ALASKA LEGISLATURE COMMITTEE FILES, 2005-2006 8672
11698 HOUSE STATE AFFAIRS

> superior court for a protective order against a household member. A parent, guardian, or other representative appointed by the court under this section, may file a petition for a protective order on behalf of a minor. The court may appoint a guardian ad litem or attorney to represent the minor. Notwithstanding AS 25.24.310 or this section, the office of public advocacy may not be appointed as a guardian ad litem or attorney for a minor in a petition filed under this section unless the petition has been filed on behalf of the minor.

This subsection merely delineates those individuals that may file a protective order petition (on behalf of themselves or another). Logically, under AS 18.66.110(a), the cross-reference to AS 18.66.100(a) merely sets forth, with specification, those individuals which may file an ex parte protective order.

AS 18.66.110(a) merely incorporates the list of those eligible to file a six-month order petition into the list of those eligible to file an 20-day order ex parte petition. If the legislature had intended otherwise, it would have referenced subsection (b) of AS 18.66.100, not subsection (a), into AS 18.66.110(a). It is subsection (b) that establishes a six-month protective order. Subsection (a) of AS 18.66.100 does no such thing. Contrary to the ACS's assertion, AS 18.66.110(a) does not combine the six-month order with the 20-day ex parte order: it merely defines those eligible to file a petition for a 20-day ex parte order.

The ACS points out that the language of AS 18.66.110(a) duplicates the opening lines of AS 18.66.100(a): "A person who is or has been a victim of a crime involving domestic violence may file a petition . . . ." The ACS urges that this somehow establishes that the cross reference in AS 18.66.110(a) was for some purpose other than defining who is eligible to file a

petition. The ACS would have it that the legislature, therefore, must have been referring to the six-month order when it referenced this subsection. This argument is unpersuasive since, first, there is no ambiguity as to what subsection the legislature was referencing in AS 18.66.110(a): the legislature explicitly referenced subsection (a) which does not talk about a six-month order at all. Second, since there is no ambiguity as to which subsection the legislature was referring to, it is of no matter that the opening phrase of the two passages use the same language. AS 18.66.110(a) merely contains a vague provision (on who can file a petition) that refers to AS 18.66.100(a), a more detailed provision (on who can file a petition).

3. Legislative History

The ACS challenges attempts by the Network to introduce various documents as legislative history, including the affidavits of Representative Sean Parnell (the DV Act's sponsor) and Deputy Attorney General Laurie Otto. Statements made by legislators or witnesses after the passage of an act do not, in and of themselves, constitute legislative history, for there is no record that the legislative body was privy to the information contained. Neither should the Model Code on Domestic and Family Violence (on which the DV Act is based) constitute legislative history, since there is no indication that the Legislature adopted the Model Code as a whole, and since there is no indication that the individual legislators considered the Model Code comments.

The ACS claims that the plain language meaning of AS 18.66.110(a) is clear and no legislative history supports the Network's position. As discussed above, the plain language meaning of the statute tips in favor of the Network's position. Any dearth of legislative history hence does not disadvantage the Network, but rather, disadvantages the ACS. The ACS has failed to put forth any legislative history in support of its position that a 20-day ex parte order cannot be requested on its own.

To an extent, the limited existing legislative history supports the Network's position that an independent 20-day ex parte order is authorized. Included in the house floor debate, which clearly constitutes legislative history, are comments by Representative Parnell in which he states that:

> HB 314 establishes three orders; one is a three-day order, one is a twenty-day order and the other is a six-month order. The three-day order and the twenty-day order are ex parte in nature, meaning that they can be obtained by the victim. The six-month order requires a hearing; it requires notice and an opportunity to be heard by the court before that order is issued.

Transcript of May 6, 1996 House Proceedings at 3. In the proceedings on the DV Act, nowhere on record is there an indication that the 20-day order can only be petitioned for in conjunction with the six-month order. As the above excerpt indicates, the DV Act was described as offering three distinct types of orders. There is no indication that the legislators were under the impression that any one type of order can only be gotten in conjunction with another. In spite of this support, though, the legislative history does not specifically speak to the purpose of

AS 18.66.110(a).

4. Overall Purpose, Common Sense and Good Policy

When "the legislative history sheds no light as to the specific purpose of [a] subsection", the court must examine the plain language of the subsection "in light of [the act's] overall purpose and in accordance with common sense and good policy." Saunders Properties v. Municipality of Anchorage, 846 P.2d 135, 138 (Alaska 1993). While the legislative history does not specifically discuss AS 18.66.110(a), the purpose of the DV Act is clear. The DV Act is designed to protect victims of domestic violence. This is evident from the title: 'Domestic Violence Prevention and Victim Protection Act of 1996". This is evident from the floor discussions on the bill, in which there was talk of improving "the safety of domestic violence victims" (Testimony of Senator Salo, Senate Proceedings (May 3, 1996); and "ennanc[ing] protection for domestic violence victims" (Testimony of Representative Parnell, House Proceedings (May 6, 1996). A reading of the Senate and House debate can lead to no other reasonable conclusion than that the purpose of the DV Act was to protect victims of domestic violence.

The DV Act is clearly a victim's rights law. It is clearly intended to provide the maximum amount of protection to victims of domestic violence. When this court considers this purpose, the proposition that an independent 20-day ex parte order exists under the DV Act is firmly grounded. The proposition that AS 18.66.110(a) requires a 20-day ex parte order request to join a

six-month order petition tends to undermine the purpose of the DV Act.

As a matter of common sense, by allowing victims of domestic violence the option of requesting a 20-day ex parte protective order independent of a 6-month order, the victim of domestic violence is offered a greater encouragement to seek some degree of protection. Six months is a long period and the prospects of filing a six-month order may seem overwhelming and daunting to some victims. Others may not apply because they merely want a short cooling-off period from their abusers, and when they find that a six-month period is required, they may elect no protection at all. Requiring a linkage of a 20-day ex parte order to a six-month order could have a chilling affect on some domestic violence victims. While the court does not have before it cold hard statistics as to the percentage of victims that would decline to file a 20-day order request were it attached to a six-month petition, common sense informs the court that if the independent 20-day order was permitted, the incentive to seek protection would -- at least to some degree -- be increased. As a matter of public policy, it is desireable to increase the incentive for victims of domestic violence to come forward and seek protection from their abusers.

The ACS has argued that requiring that a six-month order be sought in conjunction with a 20-day ex parte order does not amount to any real limitation. A petitioner, for instance, could just withdraw the petition after the 20 days should the petitioner prefer not to seek a full six-month protective order, or the

petitioner could fail to show up at the hearing required for a six-month order. This is simply not an acceptable substitute for allowing an independent 20-day ex parte order. A pro se petitioner may not be fully appraised of the right to withdraw a petition.

5. The DV Act Scheme vs. Civil Injunction Rules

The ACS proposes that the petition for protective orders under the DV Act is essentially the same as a petition for a civil injunction under Rule 65 of the Alaska Rules of Civil Procedure. Under Rule 65, it is accepted that:

> a party who initially obtains a TRO is not entitled to receive its benefits indefinitely by not proceeding to request a preliminary injunction hearing.

Ostrow v. Higgins, 722 P.2d 936, 940 (Alaska 1986) (citations omitted). The ACS urges that this holding precludes allowing an ex parte order under the DV Act without also requiring that the petitioner seeks a six-month order, since doing so would be like allowing an indefinite TRO without proceeding to a preliminary injunction hearing. This is an unpersuasive argument. The 72-hour, 20-day and six-month orders now utilized in the domestic violence context in the State of Alaska are the product of the DV Act. The DV Act's scheme of protection orders was designed and enacted by the legislature, and is not bound to the general civil injunction requirements of Rule 65.

6. The Rights of the Accused

The ACS has expressed concern that the existence of an independent 20-day ex parte protective order would jeopardize the respondent's right to notice and hearing, since the ex parte order can (by definition) be implemented without notice or an opportunity for a hearing to the respondent. The DV Act contains two provisions which adequately address these concerns.

First, under the act, an ex parte protective order may be dissolved:

> An ex parte protective order expires 20 days after it is issued unless dissolved earlier by the court at the request of either the petitioner or the respondent and after notice and, if requested, a hearing.

AS 18.66.110(a) (emphasis added). Secondly, an ex parte order may be modified:

> Either the petitioner or the respondent may request modification of a protective order. If a request is made for modification of . . . an ex parte protective order under AS 18.66.100(a), the court shall schedule a hearing on three days' notice or on shorter notice as the court may prescribe; the court shall hear and rule on the request in an expeditious manner.

AS 18.66.120(a)(1) (emphasis added). Given these provisions, the respondent in a DV Act protective order action is not deprived of an opportunity to be heard where an ex parte protective order is granted.

B. THE ISSUES OF REQUIRING THE ADDRESS OF PETITIONER AND REQUIRING THE LISTING OF PRIOR CASES ARE MOOT

As stated previously, the ACS has made changes to the domestic violence forms so that they no longer require the disclosure of a petitioner's home and work address and so that they no longer

require the disclosure of prior cases within the last five years involving either the petitioner or respondent. These changes were clearly appropriate. The DV Act is designed to afford victims of domestic violence protection from their abusers. Requiring the listing of a petitioner's address with the potential for disclosure to the respondent would not be consistent with the DV Act's intent to protect a victim of domestic violence. Requiring the listing of all prior cases within the last five years involving either the petitioner or respondent was too broad, and presented an undue burden to the petitioner.

A claim is moot if it has lost its character as a present, live controversy. Kodiak Seafood Processors Ass'n v. State, 900 P.2d 1191, 1195 (Alaska 1995) (citing Kleven v. Yukon-Kovukuk School Dist., 853 P.2d 518, 523 (Alaska 1993) (citations omitted)). In order for a court to review a controversy, in general,

> [t]he controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Id. (quoting Jefferson v. Asplund, 458 P.2d 995, 998-99 (Alaska 1969) (citations omitted)).

The ACS no longer utilizes Child Custody and Support Order Form DR-300 (10/95) in the domestic violence protective order context. Instead, it now utilizes Temporary Child Custody Order (Domestic Violence) Form DV-200 (11/96), which does not require a petitioner's address information. The issue of whether the ACS

should be enjoined from using Form DR-300 (10/95) in the domestic violence protective order context because it requires information regarding a petitioner's home and work address is now, therefore, moot. The question of whether the ACS should be enjoined from requiring a domestic violence protective order petitioner from listing a work and home address on court documents is no longer a live controversy since the form currently used no longer requires a petitioner to list such addresses.

The issue of whether the ACS should be enjoined from requiring a petitioner to list "all court cases within the last five years" involving either petitioner or respondent is similarly moot. For the ACS, through the introduction of the revised Form DV-100 (11/96), no longer requires that such information be divulged. The question no longer presents a live controversy.

Both parties have acknowledged that the replacement of Form DV-100 (6/96) with Form DV-100 (11/96) obviates the need to litigate the "prior court case" issue. Both parties have also acknowledged that the replacement of Form DR-300 (10/95) in the domestic violence context with Form DV-200 (11/96) obviates the need to litigate the "confidentiality of address" issue. Neither of the parties have put forth an argument that, despite the mootness of both these issues, they fall under an exception to the mootness doctrine.

For a court to review a matter despite the absence of a live controversy (i.e., where the controversy is moot), the following factors are applied:

> 1) whether the disputed issues are capable of repetition.
> 2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues and,
> 3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.

DHSS v. Alaska State Hospital, 856 P.2d 775, 766 (Alaska 1993). The issues at hand are presumably capable of repetition since the ACS could arguably choose, in the future, to alter its forms in a manner by which a petitioner may, once again, be required to list past court cases or list the petitioner's address. Nevertheless, the two issues at hand do not fit under the exception to the mootness doctrine since, should the ACS alter the forms in such a manner, the Network would have redress through filing a new suit at such a time. The issues would not repeatedly circumvent review.

