop Rd. #226
Kenai, AK 99611
Phone: (907) 283-7996
Fax: (907) 283-8127

Senator Tom Wagoner
Kenai/Soldotna

For Immediate Release: February 28, 2003
Contact: Senate Majority Press Office - 465-3803

Wagoner Bill Supports Rights of Private Land Owners **Bill Will End "Doctrine of Adverse Possession"**

(Juneau) – Sen. Tom Wagoner (R-Kenai/Soldotna) is taking on a legal doctrine, which was first put into law roughly 800 years ago.

The "Doctrine of Adverse Possession" first came on the scene during the "Middle Ages." With its enactment anyone, including squatters, could receive title to property simply because they lived on the property, regardless who the legal property owner was. It is a doctrine the State of Alaska still employs and Wagoner says it is time for a change.

"Our law, right now, allows a person who has no claim of ownership to squat on someone else's property and as a result of their illegal trespass the squatter could actually secure title to the property they are squatting on," said Wagoner. "That is simply legal thievery – to me that is offensive and it needs to stop."

If Senate Bill 93 passes the Legislature and is signed by the governor it would repeal the Doctrine of Adverse Possession and give private property owner more security in knowing that their land will not be taken away from them summarily. The adverse possession doctrine in Alaska does not apply to state lands; it only applies to private land ownership, which Wagoner says includes Native lands and maybe even University and Mental Health lands.

"In Alaska especially, many people buy large parcels of land, often that land is very remote and this doctrine puts undue hardships upon those landowners to police their property," said Wagoner. "This bill simply accords equal dignity and protection to private land ownership, already afforded to the government."

Senate Bill 93 has been referred to the Senate's Labor and Commerce and Judiciary committees.

###

Broadcaster's Note: Sound Actualities are available on this issue at www.akrepublicans.org

*SB 93: Legislation to Limit the Circumstances Under Which
A Person May Divest a Landowner of Title to Its Land
Under the Doctrine of Adverse Possession*

A. Overview of the Legislation

“Adverse possession” is the doctrine under which a person--even a squatter acting in bad faith--can take another person’s property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 21st Century Alaska, and it offends Alaska’s abiding respect for private property ownership.

SB 93 would limit the availability of this doctrine to circumstances in which a person has, in good faith, occupied property under color of title for seven years. Beyond that situation, “adverse possession” is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence. That burden is an economic waste, and serves no valid public policy.

B. The Origins and Purpose of the “Adverse Possession” Doctrine

1. The Doctrine’s Original Rationale--Possession was Equated with Ownership

“Adverse possession” is a doctrine that rewards possession of land at the expense of the landowner. The doctrine has its roots in the feudal concept of “seizin.” In the early Middle Ages, “ownership” of land was proven not by title or deed, but rather by actual possession. If a person was forcefully expelled from his property, the trespasser became

the land's new "owner," and the dispossessed person could regain "ownership" only by himself resorting to force. ^{1/}

Gradually, the dispossessed "owner" was given a legal remedy to regain possession--a remedy which, by virtue of a statute issued under Henry VIII, must be exercised within 60 years of dispossession. Thus was borne the thought that a person could recover his land from an "adverse possessor," but only if he acted within a specific period of time. ^{2/}

Remember, though, that in those days possession--or "seizin"--was title. Therefore, by giving the "adverse possessor"--or "disseizor"--the opportunity to bar the person he dispossessed from reclaiming his property after 60 years, feudal courts were, in their minds, doing no injustice to the prior occupant, since that occupant had lost the basis for his claim of "ownership" when he was forceably dispossessed.

2. A New Rationale--Possession was the Best Proof of Ownership

Gradually, English common law came to recognize the concept of conveying and holding land by deed. "Title" became something different from, and superior to, mere "possession." And so the doctrine of "adverse possession" needed a new rationale.

^{1/} 5 George W. Thompson, *Commentaries on the Modern Law of Real Property* (1979) ("Commentaries") at 573-76.

^{2/} *Commentaries, supra* at 574-76. Actually, "adverse possession" rules can be traced further back, to the Code of Hammurabi, which provided, in part, that:

If a captain or a soldier has neglected his field, his garden and his house, instead of working them; and another takes his field, his garden and his house, and works them for three years; if he returns and desires to till his field, his garden, and his house, they shall not be given to him. He that has taken and worked them shall continue to use them.

The Hammurabi Code and the Sinaitic Legislation at 32-33 (Chilperic Edwards ed., 1904).

The virtue of "seizin," of course, was that it was obvious who is "seized" of a particular piece of property--the person living on it. "Title," conversely, was the source of considerable dispute, since there then existed no reliable, centralized recording system to resolve conflicting claims of "title." As a result:

In an era of comparatively scarce land, decentralized records and crude surveying techniques, lengthy possession may have been the best possible proof of ownership.

^{3/} Thus, while possession no longer equated with ownership, possession remained the best evidence of "title," and so the doctrine of adverse possession continued to serve some worthwhile purpose. "Ultimately, the 1623 Statute of Limitations required that suits to recover possession of land be brought within twenty years. The Statute recited that this limit was necessary for 'quieting men's estates, and avoiding of suits...'" ^{4/}

3. The New American Purpose--Social Engineering

In James I's England, if a person owned land, he probably lived on it. ^{5/} Even by the 16th century, there was precious little wild land in England that a person might own, but not make productive use of. ^{6/}

This was not true in North America, where vast tracts of wilderness might lie in private ownership. Here, the assumption that ownership was reliably proven by physical possession did not hold true:

Transplanted to the abundant, sparsely populated wild lands of North America, however, the assumptions of the [doctrine of adverse possession] ...failed. The terrain was too hostile, the

^{3/} Sprankling, *An Environmental Critique of Adverse Possession*, 79 Cornell Law Rev. 816, 822 ("Critique") (1994).

^{4/} *Critique, supra* at 823.

^{5/} James I promulgated the 1623 statute just quoted.

^{6/} By 1696, only 16% of England's land were uncultivated forest lands. *Critique, supra* at 822, n. 25.

forests too impenetrable and the distances too vast for most owners to reside upon or even to inspect their properties regularly. More importantly, possession of land in the English sense, characterized by residence, cultivation or improvement, was often impractical. The minor acis, greatly separated in time, that characterized land use in wilderness areas were unlikely to afford constructive notice to the owner who did inspect occasionally.

Critique, supra at 823. "Adverse possession," then, needed a new purpose, and found one in our 19th century urge to settle the West. The modern doctrine " was developed when much of the continental United States was unsurveyed wilderness," and our courts and legislatures resultantly "adopted a public policy that as much land should be put to use as possible." ^{7/} Under the new theory of adverse possession, the squatter was to be rewarded for making use of wild land, even at the expense of the person who owned it:

Beginning in the nineteenth century, American courts serving the ideology of economic expansion reformulated adverse possession in the pursuit of national productivity. These courts transformed the doctrine from a mechanism designed to protect the title of the true owner against false claims into a tool designed to transfer title to wild lands from the idle true owner to the industrious adverse possessor.

Critique, supra at 821 (emphasis original).

The American justification for the doctrine also took on something of a Marxist flavor. Vast expanses of public lands were conveyed to large, absentee landlords--principally, the railroads. As pioneers struck west and inadvertently (or otherwise) homesteaded then-or-future railroad land, Western state legislators, and courts, concluded that disputed land should belong to the worker rather than the absentee capitalist. *Critique, supra* at 843. For this reason, the periods necessary to establish title by "adverse possession" tend to shrink as one proceeds westward--from the old 20-year

English rule still prevalent in the original colonies, to as little as five years in many western states.