IV. CONCLUSION

A petitioner filing for protection under the Domestic Violence Prevention and Victim Protection Act of 1996 has the right to seek the following relief:

1. An independent ex parte emergency protective order under AS 18.66.110 which expires 20 days after it is issued;

2. An independent six (6) month protective order under AS 18.66.100(b); or

3. Both an ex parte 20-day protective order in conjunction with a regular six-month protective order.

Subsequent to the filing of this litigation, the Alaska Court System made various appropriate changes to the forms in use by

petitioners applying for a domestic violence order. The forms currently in use no longer require the petitioner to list a home and work address, nor do they mandate that a petitioner list all cases in which either the petitioner or the respondent were involved during the last five years. As a result of the changes made by the Alaska Court System to the forms, the issues raised by the plaintiffs in these areas have become moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Alaska Court System prepare and utilize a revised Form DV-100 that provides proper notice that a petitioner may request the following protective orders:

[ ] an ex parte 20-day protective order which takes effect immediately and without prior notice to the respondent.

[ ] a six-month protective order which can be granted only after notice to the respondent and a court hearing.

[ ] both an ex parte 20-day protective order (which can take effect immediately, without prior notice to the respondent) and a regular 6-month protective order (which can be granted only after notice to the respondent and a hearing).

Dated this 13th day of March, 1997, at Anchorage, Alaska.

RENE J. GONZALEZ
SUPERIOR COURT JUDGE

I certify that on 3-13-97
a copy of the above was mailed to each
of the following at their addresses of
record: Lombardi

Secretary/Deputy Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JANE DOE, and the ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT,	)
Plaintiffs,	)
vs.	)
STATE OF ALASKA, ALASKA COURT SYSTEM ADMINISTRATIVE OFFICE OF THE COURTS, and ART SNOWDEN, ADMINISTRATIVE DIRECTOR,	)
Defendants.	)
	) Case No. 3AN-96-5455 Civil

FINAL JUDGMENT

The above-entitled parties, through respective counsel, having entered into a Stipulation Regarding Attorneys' Fees and Costs, dated April 25, 1997, and this court, after consideration thereof, having entered an order in accordance with same, now adjudges that,

Pursuant to this court's Memorandum Opinion and Judgment, dated March 13, 1997, ordering, adjudging and decreeing revision of the Form DV-100 to permit petitioners to request a 20-day *ex parte* protective order without also requesting a 6-month order, and pursuant to this court's order regarding attorneys' fees and costs,

Gilmore & Doherty
ATTORNEYS AT LAW
RESOLUTION PLAZA
1029 W. 3rd AVE., SUITE 300
ANCHORAGE, ALASKA
99501-1982
TEL (907) 279-4506
FAX (907) 279-4507

final judgment is entered in favor of the plaintiffs, Jane Doe and the Alaska Network on Domestic Violence and Sexual Assault in the amount of nineteen thousand dollars ($19,000.00).

DATED this ___ day of _____, 1997, at Anchorage, Alaska.

_____
René J. Gonzalez
Superior court Judge

APPROVED as to form, DISAPPROVED as to form or ACKNOWLEDGED RECEIPT of a true and correct copy of the foregoing FINAL JUDGMENT this 25th day of April, 1997.

By: _____
Paul J. Niewiadomski, Counsel for Plaintiffs

CERTIFICATE OF SERVICE
I HEREBY CERTIFY that on this _____ day of April, 1997, a true and correct copy of the foregoing was delivered by mail/hand delivery to:

Suzanne H. Lombardi
Faulkner, Banfield, Doogan & Holmes
550 West Seventh Ave., Suite 1000
Anchorage, Alaska 99501-3510
GILMORE & DOHERTY
By: _____
Debi Morrow
C:\DOCS\AK-COURT\FINAL.JUD

Gilmore & Doherty
ATTORNEYS AT LAW
RESOLUTION PLAZA
[illegible] AVE., SUITE 800
ANCHORAGE, ALASKA
99501-1982
TEL (907) 279-4506
FAX (907) 279-4507

Louie Flora

From: POMS@legis.state.ak.us
Sent: Thursday, April 13, 2006 3:48 PM
To: Louie Flora
Subject: New Pom:SB 86 State/muni Liability For Attorney Fees

Alison York
1170 Sundance Loop

Fairbanks 99709-6855,

Please do not support passage of SB86 from committee. This bill would discourage private citizens from contesting state and local actions. This is ultimately in the public interest.

Louie Flora

From: Michael J. Schneider [mjspc@gci.net]
Sent: Wednesday, April 12, 2006 10:5 AM
To: Rep Paul Seaton
Subject: SB 86

Dear Chairman Seaton:
I am working in California and can't seem to make this computer send this message to all members of the committee. Please pass it along.

I have practiced law in Anchorage for 30 years. I think SB 86...a bill limiting attorney fee awards against government entities, is a bad idea.

R's and D's, liberals and conservatives, young and old, urban and rural have had to rely on current law as the ONLY hope of mounting a righteous fight against some governmental bad idea or other. The rich can always afford to challenge those in power. The rest of us can't. Remember, the person seeking the fees has to WIN UNDER CURRENT LAW TO GET THEM. There is nothing wrong with making governmental action accountable on the same level and under the same rules as individual action.

I am sorry that I am out of state and unable to testify. Please vote "no" and encourage other committee members to do the same.

Michael J. Schneider

Louie Flora

From: Sherrie Goll [riverside@aptalaska.net]
Sent: Wednesday, April 12, 2006 4:49 PM
To: Rep. Paul Seaton; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Jay Ramras; Rep. Berta Gardner; Rep. Max Gruenberg; Rep. Jim Elkins
Subject: Opposing SB 86

Dear House State Affairs Committee,

I am writing to urge you not support SB 86 the public interests litigant bill currently in House State Affairs.

This measure is aimed at chilling lawsuits that seek to compel the government to do what it is obligated to do by law.

It would limit the reimbursement of attorney fees to plaintiffs acting in the public's interest, not for monetary gain, after they have successfully proved in court that the state or some other public entity has failed to comply with its obligations under the law.

This measure will affect non-profit organizations, conservatives, liberals, pro-business groups, pro and anti environmentalists and political groups of every persuasion.

It is a bad policy. I urge you not to pass it.

Thank you for your consideration.

Sherrie

Sherrie Goll

P.O. Box 261

Haines, AK 99827

Phone: 907 766 3717

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
P. O. Box 201844
Anchorage, AK 99520
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

ACLU
AMERICAN CIVIL LIBERTIES UNION of ALASKA

April 13, 2006

To: Representative Paul Seaton, Chairman
House State Affairs Committee

From: Michael W. Macleod-Ball, Executive Director

RE: Senate Bill 86 – *An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals.*

Please accept this statement in opposition to the above referenced bill. We oppose SB 86 on the grounds that it will have a chilling effect on the ability of parties acting in the public interest to challenge the inappropriate exercise of governmental authority. Further, the bill will tend to widen the legal advantage currently held by governmental litigants over private individuals. The ACLU of Alaska will be affected somewhat by this measure, but not to the extent of other non-profits and individuals who benefit from the current rule. That is because many of our claims are constitutional in nature – and often there is an alternative statutory award of attorney fees. Most others will not be so lucky. The bottom line is that citizen oversight of government will be thwarted by this measure and that will be bad for Alaskans.

The typical plaintiff in a public interest lawsuit is an individual, a non-profit advocacy organization, or a charitable organization. A typical defendant in such a suit is a governmental entity – often the federal or state government due to the nature of the issues commonly litigated. However, your reports clearly show that public interest cases are brought just as regularly against quasi-public or private entities. There can be no dispute that the typical suit pits a party with limited financial resources who needs to hire outside counsel against a governmental entity with access to substantially greater financial and legal resources. As often as not, the dispute is over principle and not over money.

Compare this to any other type of litigation. First, private suits almost always involve a fight over money or property interests. Typically, general civil litigation pits business against business or individual against individual. Certainly there are disparities in each party's ability to cope with the costs of litigation – but it's a matter of happenstance.

The public interest litigant, therefore, is financially disadvantaged and typically does not have the prospective benefit of a money damages award. As a result, attorneys are not readily available to take on such cases without sizable retainers – it is not profitable for them to do so. Therefore, the public interest litigant is legally disadvantaged as well – because the governmental adversary will always have counsel on board from the start. In his letter of transmittal, the Governor complains that the public interest litigant is being subsidized by the current system of attorney fee reimbursement. But, bear in mind that the public interest litigant only receives reimbursement if a) he or she is acting in the public interest and b) he or she is successful in showing that the government acted wrongly. On the other hand, the government gets its subsidy

from the taxpayers whether it wins or not. It's not as if the individual within the government who caused the government to violate the victim's rights is made to reimburse the taxpayers for the internal costs of running the government in a manner violative of the public interest. The key is to set up a system that doesn't reward improper behavior – and there will be no incentive for the government to stop inappropriate action if there is no one willing to speak out against such action through public interest legal action.

Who will this bill affect? It will affect those in our society least able to afford it – the poor, the uneducated, the minorities, the disabled, the elderly – all of whom have benefited from public interest litigation at one time or another – and many of whom would not have been able to bring such actions in their own right. It won't make a difference to the wealthy individual who funds a public interest lawsuit – for such individuals, attorney fee reimbursement is not a consideration. Rather, this law will discourage normal, everyday people from trying to make a difference when they see the government failing to do its job. If this bill becomes law, the state government will be able to rest easier that it can act against the public interest because it will be less likely to be held to account for its wrongful actions.

We agree with those who assert that this measure effectuates a court rule change, requiring a 2/3 vote for approval. Though we defer to the comments of others on this issue, we note for the record the pending court case against the most recent legislation in this area. The measure was struck down in Superior Court and is now on appeal to the Supreme Court. In our view, it's inappropriate to further muddy the waters by legislating in this area before the case has been decided and we strongly recommend that, at a very minimum, the legislature wait for a final decision before moving forward.

We note with concern the exception provided for eminent domain proceedings. This measure preserves an award of attorney fees for eminent domain cases where the government loses. If it's okay to award full fees when someone property rights have been violated by the government, what about other unlawful action by the government? What about government negligence, violations of open meeting laws, equal protection rights, due process rights, free speech rights or restrictions on religious freedom rights? What about violations of election laws? Who is to say that a taking of property is worthy of fee reimbursement, but a violation of a liberty interest is not?

In short, this bill is presented as if the government is unfairly required to pay for a vengeful individual's lawsuit against the state. Nothing could be further from the truth. This bill will make it harder for someone acting in the public interest to force the government to comply with its legal obligations. We strongly urge you to reject this bill.

SB 86- Public Interest Litigants

February 8, 2005- Senate CRA

810 N St, Ste 203, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
PO Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.acvoters.org

Two bills currently under consideration in the Legislature would severely limit Alaskans' ability to challenge poor government decisions **SB 86** and **HB 117** asserts sovereign immunity to ignore the Supreme Court rules that allow public interest litigants to recover legal expenses for challenges of decisions made by the State. The public interest litigant Rule 82 exemption is necessary to ensure that citizens can afford to challenge bad decisions by state agencies. SB 86/HB 117 limit the award of attorney's fees against the state or municipalities to the amount applicable under Civil Rule 82, **only 20-30% of legal expenses.** The limits will make it difficult for public interest litigants to find attorney's to challenge the state.

Public Interest Litigants, by definition, are *not* motivated by an economic incentive, but rather by an interest in the resolution of a significant public policy issue. In 1974 the Alaska Supreme Court removed barriers that allowed only the rich to challenge bad government decisions.