C. Adverse Possession in 20th Century Alaska--A Doctrine Without a Reason

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because "society will benefit from someone's making use of land the owner leaves idle." ^{7/}

One might argue that there is considerable "idle" land in Alaska's *public* domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. AS 09.45.052(a). And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA, §1. ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. 43 U.S.C. §1636(d). But ANCSA corporations often acquire other remote lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now

^{7/} *Seddon v. Harpster*, 403 So. 2nd 409, 413 (Florida 1981).

^{8/} *Tenala, Ltd. v. Fowler*, 921 P.2nd 1114 (Alaska 1996).

would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

The last remaining modern justification for adverse possession is that it "keep[s] stale causes out of court." *Tenala, Ltd. v. Fowler, supra*. But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who-possessed-what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale. ^{9/}

Similarly, allowing adverse possession claims promote litigation, while limiting them discourages it. This because:

[b]right line standards generally deter litigation...The record title standard draws an exceedingly bright line: the holder of record title always prevails. In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.

Critique, supra at 878. The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession." *Seddon v. Harpster*, 493 So.2nd at 414.

Continued recognition of "squatters' rights" serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse

^{9/} "Outlaws of the Past: A Western Perspective on Prescription and Adverse Possession," 31 Land and Water Law Review 79, 104 (1996) ("Outlaws").

possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty." *Outlaws, supra* at 97.

The doctrine ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and SB 93 attempts to do just that by amending only AS 09.10.030, which currently allows land to be taken by bad faith trespassers, while leaving untouched AS 09.45.052, which allows adverse possession claims by persons with a good faith claim to the property based on color of title.

AS 09.10.030 is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. ^{10/} As one commentator puts it, this statute "gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land." ^{11/}

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

Section 1 of SB 93 would amend this statute to provide that the owner of record could recover his or her land--by a quiet title or ejectment action--at any time. ^{12/} Because of computerized land records, the record owner's claim will never, as a practical matter, grow stale.

AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse

^{10/} *Hubbard v. Curtiss*, 684 P.2nd 842, 848 (Alaska 1984).

^{11/} 7 Richard R. Powell, *Powell on Real Property*, ¶1012(3) (1993).

possessor has some deed or other document purporting (but for some reason failing) to convey title to the property being possessed. Unlike the statute amended by Section 1, this statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land. *Ault v. State*, 688 P.2nd 951, 956 (Alaska 1984). The legislation leaves this section untouched.

Finally, Section 2 of the legislation would make the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for claims under color of title). ^{13/} Serious constitutional questions would arise if the legislation purported to extinguish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since an adverse possessor has no protected right in the mere expectation that, eventually, he or she may possess the land for a sufficient period of time. ^{14/}

^{12/} To the extent that this statute governs other types of real property claims, the 10-year statute of limitations would be retained.

^{13/} *Markovich v. Chambers*, 857 P.2nd 906, 908 (Or. App. 1993).

^{14/} See *Lovell v. Magnet Cove School District No. 8*, 782 S.W.2nd 41, 42 (Ark. 1990) (change in Arkansas adverse possession statutes applicable to unvested adverse possession claims).

SB

97

23-GS1064\X
Luckhaupt
5/4/04

CS FOR SENATE BILL NO. 97()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public interest litigants and to attorney fees and costs and the
2 posting of bonds or other security; amending Rules 65, 79, 80, and 82, Alaska Rules of
3 Civil Procedure, and Rules 205, 508, and 602, Alaska Rules of Appellate Procedure; and
4 providing for an effective date."

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

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

8 **FINDINGS, PURPOSE, AND INTENT.** (a) The legislature finds that

9 (1) the portion of the judicially created policy relating to the award of
10 enhanced attorney fees and enhanced costs to public interest litigants who prevail in part or in
11 full in a civil action or appeal that they initiate created an unbalanced set of incentives for
12 parties litigating issues that fall under the public interest litigant exception;

13 (2) this imbalance imposed significant costs on the state and municipalities
14 and, to a lesser degree, imposed unbalanced burdens on private citizens and businesses;

1 (3) the legislature responded to these and other problems with the public
2 interest litigant policy through the enactment of ch. 86, SLA 2003;

3 (4) the superior court has declared that certain reforms embodied in ch. 86,
4 SLA 2003, are beyond the legislature's authority or require a two-thirds vote of the
5 legislature; and

6 (5) while the legislature does not endorse the declaration of the superior court,
7 it seeks to avoid a clash with another branch of government by providing for more limited
8 reforms that are clearly within its authority.

9 (') The purpose of sec. 2 of this Act is to provide for a more equal footing for parties
10 in civil actions and appeals by abrogating the special status given to public interest litigants
11 with respect to the award of attorney fees and costs. It is the intent of the legislature to
12 expressly overrule the decisions of the Alaska Supreme Court in Dansereau v. Ulmer, 955
13 P.2d 916 (Alaska 1998); Southeast Alaska Conservation Council, Inc. v. State, 665 P.2d 544
14 (Alaska 1983); Thomas v. Bailey, 611 P.2d 536 (Alaska 1980); Anchorage v. McCabe, 568
15 P.2d 986 (Alaska 1977); Gilbert v. State, 526 P.2d 1131 (Alaska 1974), and their progeny,
16 insofar as they relate to the award of attorney fees and costs to or against public interest
17 litigants in future civil actions and appeals.

18 (c) This Act does not preclude the enactment of, or create an implied repeal of,
19 specific statutes authorizing awards of costs or fees in particular situations, such as in
20 AS 45.50.537.

21 (d) Consistent with (c) of this section, this Act also is intended to enact a specific
22 statute governing the award of costs and fees in certain challenges to decisions of the Alaska
23 Board of Fisheries and the Alaska Board of Game.

24 * **Sec. 2.** AS 09.60.010 is amended by adding new subsections to read:

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

31 (g) Except as otherwise provided by statute, a court in this state may not

1 discriminate in the award of attorney fees and costs to a party in a civil action or
2 appeal based on the nature of the policy or interest advocated by the party, the number
3 of persons affected by the outcome of the case, whether a governmental entity could
4 be expected to bring or participate in the case, the extent of the party's economic
5 incentive to bring the case, or any combination of these factors.

6 (h) In a civil action or appeal concerning the establishment, protection, or
7 enforcement of a right under the United States Constitution or the Constitution of the
8 State of Alaska, the court

9 (1) shall award, subject to (i) and (j) of this section, full reasonable
10 attorney fees and costs to a claimant, who, as plaintiff, counterclaimant, cross
11 claimant, or third-party plaintiff in the action or on appeal, has prevailed in asserting
12 the right;

13 (2) may not order a claimant to pay the attorney fees of the opposing
14 party devoted to claims concerning constitutional rights if the claimant as plaintiff,
15 counterclaimant, cross claimant, or third-party plaintiff in the action or appeal did not
16 prevail in asserting the right, the action or appeal asserting the right was not frivolous,
17 and the claimant did not have sufficient economic incentive to bring the action or
18 appeal regardless of the constitutional claims involved.

19 (i) In calculating an award of attorney fees and costs under (h)(1) of this
20 section,

21 (1) the court shall include in the award only that portion of the services
22 of claimant's attorney fees and associated costs that were devoted to claims concerning
23 rights under the United States Constitution or the Constitution of the State of Alaska
24 upon which the claimant ultimately prevailed; and

25 (2) the court shall make an award only if the claimant did not have
26 sufficient economic incentive to bring the suit, regardless of the constitutional claims
27 involved.

28 (j) The court, in its discretion, may abate, in full or in part, an award of
29 attorney fees and costs otherwise payable under (h) and (i) of this section if the court
30 finds, based upon sworn affidavits or testimony, that the full imposition of the award
31 would inflict a substantial and undue hardship upon the party ordered to pay the fees

1 and costs or, if the party is a public entity, upon the taxpaying constituents of the
2 public entity.