Limited Financial Benefit for the State

Over the 10 year period of 1993-2003, the state paid $9,088,000 in attorney s fees. Over one half of the cost was for the ongoing Mental Health Trust Litigation. If the Trust litigation is deleted and HB 117/SB 86 passes the State will save an average of only about $360,000 per year.

All Sides Impacted

Public interest litigants represent all points along the ideological and political spectrum. If not for the public interest rule, citizens such as those cited below, could not afford to challenge poor government decisions.

Ruedrich, Cities of Craig, Valdez, Delta, et al. v. Alaska Redistricting Board, 44 P.3D 141 (Alaska 2001): The Republican Party and several communities challenged the proposed electoral redistricting

Citizens for the Preservation of the Kenai River, Inc. v. Sheffield, 758 P.2d 624 (Alaska 1988): A group of boat-owners brought suit challenging the validity of a state regulation limiting horsepower of motorized boats on the Kenai River.

Payton v. State, 938 P.2d 1036 (Alaska 1997): Rural residents sued DNR for failing to establish a subsistence salmon fishery on the upper Yentna River.

Alaska Survival, Inc. v. Dept. of Natural Resources, 723 P.2d 624 (Alaska 1988): An organization of local residents filed suit regarding state land disposal of 32 agricultural homesteads.

Is the bill constitutional?

Two superior courts have held that attorney's fees are a matter of procedure under the Alaska Constitution, and this issue will be heard by the Supreme Court this spring. Should the court agree this bill could require Court Rule change 2/3rds vote, because it again attempts to change procedural rules regarding the award of attorney's fees.

Alaskans building a better future.

P's Q's 10:15 a.m.

~~Small Project~~ Almost full attendance firms

All litig. practice

Hillman v. Nguyen → Have to win on main issues

— under Darsereau → don't have to win on all issues only on a few (that were the main issues)

A.C.L.U. → 9 of 11 constitutional issues → won 2 out of 11 → wasn't track up afford the court

→ Superior Courts rules 85% upper Court Initiative large sites

less than 20% of provisions were struck down

(?) 10:18

Ketchikan → Municipal Attorney → Not a courts rule now changes wouldn't ... sufficient distinction

(1) Group sued city clerk

(2) other

Public Interest on both sides → Sides will not be as lopsided

under current law — if lose → can't get
award of attorney fees for Pub. Int. Litigation.
under Supreme Courts doctrine

Legislature abolished
HB 145 → ruled unconstitutional by Supreme Court
not yet by Supreme Court

under appeal - differ
under appellate rule - discretion of Supreme Court

between 500 - 1000 + cost of printing of briefs

but determine if win on appeal on (or depend on) ground / issues

This → would

P. 2 line 21-24

in an appeal currently only gets 1/2 the
1,000 $ 20% might significantly increase
in a few of the mill

I think appeal
Appellate rule 508

→ what is current courts language

→ 50 days not impacted current court rules

As a matter of Strategy must be 25%. State treasurer will not be open.

~~tuto~~ If supr Ct uphlds 1 ~~4~~5
then ↓

Based on confidential grounds S usual

Dursam ?

If were to have an apparen

— how apportion? fees on grounds?

PX

FD 40 Substantial → occupation v. confid

P. 5 of 8

conflict of interest — alienated to Dr LPM

Greenberg — struck down class primary

or constitutional grounds

Dursteman v. ulmos

9/55 P 2.nd 9.16

full awards under 82

→ ~~Condemnation~~ proceedings

→ or where legislature provides for full awards

→ or when sanctioned by courts for misconduct

"Policy priorities determined by legislature"

10:55

Discretionary Decisions

→ Procurement for an office bid challenge?

State found faulty procedures

~~have to go back~~

Superior court decision

→ ACLU.

Not reported yet in pacific [illegible]

Slip opinion # → to GTAE

if challenger was successful fees would be awarded

→ overturned by supreme court

in 1985 → Constitution ← two considered by

→ Supreme Court

· Kedrum

occasionally issues →

P.I.L. – only half in terms of regulatory/law
half on Admin discharges of students
Doubts (e.g. clerk carry/ or munged clothing) → myth → into range? | should not prescribe

(.5) philosophical

→ (p's Q?) heightened attention?

(4) Vets (Unidentified) – in P.I.L. CSS not common

In regard CSS tests are for in Army where you know there is crossing

Times – Elects (new!) – Contradictions – "deny best" but people still displeased

(10:30) [illegible]

[illegible] Fuss (7) →

What diff between this legislation ~~[illegible] Board Status~~ and other

~~This would change – Good~~

Normally Admit for Prison

Admissions (7) in writing

4/13/06

~~[illegible]~~ 82 Sub B 3 ✓

→ Other states Amend ? [illegible]

TRO?

Plaintiff 1st on 11 counts (with/

Dasseren v. Ulmer — allow full attorney fees on
[illegible] Issues → Ruhe Will Provide an outline

Challenge on constitutional grounds full recovery of fees
↙
HB ~~14~~5 →

P 2. → L. 4-6 of SB 86
Lessnot Preclude

max

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 26, 2006

SUBJECT: Is a two-thirds vote required because of a court rule change? (CSSB 86(CRA))

TO: Representative Les Gara
Attn: Darcy Dugan

FROM: Dennis C. Bailey DCB
Legislative Counsel

You asked for an opinion whether a two-thirds vote is required for passage of CSSB 86(CRA). The short answer is yes. The bill modifies Civil Rule 82, which provides for court-awarded attorney fees. Article IV, sec. 15, Constitution of the State of Alaska requires a two-thirds vote by the members in each house to change a court rule. Accordingly, there should be a section and court rule change notice in the title of the modification of Civil Rule 82.

Without meeting the two-thirds voting requirement, the bill is subject to a court challenge. *Native Village of Nunapitchuk v. State*, 1-JU-03-700 CI (April 6, 2004) (currently on appeal to the state Supreme Court).

If I may be of further assistance, please advise.

DCB:med
06-341.med

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Max

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to. 129 6th St., Rm. 329

MEMORANDUM April 26, 2006

SUBJECT: Is a two-thirds vote required because of a court rule change? (CSSB 86(CRA))

TO: Representative Les Gara
Attn: Darcy Dugan

FROM: Dennis C. Bailey DCB
Legislative Counsel

You asked for an opinion whether a two-thirds vote is required for passage of CSSB 86(CRA). The short answer is yes. The bill modifies Civil Rule 82, which provides for court-awarded attorney fees. Article IV, sec. 15, Constitution of the State of Alaska requires a two-thirds vote by the members in each house to change a court rule. Accordingly, there should be a section and court rule change notice in the title of the modification of Civil Rule 82.

Without meeting the two-thirds voting requirement, the bill is subject to a court challenge. *Native Village of Nunapitchuk v. State*, 1-JU-03-700 CI (April 6, 2004) (currently on appeal to the state Supreme Court).

If I may be of further assistance, please advise.

DCB:med
06-341.med

Full Journal

05-05-2005 Senate Journal 1380
SB 86
CS FOR SENATE BILL NO. 86(CRA) was read the third time.

Senator Stedman called the Senate. The call was satisfied.

The question being: "Shall CS FOR SENATE BILL NO. 86(CRA) "An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

05-05-2005 Senate Journal 1381
CSSB 86(CRA)
Third Reading - Final Passage

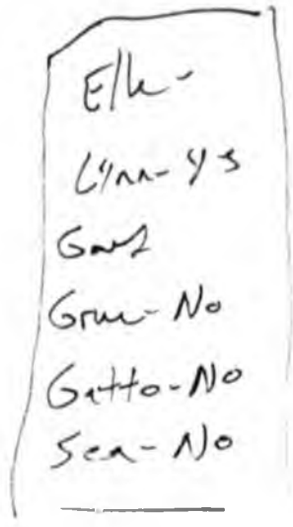
YEAS: 11 NAYS: 8 EXCUSED: 1 ABSENT: 0

Yeas: Cowdery, Dyson, Green, Huggins, Seekins, Stedman, Stevens B, Stevens G, Therriault, Wagoner, Wilken

Nays: Davis, Ellis, Elton, French, Guess, Hoffman, Kookesh, Olson

Excused: Bunde

It didn't get a 2/3 vote in the Senate


Elk-
Lynx-Yes
Gnat
Gnu-No
Gutto-No
Sea-No

LEGISLATIVE RESEARCH REPORT

FEBRUARY 17, 2006 REPORT NUMBER 06.097

PUBLIC INTEREST LITIGATION IN ALASKA, 1993-2005

PREPARED FOR REPRESENTATIVE PAUL SEATON

BY BECKY TAYLOR, LEGISLATIVE ANALYST

You asked us to update Legislative Research Report 03.150, "Public Interest Litigation in Alaska, 1993-2003."[1] You were interested in a list of public interest litigation before the Alaska court, including the name of each case, the amount and year of the judgment, and a very brief description of the topic at issue.

As we noted in our previous report, a public interest litigant is a plaintiff who seeks to resolve a public policy issue impacting a number of people rather than to achieve some private goal. Such a litigant must adhere throughout a civil suit to the same rules and procedures as every other litigant. The question of status as a litigant acting in the public interest arises only in the context of awards of attorney's fees and costs that accompany the decision in the case.

Neither the rules of court nor pertinent statutes directly address public interest litigants; however, by long-standing judicial practice, such litigants are exempt from the normal application of Civil Rule 82. Under this rule, the losing party in a civil action generally pays a portion of the reasonable attorney's fees of the prevailing party. If, however, the court makes a specific finding that a plaintiff qualifies as acting in the public interest, the plaintiff is exempt from paying the fees

[1] Please note the following limitations to our search. (1) We could find no way to identify cases that are settled before a judicial decision is reached. (2) Decisions issued by the superior court are not published, although because the legislature must appropriate funds for any judgment against the State, we can identify those public interest cases that result in such judgments. Aside from that record, however, there is no ready way to identify superior court cases that do not result in a judgment against the State, unless the decision is appealed to the Supreme Court and public interest status is at issue. (3) There is no ready system for identifying cases against municipal governments and other governmental bodies unless they are appealed to the Supreme Court and public interest status is at issue.

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/Research/research_home.htm

State Capitol
Juneau, AK 99801

of the prevailing party.[2] If the plaintiff prevails, the losing party pays full reasonable attorney's fees.[3]

Table 1 shows, by fiscal year, the amount of attorney's fees, costs, and interest paid by the State from those cases that the Department of Law and the Division of Legislative Audit identified as public interest cases resulting in judgments against the State. Table 2 displays, by case, the attorney's fees, other costs, and interest paid by the State. Table 3 shows those cases in which a public interest plaintiff lost and, therefore, paid no fees to the State, as well as cases involving entities other than the State. We identified these cases by searching the Lexis database of Alaska cases for the past thirteen years.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

---

[2] According to the Court in *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977),

> The public interest exception to [Civil Rule 82] is designed to encourage plaintiffs . . . to raise issues of public interest by removing the awesome financial burden of such a suit.
>
> As a matter of sound policy, attorney's fees should not be assessed against public interest plaintiffs because awarding fees in this type of controversy will deter citizens from litigating questions of general public concern for fear of incurring the expense of the other party's attorney's fees.

[3] The criteria the court uses in weighing a plaintiff's private motivation against the extent of public interest involved appear among the annotations to Civil Rule 82 as follows: (1) Is the case designed to effectuate strong public policies? (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit? (3) Can only a private party have been expected to bring the suit? (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

Table 1: Attorney's Fees, Costs, and Interest Paid by the State in Public Interest Cases, FY93-FY05					
Fiscal Year	Attorney's Fees	Costs	Interest		Total
			Pre-Judg.	Post-Judg.	
FY 93	689,806	Unknown			689,806
FY 94	37,894				37,894
FY 95	373,290				373,290
FY 96	259,584	6,585	1,437	10,586	278,192
FY 97	215,684	7,074	0	11,044	233,803
FY 98	238,298	7,337	0	23,898	269,533
FY 99	151,578	5,212	0	6,853	163,643
FY 00	80,833	3,232	0	6,445	90,510
FY 01	417,931	22,115	1,693	45,659	487,398
FY 02	1,847,137	141,324	0	40,693	2,029,154
FY 03	490,442	59,779	0	5,885	556,106
FY 04	41,330	410	0	586	42,326
FY 05	192,256	1,936	0	4,482	198,674
Several Years (Weiss v. State)	4,578,758	Unknown			4,578,758
FY93-FY05	9,614,821	255,004	3,129	156,132	**10,029,086**

Notes: There were a number of discrepancies in the information that was provided by the Department of Law for both the previous and current report. Although every effort was made to select the most recent and most accurate information, the number of discrepancies raises the concern that there may be errors.

This table shows the fiscal years in which judgments were paid, not necessarily years in which cases were decided. Not included are cases that settled out of court, and public interest cases that did not result in a judgment against the State.

For some years, the fees figure may include a small amount of costs. For *Cleary v. State* in FY96-FY99 and *Lynn Canal Conservation v. State* in FY03, no information is available regarding how much of the award was allocated for costs and how much was allocated for fees. The total of fees and costs is calculated into total costs as if it were all fees. The FY02 amount shown for fees for *In Re 2001 Redistricting Cases / Alaska Redistricting Board* includes a small amount of costs for the Craig plaintiffs. In that consildated case, the Redistricting Board and the Craig plaintiffs stipulated in superior court to the award of fees and costs in the amount of $173,922. A relatively small but unspecified portion of this amount represents costs. In every other regard, the court orders in this case were specific as to the amounts for fees and costs, and of those awards, costs represented approximately 11 percent of the total.

A statute that would eliminate the court's authority to award full attorney's fees under its own rules would not entirely eliminate instances in which the court could award full fees: some other state and federal laws allow for full fees. Federal law could have been a factor in determining fees awarded under *Cleary v. Smith*.

In *Weiss v. State*, the plaintiffs received an appropriation of $3,500,000 for the land work. The appropriation did not go through the judgment process, which removes litigants from the public interest litigant category. That amount is therefore not reflected in the above nearly $4.6 million for *Weiss*.

Sources: Kathryn Daughhetee, Administrative Services Director, Department of Law, (907) 465-3673, and Pat Davidson, Legislative Auditor, Division of Legislative Audit, (907) 465-3830.

Table 2: Public Interest Cases and Fees Paid by the State, FY 1993-FY 2005

Case Name	Description	Attorney's Fees	Costs	Interest		Total	Amount Paid	
				Pre-Judg.	Post-Judg.		Criminal Division	Civil Division
FY 93								
Stein v. State (Trustees for Alaska)	NPDES placer mining permits	14,049	Unknown			14,049	Unknown	
Trustees for Alaska v. Gorsuch	Coal mining permit	39,890				39,890		
S.E. Conference v. Hickel	Reapportionment	635,868				635,868		
FY 93 Subtotal		**685,806**				**639,806**		
FY 94								
Kuitsarak v. Swope	Offshore prospecting permits for platinum in Goodnews Bay	30,000	Unknown			30,000	Unknown	
Kuitsarak v. Swope	Offshore prospecting permits for platinum in Goodnews Bay	7,894				7,894		
FY 94 Subtotal		**37,894**				**37,894**		
FY 95								
Hickel v. Cowper	Interpretation of Article IX, Section 17 of the Alaska Constitution "amount available for appropriation"	43,756	Unknown			43,756	Unknown	
S.E. Conference v. Hickel (Minimum required exclusive of attorneys fees)	Reapportionment	106,928				106,928		
Southeast Alaska Conservation Council v. State	DNR's granting of concurrence under section 906(k) of ANILCA through No Name Bay, Kuiu Island	44,705				44,705		
Cleary v. Smith	Prisoners' rights	82,047	Unknown			82,047	Unknown	
Native Village of Toksook Bay v. State	Right to subsistence herring fishery	33,385				33,385		
City of Ekwok & Lake & Peninsula Borough v. Local Boundary Commission	Challenging boundary of Lake & Peninsula Borough	51,407				51,407		
Kwethluk IRA Council v. Coghill	Elections case regarding failure to open certain polling places in 10/94 elections	11,063	Unknown			11,063	Unknown	
FY 95 Subtotal		**373,290**				**373,290**		
FY 96								
Robert Shepard v. Kodiak	Conditions in Kodiak jail (DOC contract jail)	26,000	500		1,433	**27,933**	27,933	
Trustees of Alaska v. State	Challenging DNR's best interest finding in O&G lease sale #55	42,855			3,625	**46,480**		46,480
Tuiksarmute v. Heinze	Appealing decision by DNR Div of Water to extend water appropriation permits to mining company	6,225	264		517	**7,006**		7,006

Table 2: Public Interest Cases and Fees Paid by the State, FY 1996-FY 2005--Continued

Case Name	Description	Fees	Costs	Interest		Total	Amount Paid	
				Pre-Judg.	Post-Judg.		Criminal Division	Civil Division
Dansereau v. Ulmer	1994 Gubernatorial election		2,560		317	2,877		2,877
Keane v. LBC	LBC decision incorporating the City of Pilot Point	11,038	261	1,437	1,414	14,149		14,149
Cleary v. Smith	Prisoners' rights	116,467			2,038	118,505	118,505	
Ken Sorenson v. State	Subsistence - moose hunting	57,000	3,000		1,243	61,243		61,243
FY 93 Subtotal		**259,584**	**6,595**	**1,437**	**10,586**	**278,102**	**146,438**	**131,753**
FY 97								
Cowper v. Knowles	CBRF appropriation language	4,331			326	4,657		4,657
O'Callaghan v. Coghill	Open/closed primary issue	25,000	3,249		3,208	31,457		31,457
Capital Info Group v. State	Deliberative process executive privilege	20,000	272		1,418	21,690		21,690
Cleary v. Smith	Prisoners' rights	81,353			3,639	84,992	84,992	
Ninilchik Traditional Council v. State	Cook Inlet Oil & Gas lease sale #78	85,000	3,[illegible]4		2,454	91,007		91,007
FY 97 Subtotal		**215,684**	**7,074**	**0**	**11,044**	**233,803**	**84,992**	**148,811**
FY 98								
Payton v. State	Upper Ventna River salmon subsistence	54,780	2,585		4,688	62,053		62,053
Port Graham & Nanwalek v. State	"Zero discharge" in Cook Inlet from drilling platforms	24,047			2,186	26,233		26,233
Cleary v. Smith	Prisoners' rights	51,861			2,061	53,922	53,922	
Pullen v. Ulmer	Challenging the Lt. Governor's certification of the F.I.S.H. Initiative for placement on the November 1996 ballot	24,254	1,085		838	26,177		26,177
Dansereau v. Ulmer	1994 Gubernatorial election	83,356	3,668		14,124	101,148		101,148
FY 98 Subtotal		**238,298**	**7,337**	**0**	**23,993**	**269,533**	**53,922**	**215,611**
FY 99								
Bess v. Ulmer	Challenging same sex marriage constitutional amendment	50,245	3,262		842	54,349		54,349
Kachemak Bay Conservation Society v. State.	Cook Inlet Oil & Gas lease sale #85A	37,050	1,950		3,414	42,414		42,414
Cleary v. Smith	Prisoners' rights	54,786			1,948	56,734	56,734	
Doe v. Burton	Challenge to Alaska's Sex Offender Registration Act	9,496			648	10,145	10,145	
FY 99 Subtotal		**151,578**	**5,212**	**0**	**6,853**	**163,643**	**66,879**	**96,764**

Gruenberg

Table 2: Public Interest Cases and Fees Paid by the State, FY 1996-FY 2005--Continued

Case Name	Description	Fees	Costs	Interest		Total	Amount Paid	
				Pre-Judg.	Post-Judg.		Criminal Division	Civil Division
FY 00								
Alexie v. State	Affect of cultural adoption on child support obligation	34,742	105		2,877	**37,724**		37,724
Cleary v. Smith	Prisoners' rights	46,091	3,127		3,569	**52,786**	52,786	
FY 00 Subtotal		**80,833**	**3,232**	**0**	**6,445**	**90,510**	**52,786**	**37,724**
FY 01								
Planned Parenthood v. State	Unconstitutionality of statute limiting partial birth abortions	102,725	7,901		29,559	**140,185**	140,185	
Cleary v. Smith	Prisoners' rights	119,379	9,252		5,747	**134,378**	134,378	
Cook Inlet Keeper v. State	Challenge to DNR's inclusion in a oil and gas lease sale of certain tracts identified as important to beluga whale whale migration	81,975			3,971	**85,946**		85,946
NAEC/Sierra Club v. State/Golden Valley Electric	Challenge to DNR ROW for the Northern Intertie	99,102	3,202	1,693	5,737	**109,733**		109,733
Greenpeace v. State	Challenge to legality of numerous DNR water permits	12,488	1,760		552	**14,799**		14,799
Gilbertson v. State	Challenge to DNR process of identifying RS 2477 easements	2,263			93	**2,356**		2,356
FY 01 Subtotal		**417,931**	**22,115**	**1,693**	**45,659**	**487,398**	**274,563**	**212,835**
FY 02								
Planned Parenthood v. State	Challenge to legislative elimination of funding for abortions under the General Relief Medical Program	228,082	7,965		33,049	**269,075**		269,075
Ak Civil Liberties Union v. State	Challenge to the 1996 campaign finance reform legislation	107,814	141		7,243	**115,197**		115,197
Cleary v. Smith	Prisoners' rights	9,295	598		401	**10,294**	10,294	
In Re 2001 Redistricting Cases v. Alaska Redistricting Board	Reapportionment	1,501,967	132,621	Unknown		**1,634,588**	Not Applicable	
FY 02 Subtotal		**1,847,137**	**141,324**	**0**	**40,693**	**2,029,154**	**10,294**	**384,272**
FY 03								
Neighborhood Mine Watch v. State, DNR and Fbks Gold Mining, Inc	Challenge to DNR ROW for the haul road	22,242	1,846		948	**25,037**		25,037
Alaskans for Efficient Gov't v. State	Challenge to the ballot summary for the legislation session move initiative	24,000			509	**24,509**		24,509
Lynn Canal Conservation v. State	DNR's list of generally allowed uses on state land must be promulgated by regulation	53,260			314	**53,574**		53,574
Cook Inlet Keeper v. State	Challenge that Forest Oil Corp's Osprey Project was consistent with ACMP	51,215	524		2,156	**53,895**		53,895

Table 3: Other Public Interest Litigation Before the Alaska Supreme Court, FY 1993 - FY 2005