3 * **Sec. 3.** AS 09.68.040 is amended by adding a new subsection to read:

4 (d) A court in this state may not excuse a litigant requesting the entry of a stay
5 or other interlocutory relief from posting a bond or other security to protect the
6 persons who will be adversely affected if the excuse is based on the nature of the
7 policy or interest advocated by the party, the number of persons affected by the
8 outcome of the case, whether a governmental entity could be expected to bring or
9 participate in the case, the extent of the party's economic incentive to bring the case, or
10 any combination of these factors.

11 * **Sec. 4.** AS 16.05 is amended by adding a new section to read:

12 **Sec. 16.05.812. Attorney fees and costs.** In a civil action or appeal
13 challenging a decision, order, regulation, or other action of the Board of Fisheries or
14 the Board of Game,

15 (1) a prevailing private plaintiff shall be entitled to an award of its full
16 actual reasonable attorney fees and costs if the party does not otherwise have an
17 economic incentive to bring the case; and

18 (2) a private plaintiff who does not prevail may not be subject to an
19 award of attorney fees or costs against it unless the party otherwise has an economic
20 incentive to bring the case or the party's claim or claims are frivolous.

21 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 09.60.010(b), (c), (d), and (e),
24 enacted by ch. 86, SLA 2003, have the effect of amending Rules 79 and 82, Alaska Rules of
25 Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by restricting the
26 discretion of courts to enhance awards of attorney fees and awards of costs on the basis of
27 certain factors.

28 (b) AS 09.60.010(l), (g), (h), (i), and (j), added by sec. 2 of this Act, and
29 AS 16.05.812, added by sec. 4 of this Act, have the effect of amending Rules 79 and 82,
30 Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by
31 restricting the discretion of courts to enhance awards of attorney fees and awards of costs on

1 the basis of certain factors.

2 (c) AS 09.68.040(c), enacted by ch. 86, SLA 2003, has the effect of amending Rules
3 65 and 80, Alaska Rules of Civil Procedure, and Rules 205 and 602, Alaska Rules of
4 Appellate Procedure, by limiting the court's discretion related to the posting of bonds or other
5 security by certain parties.

6 (d) AS 09.68.040(d), added by sec. 3 of this Act, has the effect of amending Rules 65
7 and 80, Alaska Rules of Civil Procedure, and Rules 205 and 602, Alaska Rules of Appellate
8 Procedure, by limiting the court's discretion related to the posting of bonds or other security
9 by certain parties.

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

12 **APPLICABILITY.** Sections 2 - 5 of this Act apply to civil actions and appeals filed
13 on or after the effective date of this Act.

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

16 **SEVERABILITY.** Under AS 01.10.030, if any provision of this Act, or the
17 application of it to any person or circumstance is held to be invalid, the remainder of this Act
18 and the application to other persons or circumstances are not affected except that if

19 (1) AS 09.60.010(g) is held by the Alaska Supreme Court to be invalid or is
20 found to not effect a change to a court rule as provided in sec. 5 of this Act, then
21 AS 09.60.010(h), (i), and (j), AS 09.68.040(d), and AS 16.05.812 are not severable;

22 (2) the portion of AS 09.60.010(b), enacted by ch. 86, SLA 2003, relating to
23 awards of attorney fees to public interest litigants is held by the Alaska Supreme Court to be
24 invalid or is found to not effect a change to a court rule as provided in sec. 5 of this Act, then
25 AS 09.60.010(c), (d), and (e), AS 09.68.040(c), enacted by ch. 86, SLA 2003, and
26 AS 16.05.812 are not severable.

27 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **RETROACTIVITY.** Sections 5(a) and (c) of this Act are retroactive to September 11,
30 2003.

31 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 ~~CONDITIONAL EFFECT.~~ Sections 1 - 8 of this Act take effect only if sec. 5 of this
3 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
4 Constitution of the State of Alaska.

5 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).