Case Name	Citation	Subject
Valleys Borough Support Comm. v. Local Boundary Commision	863 P.2d 232 (1993)	Incorporation of Borough
Municipality of Anchorage v. Citizens for Representative Governance	880 P.2d 1058 (1994)	Validity of petitions to recall school board members from office.
Eyak Traditional Elders Counsel v. Sherstone, Inc.,	904 P.2d 420 (1995)	Attorney's fees after voluntary dismissal of action to enjoin logging on land alleged to be ancestral village & burial grounds
Spenard Action Comm. v. Lot 3, Block 1, Evergreen Subdivision	902 P.2d 766 (1995)	Subsistence hunting and fishing--challenge to "all Alaskans" eligibility
Kodiak Seafood Processors Ass'n v. State	900 P.2d 1191 (1995)	Permit to a private fisher for exploratory fishing in closed waters
State v. United Cook Inlet Drift Ass'n	895 P.2d 947 (1995)	Subsistance hunting and fishing--challenge to "all Alaskans" eligibility
Keam v. Local Boundary Commission	893 P.2d 1239 (1995)	Incorporation of city
Griswold v. City of Homer	925 P.2d 1015 (1996)	Validity of a city ordinance re zoning, and conflict of interest
Laverty v. Alaska Railroad Corp.	13 P.3d 725 (2000)	Extraction of gravel & Public Notice Clause, Alaska Const. art. VIII, § 10
Gwich'in Steering Comm. v. Office of the Governor	10 P.3d 572 (2000)	Deliberative process executive privilege (re ANWR lobbying activity)
Matanuska Elec. Ass'n Inc. v. Rewire the Bd.	36 P.3d 685 (2001)	Rural electric cooperative--removal of directors
Anchorage Police Dep't Emples. Ass'n v. Municipality of Anchorage	24 P.3d 547 (2001)	Substance abuse testing for police and fire department employees in safety-sensitive positions
Cabana v. Kenai Peninsula Borough	21 P.3d 833 (2001)	Whether classification of municipal land is a legislative decision or quasi-judicial and subject to appeal
Koyukuk River Tribal Task Force v. Rue	63 P.3d 1019 (2003)	Moose management
Cizek v. Concerned Citizens of Eagle River Valley, Inc.	71 P.3d 845 (2003)	Partial public interest attorney's fees awarded to plaintiff citizens group sueing property owners seeking re-zoning
Alaska Wildlife Alliance v. State	74 P.3d 201 (2003)	Composition of the Board of Game
Matanuska Elec. Ass'n Inc. v. Rowland Scott Waterman	87 P.3d 820 (2004)	Campaign disclosure violation as grounds to deny a seat on the Board of Directors
State v. Greenpeace, Inc.	96 P.3d 1056 (2004)	Due process in regards to Department of Natural Resource permitting
Halloran v. State	115 P.3rd 547 (2005)	Attorney's fees after legislation mooted a challenge to the constitutionality of election procedures for voting on an initiative proposition

Notes: Included are Alaska Supreme Court public interest cases against the State in which the plaintiff lost (i.e., no fees paid and, therefore, the case is not included in Table 1). It also includes cases (both winning and losing) against entities other than the State that were appealed to the Supreme Court that we identified as involving a public interest litigant. Not included are cases that settled out of court and those public interest cases that resulted in judgments for attorney's fees against the State.
Source: Lexis search of Alaska cases within the past thirteen years.

Table 2: Public Interest Cases and Fees Paid by the State, FY 1996-FY 2005--Continued

Case Name	Description	Fees	Costs	Interest		Total	Amount Paid	
				Pre-Judg.	Post-Judg.		Criminal Division	Civil Division
State v. Grady	Challenge to Lindauer gubernatorial candidate's placement on the ballot	99,075	13,060		1,958	114,094		114,094
In Re 2001 Redistricting Cases v. Alaska Redistricting Board	Reapportionment	240,650	44,348	Unknown		284,998	Not Applicable	
FY 03 Subtotal		**490,442**	**59,779**	**0**	**5,885**	**556,106**	**0**	**271,108**
Hinterberger v. State	Challenge to failure to certify petitions re: marijuana legalization	25,250	410		443	26,103		26,103
Jacobus v. State	Challenge to constitutionality of $5,000 limit on an individual's contributions to a political party etc.	16,080			143	16,223		16,223
FY 04 Subtotal		**41,330**	**410**	**0**	**586**	**42,326**	**0**	**42,326**
FY 05								
Trust the People v. State	Challenge to failure to certify petitions re: US Senate vacancies	103,168	968		3,994	108,130		108,130
Jacobus v. State	Challenge to constitutionality of $5,000 limit on an individual's contributions to a political party etc.	77,400	740		143	78,283		78,283
Hinterberger v. State	Challenge to failure to certify petitions re: marijuana legalization	11,688	228		344	12,260		12,260
FY 05 Subtotal		**192,256**	**1,936**	**0**	**4,482**	**198,674**	**0**	**198,674**
General Years								
Weiss v. State	Mental Health Land Trust breach	4,578,758	Unknown					
Totals FY93-FY05[1]		**9,814,821**	**255,004**	**3,129**	**166,132**	**10,239,086**	**Incomplete Data**	

Total Fees and Costs: 9,8b9,825.39

Notes: There were a number of discrepancies in the information that was provided by the Department of Law for both the previous and current report. Although every effort was made to select the most recent and most accurate information, the number of discrepancies raises the concern that there may be errors.

This table shows the fiscal years in which judgments were paid, not necessarily years in which cases were decided. Not included are cases that settled out of court, and public interest cases that did not result in a judgment against the State.

For some years, the fees figure may include a small amount of costs. For *Cleary v. State* in FY96-FY99 and *Lynn Canal Conservation v. State* in FY03, no information is available regarding how much of the award was allocated for costs and how much was allocated for fees. The total of fees and costs is calculated into total costs as if it were all fees. The FY02 amount shown for fees for *In Re 2001 Redistricting Cases v. Alaska Redistricting Board* includes a small amount of costs for the Craig plaintiffs. In that consildated case, the Redistricting Board and the Craig plaintiffs stipulated in superior court to the award of fees and costs in the amount of $173,922. A relatively small but unspecified portion of this amount represents costs. In every other regard, the court orders in this case were specific as to the amounts for fees and costs, and of those awards, costs represented approximately 11 percent of the total.

A statute that would eliminate the court's authority to award full attorney's fees under its own rules would not entirely eliminate instances in which the court could award full fees; some other state and federal laws allow for full fees. Federal law could have been a factor in determining fees awarded under *Cleary v. Smith*.

In *Weiss v. State*, the plaintiffs received an appropriation of $3,500,000 for the land work. The appropriation did not go through the judgment process, which removes litigants from the public interest litigant category. That amount is therefore not reflected in the above nearly $4.6 million for *Weiss*.

1) Totals for costs and interest are for FY96-FY05, as these figures were not provided for FY93-FY95.

Sources: Kathryn Daughhetee, Administrative Services Director, Department of Law, (907) 465-3873, and Pat Davidson, Legislative Auditor, Division of Legislative Audit, (907) 465-3830

LEGISLATIVE RESEARCH REPORT

FEBRUARY 17, 2006

REPORT NUMBER 06.064

CIVIL LAWSUITS INVOLVING THE STATE OF ALASKA AND LOCAL GOVERNMENTS, 1993-2005

PREPARED FOR REPRESENTATIVE PAUL SEATON

BY BECKY TAYLOR, LEGISLATIVE ANALYST

You asked for a list of cases in which the State of Alaska, or an Alaska city, borough, or municipality, was involved in civil litigation as a defendant. Specifically, you were interested in the number of these types of cases each year between 1993 and 2005.

SUMMARY

We contacted the Alaska Department of Law (DOL) to determine how many cases the State of Alaska has been involved in as a defendant between 1993 and 2005. Although the DOL was able to determine the total number of civil cases involving the State that were opened during those years, the department has no efficient mechanism for sorting through the over 20,000 cases to identify those in which the State was the defendant. Additionally, the DOL was unable to provide case names because confidential cases would be included in the list. For this reason, we are unable to provide exact figures for the number of civil cases involving the State of Alaska as the defendant.

Based on the department's estimate that the State is the defendant in approximately 75% of the civil cases that it is involved in, we provide an estimate of the number of such cases. Bob Meiners, Administrative Services Manager for the Alaska Department of Law, offered the following insight into why the State is more frequently the defendant than the plaintiff:

> As the chief enforcer of state laws and regulations as well as being viewed as the penultimate "deep-pocket," the State is frequently and, in most instances, the target of litigation rather than the initiator. As a consequence the vast majority of the files listed (possibly 70% to 80%) have the State as the defendant. The remainder where the State is the "plaintiff" fall mainly into those categories where the State is required to work through the courts to accomplish specific agency

missions (e.g., mental health commitments and hospitalizations, child support enforcement actions, etc.).[1]

Our estimates of the number of cases involving the State of Alaska as the defendant are included below in Table 1. These numbers are rough estimates at best, and do not represent the actual number of cases.

Table 1: Estimated Number of Civil Cases Involving the State of Alaska, 1993-2005

Year	1994	2004	1993-2005	
			Number	Annual Average
Total number of general litigation files involving the State of Alaska	1,851	1,298	20,533	1,579
Estimated number of cases involving the State of Alaska as the defendant	1,388	974	15,400	1,184

Notes: To obtain our estimates we multiplied the total number of cases by 75%, based on Mr. Meiners approximation that the state is the defendant in possibly 70% to 80% of the civil cases that it is involved in. These numbers are estimates only and do not necessarily represent the actual number of cases. Although the State is usually the target of ligitation, rather than the initiator, the State acts as the plaintiff primarily in cases, such as child support enforcement actions or mental health commitments, where working through the courts is necessary to accomplish the mission of a specific agency.

Sources: Data for 1994 and 2004 were provided by Bob Meiners, Administrative Services Manager, Department of Law. Mr. Meiners can be reached at (907) 465-5427. Data for 1993-2005 were provided by Kathryn Daughhetee, Director of the Administrative Services Division, Department of Law. Ms. Daughhetee can be reached at (907) 465-3673.

In order to determine the total number of civil cases involving municipalities, we conducted a Lexis search of Alaska cases within the past thirteen years. As you may know, decisions in superior court and cases that settle are not published. This count, therefore, includes only those cases that were appealed to the Alaska Supreme Court. Table 2 shows the number of cases that we identified involving local governments as the defendant for each of the specified years.

[1] Personal communication from Bob Meiners, Administrative Services Manager, Alaska Department of Law. Mr. Meiners can be reached at (907) 465-5427.

Table 2: Litigation Before the Alaska Supreme Court Involving Local Governments as the Defendant, 1993-2005

Defendant (City, Borough, or Municipality)	Year													Total
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
Municipality of Anchorage	3	0	4	5	4	0	5	1	5	2	5	4	2	40
City and Borough of Juneau				2									1	3
City and Borough of Sitka												1		1
City and Borough of Yakutat					1								1	2
Fairbanks North Star Borough	2		1		1			2						6
Kenai Peninsula Borough	1						1		1		2			5
Ketchikan Gateway Borough	1								1					2
Lake and Peninsula Borough			1											1
Matanuska-Susitna Borough			1				1			1				3
North Slope Borough		1		1			1				1			4
City of Dillingham				1					1					2
City of Fairbanks	1			2	1	2		1	1	1				9
City of Haines										1				1
City of Homer				1					1	1	1		1	5
City of Houston										1		1		2
City of Ketchikan			1											1
City of Klawock					1									1
City of Kodiak					1			1			1			3
City of Kotzebue						1	1							2
City of Nome				1										1
City of North Pole					1									1
City of Sand Point					1	1								2
City of Soldotna													1	1
City of St. Paul					1									1
City of Tenakee Springs						2								2
Total City, Borough, or Municipality: 101														

Table 2: Litigation Before the Alaska Supreme Court Involving Local Governments as the Defendant, 1993-2005—Continued

Defendant (Other Governmental Entities)	Year													Total
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
Anchorage Equal Rights Commission		2										1		3
Anchorage Police and Fire Retirement Board						1								1
Anchorage School District	1			2					1			1	1	6
City of Anchorage Police Department					1				1					2
City of Fairbanks Council						1								1
Fairbanks North Star Borough Board of Equalization	1													1
Fairbanks North Star Borough School District		1		1					1					3
Kenai Peninsula Borough School District										1				1
Kodiak Island Borough Assembly			1											1
Lake and Peninsula Borough School District							1							1
Matanuska-Susitna Borough Board of Adjustment and Appeals			1											1
Sitka School District	1					1								2
Total Other Governmental Entities: 23														
Total All Local Government: 124														

Notes: Included are Alaska Supreme Court cases. Not included are cases that settled out of court, or that for other reasons did not reach the Alaska Supreme Court.
Source: Lexis search of Alaska cases within the past thirteen years.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

file with Bill

Governor wants attorney fees

Residents debate merits of road

Louie Flora

From: Layla Hughes [lhughes@earthjustice.org]
Sent: Tuesday, April 26, 2005 12:44 PM
To: Louie Flora
Subject: RE: public interest litigants

Do you have a copy of the report done by Patricia Young for the fees paid by the state from 1993-2003? If not, I would be happy to send it to you. Since full fee recovery amounted to 9 million, the ballpark estimate of what the state would have paid without the public interest litigant rule for that period would be about 25% of that or 2.25 million over the 11 year period. (Though Leg. Legal will be able to come up with a more accurate estimate by looking at which cases went to trial and which did not.)

Keep in mind, however, that this really doesn't give you an accurate estimate. Because the court can vary an award according to the Rule 82(b)(3) factors, there is no way to guess whether the court would have awarded more than 20-30% of the total attorney fee costs on these cases and relied on those factors (instead of the public interest litigant rule.) In fact, because some of those factors relate to the same concerns the court has when it uses the public interest litigant rule, it actually seems likely that the court would have used those factors to give greater awards. Because Rule 82(b)(3)(k) allows the court to vary a fee award for "equitable factors deemed relevant" it is even possible that the court would have awarded the exact same awards, even without the public interest litigant rule.

-----Original Message-----
From: Louie Flora [mailto:Louie_Flora@legis.state.ak.us]
Sent: Tuesday, April 26, 2005 12:31 PM
To: Layla Hughes
Subject: RE: public interest litigants

Thanks for the e-mail, Layla. I have been threshing through a massive heap of paperwork and trying to get to the job of requesting from Leg.
Legal a summary of the past ten years of public interest litigant cases and the fees recovered, comparing this to what they would have recovered under court rule 82. I will be working on this during the interim, and will be stationed out of the Juneau office until the end of May.

Louie Flora
Aide,
Rep. Seaton
465-4963

-----Original Message-----
From: Layla Hughes [mailto:lhughes@earthjustice.org]
Sent: Tuesday, April 26, 2005 12:21 PM
To: Louie Flora
Cc: pvantuyn@earthlink.net
Subject: public interest litigants

Hi Louie,

I am one of the attorneys who has closely followed the public interest litigant bills over the past few years and who is challenging HB 145 before the supreme court right now.

Pete Van Tuyn informed me that he spoke to Rep. Seaton about HB 117 and the issue of public interest litigant fee awards, and promised to provide you all with more information this summer. I recently drafted a brief explanation that addresses some of the concerns we've heard legislators express. (Attached).

I would be happy to work with you more this summer to address these or any other concerns or ideas you might have. Please feel free to contact me any time.

<<hb117.doc>>
Layla Hughes
Earthjustice
325 Fourth St.
Juneau, AK 99801-1145
Ph: (907) 586-2751
Fax: (907) 463-5891
www.earthjustice.org

- Parties that succeed only on tangential issues do not recover fee awards

Under Alaska law, all litigants receive court awarded attorney's fees only if they are the prevailing party. Litigants are considered the prevailing party if they succeed on the main issue. *See e.g., Hillman v. Nationwide Mut. Fire Ins. Co*, 855 P.2d 1321, 1327 (Alaska 1993).

Generally, fee awards are not apportioned for either prevailing private or public interest litigants. However, the court has discretion to vary a fee award based on any equitable factor it deems relevant. Civil Rule 82 (b)(3)(K). For example, a court may consider the prevailing party's varying degree of success on issues when the court sets the award amount. *See Hickel v. Southeast Conference*, 868 P. 2d 919, 925 (Alaska 1994). A court may also determine that apportionment is appropriate because the litigant raised certain issues that were frivolous. *See Dansereau v. Ulmer*, 955 P. 2d 916, 919 n.4 (Alaska 1998).

- The State pays only about 0.01% of its budget on attorney's fees in public interest cases

The State is required to pay attorney fees to public interest litigants when a court finds that the State has not acted in accordance with the law. The cost of responding to lawsuits is a necessary incident of having a system of government in which state action can be challenged in court. However, this cost is quite low. The total amount spent by the state on attorney's fee awards in public interest cases from 1993-2003 was about $9 million. *See* Patricia Young, *Public Interest Litigation in Alaska, 1993-2003*, Legislative Research Services (Alaska Leg., April 21, 2003)).

Even this total is misleadingly high, because over half of the fees paid during this eleven-year period were from a single unusual case, the Alaska Mental Health Land Trust Litigation (*Weiss v. State*, 939 P.2d 380 (Alaska 1997)). It is unlikely that another aberrational case of this type will be filed. The state paid an additional 1.75 million dollars for the 2001 redistricting cases. Leaving out these two cases, the state has paid an average of $252,000 per year in public interest litigant fee awards.

Civil Rule 82

Not condemnation

Fair business practices

Sanction for bad behavior

Recall Election

1/2 arise out of administrative duties

1/2 regulations

BRIGGS LAW OFFICE

Robert B. Briggs, Attorney at Law
P.O. Box 33425, Juneau, AK 99803-3425
(907) 523-4645 (phone and fax)

April 12, 2006

By facsimile transmission only

Hon. Paul Seaton
Chair, State Affairs Committee
Alaska State Legislature
Alaska State Capitol, Room 102
Fax no.: 907-465-3472

Re: **Opposition to CSSB 86 (CRA)(efd fld)**

Dear Representative Seaton:

I am writing to urge opposition to passage of CSSB 86. I regret that I cannot attend the hearing scheduled for tomorrow, but submit this letter for the committee's consideration. I am not being compensated by anyone for writing this letter, so mine are the views of a private citizen and lawyer who has taken some interest in this issue over my professional career. I regret I was not aware of this bill when it was before the Senate.

I have been involved in the past in the debate over the so-called Public Interest Litigant exception. That rule of procedure exists in Alaska case law as an exception to the codified rules of procedure for allocating attorneys fees and costs to prevailing parties in litigation. See Supreme Court Order 1118 am, acknowledged as Note to Rule 82, Alaska R. Civ. Proc. and cases applying the exception under Rule 508(e), Alaska R. App. Proc. The Public Interest Litigant exception has existed since at least 1980 with the case of *Thomas v. Bailey*, 611 P.2d 536 (Alaska 1980). It is the product of careful thought, I think, by many justices of the Alaska Supreme Court informed by decades of public policy and legal experience.

1. **Do not throw good money after bad: CSSB 86 lacks a two-thirds majority**

When the Legislature last acted on this subject, it passed a version of House Bill 145 in 2003, over arguments made by many (including myself) that the Public Interest Litigant exception was in effect a Supreme Court rule of procedure requiring a two-thirds majority in both Houses to be modified. That precise question was fully litigated – and the State lost – in a case brought in Juneau before Superior Court Judge Patricia Collins. Judge Collins' decision is now under review by the Alaska Supreme Court, in a case that has been fully briefed, argued and is awaiting decision. *State of Alaska v. Native Village of Nunapitchuk, et al.*, S. Ct. No. S11525

(oral argument held Nov. 9, 2005). The Legislature should wait for a Supreme Court decision.

CSSB 86 did not pass the Alaska Senate by the requisite two-thirds majority. Although I did not litigate the *Village of Nunapitchuk* case, if I and other lawyers are correct, the lack of passage by a 2/3 majority is a legally fatal flaw of the bill. It makes no public policy sense to pass another bill on this subject before hearing the Alaska Supreme Court's views in the *Village of Nunapitchuk* case. Otherwise, a law on the books will have to be challenged and litigated at further public expense. Please do not throw the public's good money after bad. Instead, please wait for the Supreme Court to rule in the *Village of Nunapitchuk* case. Later legislative action on this subject, informed by the Supreme Court, is the better play.

2. CSSB 86 gambit to carve out a 'government exception to the exception' is likely to be trumped by the Equal Protection clause

CSSB 86 is a different take on the Public Interest Exception than previous bills. It essentially exempts state and municipal governments from liability for full attorneys fees when the government loses a lawsuit. In essence, the bill carves out a "government exception" to the Public Interest Exception to the normal rules of procedure. The motives behind such a gambit are understandable, given the strongly held views that our municipal and state governments need to be free to act quickly and with authority in addressing important social policy issues like taxation reform, promotion of natural resource development, and stimulation of Alaska's economy.

However, the Public Interest Litigant exception was created "to encourage plaintiffs to raise issues of public interest," *City of Kenai v. Friends of the Recreation Center, Inc. et al.*, S. Ct. No. S-11506, slip op. at 16 (Alaska Feb. 17, 2006) (citations omitted)(excerpt attached), usually in cases where the financial stake of the plaintiffs is small compared to the cost of litigation.

The question is, will such an "exception to the exception" pass muster under the Equal Protection clauses of the United States and Alaska Constitutions? What data is before the Legislature – other than that municipalities and the State have to pay money if they lose a lawsuit – to justify treating the governments different than other defendants engaged in public interest litigation. Are governments less well-financed than non-governmental defendants? Are they greater targets of litigation under the Public Interest Doctrine? I am not privy to all of the public record supporting CSSB 86, but I personally doubt this bill can survive an Equal Protection challenge.

My personal view is that access to the courts to raise issues of public interest is a form of constitutionally-protected speech. I believe this even more emphatically when the conduct being challenged is that of a state or local government. If I am correct, then the "rational basis" tests for government action are supplanted by the "strict scrutiny" tests involving infringements of

fundamental rights. Under Alaska's sliding scrutiny tests, there will have to be a greater justification for treating the government litigant differently from other litigants. If so, then it will be that much harder for CSSB 86 to overcome legal challenges based equal protection claims. I think it will be trumped.

3. **CSSB 86 is bad public policy for individuals forced to deal with the government in court**

While those engaged in private business and the use of capital, often needing government authorization to pursue their endeavors, might not understand or agree with the need for individual access to the courts, it takes only one personal legal brush with the full power of the government to gain understanding. There are many ways besides resource development that state and local government action affects individuals. There are many decisions that state or local governments make that do not directly affect individual financial interests, but do have a significant effect on individuals. And so I ask you and each member of the committee to consider whether, in the nearly three decades that the Public Interest Litigant exception has been implemented, has this stopped local or state government from acting? Will CSSB 86 instead be an unfair trump card, an ace in the hole for unfair and unwise government action?

In other countries, people go to war, get beaten and thrown in jail, for things like freedom of religion, speech, peaceful assembly, petition of government. We are very fortunate as individuals to have the courts as one very important avenue for redress of our grievances. The Alaska Supreme Court has recognized that the Public Interest Litigant doctrine has been necessary, as laws and legal procedure have become at times impossibly complex, to ensure that lawyers provide representation to those who need it, not to just those who can afford it. CSSB 86 would instead make it that much harder for an individual to find a lawyer willing to take on city hall and the power of the state bureaucracy. Thus I urge those who believe in protecting individual rights to oppose CSSB 86.

For these reasons, I urge a "no" vote on CSSB 86. Thank you for considering these ideas.

Very truly yours,

Bob Briggs

Robert B. Briggs

THE SUPREME COURT OF THE STATE OF ALASKA

CITY OF KENAI, an Alaska municipal corporation, Appellant, v. FRIENDS OF THE RECREATION CENTER, INC., an Alaska corporation, MARK NECESSARY, ANITA NECESSARY, and CLIFFORD D. MASSIE, Individually, Appellees.	Supreme Court No. S-11506 Superior Court No. 3KN-03-503 CI **OPINION** [No. 5989 - February 17, 2006]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Harold M. Brown, Judge.