23-GS1064\V
Luckhaupt
5/2/04

CS FOR SENATE BILL NO. 97()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to public interest litigants and to attorney fees and costs and the**
2 **posting of bonds or other security; amending Rules 65, 79, 80, and 82, Alaska Rules of**
3 **Civil Procedure, and Rules 205, 508, and 602, Alaska Rules of Appellate Procedure; and**
4 **providing for an effective date."**

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10 enhanced attorney fees and enhanced costs to public interest litigants who prevail in part or in
11 full in a civil action or appeal that they initiate created an unbalanced set of incentives for
12 parties litigating issues that fall under the public interest litigant exception;

13 (2) this imbalance imposed significant costs on the state and municipalities
14 and, to a lesser degree, imposed unbalanced burdens on private citizens and businesses;

1 (3) the legislature responded to these and other problems with the public
2 interest litigant policy through the enactment of ch. 86, SLA 2003;

3 (4) the superior court has declared that certain reforms embodied in ch. 86,
4 SLA 2003, are beyond the legislature's authority or require a two-thirds vote of the
5 legislature; and

6 (5) while the legislature does not endorse the declaration of the superior court,
7 it seeks to avoid a clash with another branch of government by providing for more limited
8 reforms that are clearly within its authority.

9 (b) The purpose of sec. 2 of this Act is to provide for a more equal footing for parties
10 in civil actions and appeals by abrogating the special status given to public interest litigants
11 with respect to the award of attorney fees and costs. It is the intent of the legislature to
12 expressly overrule the decisions of the Alaska Supreme Court in *Dansereau v. Ulmer*, 955
13 P.2d 916 (Alaska 1998); *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544
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16 insofar as they relate to the award of attorney fees and costs to or against public interest
17 litigants in future civil actions and appeals.

18 (c) This Act does not preclude the enactment of, or create an implied repeal of,
19 specific statutes authorizing awards of costs or fees in particular situations, such as in
20 AS 45.50.537.

21 (d) Consistent with (c) of this section, this Act also is intended to enact a specific
22 statute governing the award of costs and fees in certain challenges to decisions of the Alaska
23 Board of Fisheries and the Alaska Board of Game.

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29 entity could be expected to bring or participate in the case, the extent of the party's
30 economic incentive to bring the case, or any combination of these factors.

31 (g) In a civil action or appeal concerning the establishment, protection, or

1 enforcement of a right under the United States Constitution or the Constitution of the
2 State of Alaska, the court

3 (1) shall award, subject to (h) and (i) of this section, full reasonable
4 attorney fees and costs to a claimant, who, as plaintiff, counterclaimant, cross
5 claimant, or third-party plaintiff in the action or on appeal, has prevailed in asserting
6 the right;

7 (2) may not order a claimant to pay the attorney fees of the opposing
8 party devoted to claims concerning constitutional rights if the claimant as plaintiff,
9 counterclaimant, cross claimant, or third-party plaintiff in the action or appeal did not
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11 and the claimant did not have sufficient economic incentive to bring the action or
12 appeal regardless of the constitutional claims involved.

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14 section,

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20 sufficient economic incentive to bring the suit, regardless of the constitutional claims
21 involved.

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23 attorney fees and costs otherwise payable under (g) and (h) of this section if the court
24 finds, based upon sworn affidavits or testimony, that the full imposition of the award
25 would inflict a substantial and undue hardship upon the party ordered to pay the fees
26 and costs or, if the party is a public entity, upon the taxpaying constituents of the
27 public entity.

28 * Sec. 3. AS 09.68.040 is amended by adding a new subsection to read:

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17 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 09.60.010(b), (c), (d), and (e),
18 enacted by ch. 86, SLA 2003, have the effect of amending Rules 79 and 82, Alaska Rules of
19 Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by restricting the
20 discretion of courts to enhance awards of attorney fees and awards of costs on the basis of
21 certain factors.

22 (b) AS 09.60.010(f), (g), (h), and (i), added by sec. 2 of this Act, and AS 16.05.812,
23 added by sec. 4 of this Act, have the effect of amending Rules 79 and 82, Alaska Rules of
24 Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by restricting the
25 discretion of courts to enhance awards of attorney fees and awards of costs on the basis of
26 certain factors.

27 (c) AS 09.68.040(c), enacted by ch. 86, SLA 2003, has the effect of amending Rules
28 65 and 80, Alaska Rules of Civil Procedure, and Rules 205 and 602, Alaska Rules of
29 Appellate Procedure, by limiting the court's discretion related to the posting of bonds or other
30 security by certain parties.

31 (d) AS 09.68.040(d), added by sec. 3 of this Act, has the effect of amending Rules 65

1 and 80, Alaska Rules of Civil Procedure, and Rules 205 and 602, Alaska Rules of Appellate
2 Procedure, by limiting the court's discretion related to the posting of bonds or other security
3 by certain parties.

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

6 APPLICABILITY. Sections 2 - 4 of this Act apply to civil actions and appeals filed
7 on or after the effective date of this Act.

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

10 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
11 application of it to any person or circumstance is held to be invalid, the remainder of this Act
12 and the application to other persons or circumstances are not affected.

13 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
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15 RETROACTIVITY. Sections 5(a) and (c) of this Act are retroactive to September 11,
16 2003.

17 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 CONDITIONAL EFFECT. Sections 1 - 8 of this Act take effect only if sec. 5 of this
20 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
21 Constitution of the State of Alaska.

22 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB97-LAW-5-5-04
 Bill Version: SB97
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to public interest litigants and to RDU None
attorneys fees; and amending Rule 82..." Component None
 Sponsor Senate Rules
 Requester Senate Rules Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673
 Division Administrative Services Date/Time 5/5/04 8:23 AM
 Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 5/5/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 1/27/03 8:28 AM
 Approved by: Kathryn Daughhelee for Gregg D. Renkes, Attorney General Date 1/27/2003
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 97 #1

ANALYSIS CONTINUATION

Passage of this legislation will have no impact on the Department of Law's operating budget. However, each year the department seeks supplemental funding to pay judgments and claims against the state, including public interest litigant attorney's fee awards. Total attorney's fee awards under the public interest litigant exception to Rule 82 included in judgments against the state for the last five years are as follows: FY98, \$186.4; FY99, \$413.9; FY00, \$34.7; FY01 \$298.4; FY02 \$335.9. (These numbers represent fees only, and do not include costs, pre-judgment or post-judgment interest.)

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

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

STATE OF ALASKA

Frank H. Murkowski, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
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April 17, 2003

Senator Ralph Seekins
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator Seekins:

The judicially created doctrine respecting the award of attorney's fees for or against a party deemed to be a public interest litigant has created an unbalanced set of incentives for parties litigating issues that fall under the public interest litigant rule. This imbalance has led to increased litigation, arguments made with little merit, difficulties in compromising claims, and significant costs to the state and private citizens.

These concerns are particularly acute in litigation related to natural resource issues. Moreover, unlike other areas of public interest law, there are a number of dedicated and well funded entities whose purpose is to litigate issues of public concern in the natural resource area. Thus, while many years ago there may have been a legitimate need to provide an incentive for public interest litigation on natural resource issues, that need no longer exists. The absence of a compelling need, coupled with the concerns described above that have arisen from application of the public interest exception to natural resource litigation, led us to the conclusion that it is appropriate for the legislature to limit the public interest litigant exception.

For that reason the Governor earlier requested the introduction of legislation designed to limit the application of the public interest doctrine in certain natural resource cases where substantial amounts of public involvement were already provided. That bill is now in front of your committee.