Appearances: Cary R. Graves, City Attorney, Kenai, for Appellant. John E. Havelock, John E. Havelock Attorney at Law, Anchorage, for Appellees.

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

EASTAUGH, Justice.

prevailed on the main issue.[38] Our determination of prevailing party status has therefore traditionally focused on the litigation itself.

Furthermore, the purposes of the public interest litigant exception to Civil Rule 82 suggest that the city's political success in amending KMC 7.15.050(5) and entering into a second management contract with the club is not an appropriate basis for concluding that Friends is not the prevailing party. We award prevailing public interest litigants full reasonable attorney's fees "to encourage plaintiffs to raise issues of public interest."[39] This suggests that the focus of the prevailing party determination should be on the litigation, rather than on contemporaneous political or contractual developments.

The city has not convinced us that a public interest litigant that brings a meritorious claim against a governmental unit and obtains a preliminary injunction loses its prevailing party status if, through the political process, the governmental unit later moots the lawsuit and accomplishes its challenged goals. Because Friends succeeded in obtaining the only judicial relief granted in this case before it was dismissed without objection as moot following amendment of the ordinance, the superior court did not abuse its discretion in finding that Friends was the prevailing party.[40]

---

[38] *Matanuska Elec. Ass'n, Inc. v. Rewire the Bd.*, 36 P.3d 685, 690 (Alaska 2001); *Meidinger v. Koniag, Inc.*, 31 P.3d 77, 88 (Alaska 2001); *De Witt v. Liberty Leasing Co. of Alaska*, 499 P.2d 599, 601 (Alaska 1972); *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (Alaska 1964).

[39] *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544, 553 (Alaska 1983) (quoting *Anchorage v. McCabe*, 586 P.2d 986, 990 (Alaska 1977)).

[40] *See Halloran v. State, Div. of Elections*, 115 P.3d 547, 554 (Alaska 2005) (holding that obtaining temporary restraining order may be basis for finding plaintiff to be prevailing party when the restraining order was only relief granted in litigation).

Loule Flora

From: Jewell Family [jewell@acsalaska.net]

Sent: Monday, April 10, 2006 9:17 PM

To: Rep. Carl Gatto; Rep. Max Gruenberg; Rep. Berta Gardner; Rep. Jim Elkins; Rep. Jay Ramras; Rep. Paul Seaton; Rep. Bob Lynn

Please do not support the passage of SB 86 from committee. This proposal will make it difficult for ordinary Alaskans to find attorney's to contest state and local actions. Private citizens should be able to challenge their government and be reimbursed for their costs if they prevail on an issue brought before the courts to reverse or change a bad law or public policy. The balance of power already rests with the government. Government has vast resources available to it that most individuals do not. The public interest litigant concept helps keep the government honest and balances the unfair advantage with which a citizen is faced when deciding about whether or not to challenge the state. if there is a need to discourage frivolous lawsuits, let's find a way to do so without making it impossible for citizens to challenge bad laws or policies.

Sincerely,
Barb and Bob Jewell

Louie Flora

From: MSandberg@aol.com

Sent: Tuesday, April 11, 2006 9:25 PM

To: Rep. Carl Gatto; Rep. Paul Seaton; Rep. Bob Lynn; Rep. Jim Elkins; Rep. Jay Ramras; Rep. Berta Gardner; Rep. Max Gruenberg; MelissaFouseAATL@aol.com

Subject: SB 86 Public Interest Attorney Fees

I am writing to or e passage of SB 86, reducing public interest attorney fee awards.
Twenty-five yea ,o, I was the lawyer for Ron and Penny Zobel.
Their case was hard fought and went all the way to the US Supreme Court.
In the end, that case paved the way for equal PFD dividends for all Alaskans, including children.
Ron and Penny were young and starting out. There was no way they could pay for a lawsuit that ultimately vindicated the constitutional rights of thousands of Alaskans.
It was only the prospect of public interest fees if we won that made it possible to fight for Alaskans' rights. And, if we been wrong and lost, the State would have owed us nothing. Only successful litigants can recover. This seems like a small price for the State to pay for the vindication of Alaskans rights.
Mark Sandberg

Louie Flora

From: Michael J. Schneider [mjspc@gci.net]

Sent: Wednesday, April 12, 2006 10:57 AM

To: Rep. Paul Seaton

Subject: SB 86

Dear Chairman Seaton:
I am working in California and can't seem to make this computer send this message to all members of the committee. Please pass it along.

I have practiced law in Anchorage for 30 years. I think SB 86...a bill limiting attorney fee awards against government entities, is a bad idea.

R's and D's, liberals and conservatives, young and old, urban and rural have had to rely on current law as the ONLY hope of mounting a righteous fight against some governmental bad idea or other. The rich can always afford to challenge those in power. The rest of us can't. Remember, the person seeking the fees has to WIN UNDER CURRENT LAW TO GET THEM. There is nothing wrong with making governmental action accountable on the same level and under the same rules as individual action.

I am sorry that I am out of state and unable to testify. Please vote "no" and encourage other committee members to do the same.

Michael J. Schneider

SB

87

Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement

Senate Bill 87

"An Act relating to motor vehicle safety belt violations."

Currently, Alaska state law requires *all* individuals to wear a seat belt while driving or riding in any vehicle. Senate Bill 87 changes the enforcement measures of this law to allow police officers and state troopers to pull over individuals who are not wearing their seat belt. Presently, officers may cite drivers only if they are pulled over for another violation. As a direct result of this legislation, we have the opportunity to save both lives and the state hundreds of thousands of dollars in emergency, rehabilitative and insurance costs annually.

Motor vehicle accidents are the *leading cause of death* for Americans of every age from 6 to 33 years of age and Alaska has one of the leading accident related death rates of all 50 states (National Safety Council, 2002; Kaiser Healthfacts: State Health Facts). Although seat belt use is required by statute and is the single most effective safety device in preventing injuries and fatalities, we are currently unable to enforce its use. In Alaska, a change in enforcement powers would lead to a 10-15% increase in seat belt use. That increase alone will prevent hundreds of injuries and save 6 lives each year (National Transportation Safety Board, 2002.)

The primary enforcement seat belt law has been proven to save billions of dollars that society bears annually from motor vehicle accidents. Eighty-five percent of all costs involved in a motor vehicle crash are borne by society (National Highway Traffic Safety Administration, 2002.) On a national level in 2003, the total cost of motor vehicle crashes was over *230 billion dollars* (Alaska paid nearly a half a billion dollars), a cost of $820 per person (National Highway Traffic Safety Administration 2002.) Safety belt usage saves approximately 50 billion dollars annually; conversely we spend an *extra* 26 billion on non-use (MADD, 2003.)

Enacting a primary seat belt law may save more lives than any other single piece of legislation we consider this session. Currently, 21 states plus the District of Columbia have chosen to enforce a primary seat belt law (Insurance Journal, 2005.) If every state did, we would save lives, prevent injuries and save Americans billions of dollars in health care, taxes and insurance costs in the first year alone. This bill saves money and lives. I urge you to consider the evidence before you and support SB 87.

10-15% ↑ in seat belt use

24-LS0457\F
Luckhaupt
4/11/05

HOUSE CS FOR SENATE BILL NO. 87( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS BUNDE, Wilken, Seekins, Wagoner, Cowdery

A BILL

FOR AN ACT ENTITLED

"An Act relating to motor vehicle safety belt violations."

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

*** Section 1.** AS 28.05.095(a) is amended to read:

(a) Except as provided in (c) of this section, a person

(1) 16 years of age or older may not occupy a motor vehicle while being driven **on a highway** unless restrained by a safety belt; and

(2) may not **drive** [OPERATE] a motor vehicle **on a highway** unless restrained by a safety belt.

*** Sec. 2.** AS 28.05.095(c) is amended to read:

(c) Subsections (a) and (b) **of this section** do not apply to

(1) passengers in a school bus, unless the school bus is required to be equipped with seat belts by the United States Department of Transportation, or an emergency vehicle;

(2) a vehicle operator acting in the course of employment delivering mail or newspapers from inside the vehicle to roadside mail or newspaper boxes;

(3) a person or class of persons exempted by regulation under AS 28.05.096; [OR]

(4) a person required to be restrained by safety belts under (a) or (b) of this section if the motor vehicle is not equipped with safety belts**; or**

(5) operators or passengers of motorcycles, motor-driven cycles, off-highway vehicles, electric personal mobility vehicles, snowmobiles, and similar vehicles not designed to be operated on a highway.

*** Sec. 3.** AS 28.05.095(e) is repealed.

24-LS0457\F.1
Luckhaupt
4/11/05

AMENDMENT

OFFERED IN THE HOUSE

TO: HCS SB 87( ), Draft Version "F"

Page 2, line 8:

Delete all material.

24-LS0457\F.2
Luckhaupt
4/11/05

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GARDNER

TO: HCS CSSB 87( ), Draft Version "F"

Page 2, following line 7:

Insert a new bill section to read:

"* Sec. 3. AS 28.05.099(a) is amended to read:

(a) A person convicted of a violation of AS 28.05.095(a) or (d) is guilty of an infraction and may be fined up to **$100.** [$15] or the court may waive the fine if the person convicted donates **$100** [$15] to the emergency medical services entity providing services in the area in which the violation occurred."

Renumber the following bill section accordingly.

Louie Flora

From: POMS@legis.state.ak.us
Sent: Wednesday, April 13, 2005 6:19 AM
To: Ian Laing
Subject: New Pom:SB 87 Seat Belt Violation As Primary Offense

Matthew Erickson
Po Box 70335

Fairbanks 99707-0335,look412
look412_2001@hotmail.com

Everyone knows cigeretts kill. Government mandated a warning label and collects a hefty tax from thier sale.

Many people debate seat belts save lives, and government would force us to wear them or pay fines.

Is the government really trying to save lives? (or generate more money?).
Dont sell us out!

AARP Alaska

March 18, 2005

The Honorable Paul Seaton, Chair
House State Affairs Committee
Alaska State Capitol, Room 102
Juneau, Alaska 99801-1182

Dear Chair Seaton: RE: SB 87 (Bunde) – Support

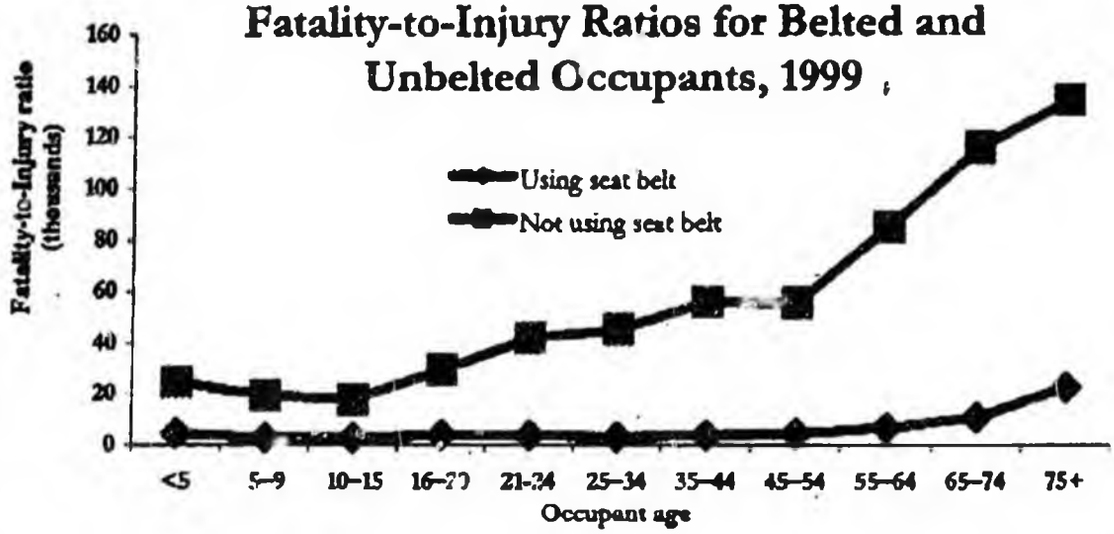
On behalf of the AARP members in Alaska, we encourage your colleagues on the House State Affairs Committee to support SB 87, authored by Senator Con Bunde and co-sponsored by Senators Wilken, Seekins, Wagoner, and Cowdery.