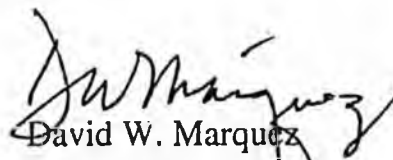
I am attaching a proposed amendment to that legislation. The amendment is intended to clarify that the bill applies to administrative appeals as well as civil lawsuits initiated in state court. It also clarifies that limitations on the types of decision listed, including coastal consistency determinations, the adoption of regulations and decisions for which there was an opportunity for public comment and administrative review, are applicable to the three agencies listed. This change is in response to concerns that the limitations applied only to DNR or, in the alternative, were inclusive of other agencies. The amendments also delete sections 2 and 3 of the bill, proposed changes to the Alaska Rules of Civil Procedure. Eased upon comments received since the bill was introduced, it was felt that it was not appropriate to change the court rules at this time. Thus the bill would be limited to statutory changes that only affect the court created public interest litigant doctrine. Because of these changes the bill would no longer require a two-thirds majority and thus section 4 would not be necessary. It is therefore also deleted.

Thank you for your consideration of these amendments.

Sincerely,

GREGG D. RENKES
Attorney General

By:


David W. Marquez
Legislative Liaison

DWM:lb

AMENDMENT

OFFERED IN THE SENATE

BY _____

RULES COMMITTEE

TO: SB 97

1 Page 1, line 1, following "fees", through line 2:

2 Delete "; and amending Rule 82, Alaska Rules of Civil Procedure"

3

4 Page 1, line 11, following "action":

5 Insert "or an appeal from an administrative agency,"

6

7 Page 1, line 13, following "Resources", through line 14:

8 Delete "making a coastal consistency determination, adopting"

9 Insert "through which one or more of those agencies makes a coastal

10 consistency determination or adopts

11

12 Page 2, line 3, following "litigant" through line 5:

13 Delete "as provided in Rule 82(g), Alaska Rules of Civil Procedure, on the
14 effective date of this Act"

15 Insert "in the same manner as attorney's fees may be awarded to or against a
16 non-public interest litigant"

17

18 Page 2, line 6, through page 3, line 2:

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

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

21 (b) In this section, "public interest litigant" means a party bringing a civil
22 action or appeal that

23 (1) is designed to effectuate strong public policies;

24 (2) will benefit numerous people;

1 (3) could only be expected to be brought by a private party; and

2 (4) the party bringing the civil action or appeal would lack sufficient

3 economic incentive to bring if it did not involve issues of general importance.

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

5 section to read:

6 APPLICABILITY. This Act applies to all civil actions and appeals filed on or

7 after the effective date of this Act."

FRANK H. MURKOWSKI
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 28, 2003

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

Dear President Therriault:

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

Under Rule 82, attorney's fees are awarded to the prevailing party. By rule, the attorney's fee awards are limited to a specified percentage of the actual fees, with the precise percentage dependent upon a number of factors, including whether the case is contested or goes to trial, and whether or not a money judgment is received. The complexity of the case and length of trial are among a list of other factors that may be used by the court to vary the size of the award. Upon consideration of a variety of factors, a court may apportion fees based upon the issues and whether a party prevailed. In contrast, current Alaska case law creates an exception to Rule 82 by which, in most circumstances, public interest

The Honorable Gene Therriault
February 28, 2003
Page 2

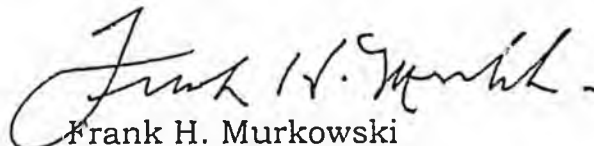
litigants who prevail receive full attorney's fees, with no apportionment by issue, but are not liable for an opposing party's fees if the public interest litigant loses the case.

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

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

I urge your prompt consideration and passage of this bill.

Sincerely,



Frank H. Murkowski
Governor

Sectional Analysis HB 145 and SB 97

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

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

Section 2 of the bill would amend Alaska Rule of Civil Procedure 82 by adding a new paragraph to subsection (b) providing that if a court increases the award from the percentages set out in (b)(1) or (b)(2) of the rule, it must apportion the attorney's fee by issue and, absent exceptional circumstances, can only award the increased fee for an issue the party prevailed upon. This would change the current application of Civil Rule 82 which courts construe to allow, but not require, apportionment of attorney's fees by issue.

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

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