SB 87 would allow an Alaska peace officer to ticket an individual who is not wearing a seat belt. Not wearing a belt would move from a secondary to a primary offense and a driver could be pulled over simply for not being "belted."

In crashes of the same severity, older individuals are more likely to die than younger people. Increased seat belt use will reduce fatalities and the severity of injuries. Research from the National Highway Traffic Safety Administration shows a clear correlation between seat belt use and a reduced likelihood of crash fatalities for individuals age 55 and older.

Figure 10-1

Fatality-to-Injury Ratios for Belted and Unbelted Occupants, 1999



Source: National Highway Traffic Safety Administration, 2001.
Prepared by AARP Public Policy Institute.

AARP recommends an "AYE" vote on SB 87.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Representative Jim Elkins
Representative Berta Gardner
Representative Carl Gatto
Representative Max Gruenberg
Representative Bob Lynn
Representative Jay Ramras
Senator Con Bunde

Louie Flora

From: POMS@legis.state.ak.us
Sent: Wednesday, April 13, 2005 5:54 AM
To: Ian Laing
Subject: New Pom:SB 87 Seat Belt Violation As Primary Offense

Matthew Erickson
Po Box 70335

Fairbanks 99707-0335,look412
look412_2001@hotmail.com

Bunde said the state will receive $2 million a year for nine years in federal highway safety funds if the bill is approved this year.

How many more rights will you sell away? How much to buy our gun rights? home privacy? Who will OK law suits for injuries/deaths caused by seat belts that the state mandates?

Louie Flora

From: Don Smith [don_smith@dot.state.ak.us]
Sent: Tuesday, April 05, 2005 3:12 PM
To: Louie Flora
Subject: Three Million Dollar Mistake

Louie,

I made a mistake in my last email. The $15 million dollar figure should have been $18 million. The email should read as follows:

Louie Flora
Staff to Representative Paul Seaton
State Affairs Committee

Louie,

Thanks for the call this morning.
The legislation proposed (SAFETEA) by the Bush administration for re-enactment of the US Transportation Administration has a section in the Highway Safety part of the bill that creates a $100 million dollar fund to distribute to states that enact a primary seat belt law. It also provides funding for states that have maintained a 90% seat belt use rate for two consecutive years. It also rewards states that currently have a primary seat belt law on the books. (I distributed a copy to all House State Affairs Committee members of Dr. Rungee's (NHTSA) presentation to the US Senate Commerce Committee this morning - please look at page 2 & 3 for his official statement on this issue....copy attached)

In respect to Alaska:

Were we to enact a Primary Seat Belt Law, the State of Alaska under this law would receive at least $12 million over the next 5 years. The year of enactment would call for an award of $4 million. Each year for 4 years after that we would receive $2 million per year. The bill calls for this fund to be in existence until FY 2010. After that it would have to be re-authorized by Congress. If we were able to raise our usage rate to 90% - after the 2nd year at that rate we would receive $4 million each year instead of the proposed $2 million. That 90% seatbelt use rate would mean that Alaska would receive $6 million in additional funds or a total of **$18 million**. These funds would be available for appropriation for highway safety projects.

Please let me know if the Chairman schedules SB 87 for consideration on Thursday.

Don Smith
Alaska Highway Safety Office

As the statistics indicate, traffic safety constitutes a major public health problem. But unlike a number of the complex issues facing the Nation today, we have at least one highly effective and simple remedy to combat highway deaths and injuries. Wearing safety belts is the single most effective step individuals can take to save their lives Buckling up is not a complex vaccine, doesn't have unwanted side effects and doesn't cost any money. It's simple, it works and it's lifesaving.

Safety belt use cuts the risk of death in a severe crash in half. Most passenger vehicle occupants killed in motor vehicle crashes are unrestrained. If safety belt use were to increase from the 2004 national average of 80 percent to 90 percent—an achievable goal—nearly 2,700 lives would be saved each year. For every 1 percentage point increase in safety belt use—that is 2.8 million more people buckling up—we would save hundreds of lives, suffer significantly fewer injuries, and reduce economic costs by hundreds of millions of dollars a year.

States recognize these lifesaving benefits, and have enacted safety belt laws. However, as of March 2005, only 21 States plus the District of Columbia and Puerto Rico have primary laws, which allow police officers to stop and issue citations to motorists upon observation that they are not buckled up. Other safety belt laws, known as secondary laws, do not allow such citations unless a motorist is stopped for another offense. In 2004, belt use in States with primary safety belt laws averaged 84 percent, 11 points higher than in States with secondary laws—a statistically significant difference. If all States enacted primary safety belt laws, we would prevent 1,275 deaths and 17,000 serious injuries annually. Enacting a primary safety belt law is the single most effective action a State with a secondary law can take to decrease highway deaths and injuries.

The Administration's SAFETEA proposal builds on the tremendous successes of previous surface transportation legislation by taking some important next steps. I'd like to highlight one very important component of this proposal that creates a strong incentive for States to enact primary safety belt laws or achieve high safety belt use rates, while at the same time streamlining NHTSA's grant programs to make them more performance-based.

The Administration's SAFETEA proposal, transmitted to Congress in 2003 and adjusted this February, proposes a major consolidation of NHTSA highway safety grant programs that would provide authorizations over the 6-year period to fund the basic formula grant program to the States under Section 402, but add two important new elements— a Safety Belt Performance Grant and a General Performance Grant.

The Safety Belt Performance Grant provides up to $100 million each year to reward States for passing primary safety belt laws or achieving 90 percent safety belt use rates in two consecutive years. Under our proposal, a State that has already enacted a primary safety belt use law for all passenger motor vehicles (effective by December 31, 2002) would receive a grant equal to 2.5 times the amount of its FY 2003 formula grant for highway safety. A State that enacts a new primary belt law or achieves 90 percent belt use for two consecutive years will receive a grant equal to five times the amount of

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Louie Flora

From: Don Smith [don_smith@dot.state.ak.us]
Sent: Tuesday, April 05, 2005 3:12 PM
To: Louie Flora
Subject: Three Million Dollar Mistake

Louie,

I made a mistake in my last email. The $15 million dollar figure should have been $18 million. The email should read as follows:

Louie Flora
Staff to Representative Paul Seaton
State Affairs Committee

Louie,

Thanks for the call this morning.
The legislation proposed (SAFETEA) by the Bush administration for re-enactment of the US Transportation Administration has a section in the Highway Safety part of the bill that creates a $100 million dollar fund to distribute to states that enact a primary seat belt law. It also provides funding for states that have maintained a 90% seat belt use rate for two consecutive years. It also rewards states that currently have a primary seat belt law on the books. (I distributed a copy to all House State Affairs Committee members of Dr. Rungee's (NHTSA) presentation to the US Senate Commerce Committee this morning - please look at page 2 & 3 for his official statement on this issue....copy attached)

In respect to Alaska:

Were we to enact a Primary Seat Belt Law, the State of Alaska under this law would receive at least $12 million over the next 5 years. The year of enactment would call for an award of $4 million. Each year for 4 years after that we would receive $2 million per year. The bill calls for this fund to be in existence until FY 2010. After that it would have to be re-authorized by Congress. If we were able to raise our usage rate to 90% - after the 2nd year at that rate we would receive $4 million each year instead of the proposed $2 million. That 90% seatbelt use rate would mean that Alaska would receive $6 million in additional funds or a total of **$18 million**. These funds would be available for appropriation for highway safety projects.

Please let me know if the Chairman schedules SB 87 for consideration on Thursday.

Don Smith
Alaska Highway Safety Office

See Pg 343

THE HONORABLE JEFFREY W. RUNGE, M.D.
ADMINISTRATOR
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Before the
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

April 5, 2005

Chairman Lott, Senator Inouye, Members of the Subcommittee: Thank you for the opportunity to appear before you today to discuss the Administration's proposal to reauthorize our highway safety programs in the "Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" or "SAFETEA." My staff and I look forward to working with this Subcommittee and the rest of the Senate to shape the proposals that will reauthorize our programs and address the highway safety challenges facing the Nation.

The National Highway Traffic Safety Administration's (NHTSA) mission is to save lives and prevent injuries. Motor vehicle crashes are responsible for 95 percent of all transportation-related deaths and 99 percent of all transportation-related injuries. They are the leading cause of death for Americans for every age from 3 through 33. Although we are seeing improvements in vehicle crash worthiness and crash avoidance technologies, the numbers of fatalities and injuries on our highways remain staggering. In 2003, the last year for which we have complete data, an estimated 42,643 people were killed in motor vehicle crashes. This number represents a slight decrease of 362 fatalities from 2002 (43,005), but we need to continue and accelerate that downward trend.

The economic costs associated with these crashes seriously impact the Nation's fiscal health. The annual cost to our economy of all motor vehicle crashes is $230.6 billion in Year 2000 dollars, or 2.3 percent of the U.S. gross domestic product. This translates into an average of $820 for every person living in the United States. Included in this figure is $81 billion in lost productivity, $32.6 billion in medical expenses, and $59 billion in property damage. The average cost to care for a critically injured survivor is estimated at $1.1 million over a lifetime, a figure that does not begin to account for the physical and psychological suffering of the victims and their families.

The fatality rate per 100 million vehicle miles traveled (VMT) in 2003 was at an all-time low of 1.48. Secretary Mineta has set a goal of reducing this rate even further, to no more than 1.0 fatality for every 100 million VMT by 2008. President Bush and Secretary Mineta have made reducing highway fatalities the number one priority for the Department of Transportation and for the reauthorization of NHTSA's programs.

As the statistics indicate, traffic safety constitutes a major public health problem. But unlike a number of the complex issues facing the Nation today, we have at least one highly effective and simple remedy to combat highway deaths and injuries. Wearing safety belts is the single most effective step individuals can take to save their lives. Buckling up is not a complex vaccine, doesn't have unwanted side effects and doesn't cost any money. It's simple, it works and it's lifesaving.

Safety belt use cuts the risk of death in a severe crash in half. Most passenger vehicle occupants killed in motor vehicle crashes are unrestrained. If safety belt use were to increase from the 2004 national average of 80 percent to 90 percent—an achievable goal—nearly 2,700 lives would be saved each year. For every 1 percentage point increase in safety belt use—that is 2.8 million more people buckling up—we would save hundreds of lives, suffer significantly fewer injuries, and reduce economic costs by hundreds of millions of dollars a year.

States recognize these lifesaving benefits, and have enacted safety belt laws. However, as of March 2005, only 21 States plus the District of Columbia and Puerto Rico have primary laws, which allow police officers to stop and issue citations to motorists upon observation that they are not buckled up. Other safety belt laws, known as secondary laws, do not allow such citations unless a motorist is stopped for another offense. In 2004, belt use in States with primary safety belt laws averaged 84 percent. 11 points higher than in States with secondary laws—a statistically significant difference. If all States enacted primary safety belt laws, we would prevent 1,275 deaths and 17,000 serious injuries annually. Enacting a primary safety belt law is the single most effective action a State with a secondary law can take to decrease highway deaths and injuries.

The Administration's SAFETEA proposal builds on the tremendous successes of previous surface transportation legislation by taking some important next steps. I'd like to highlight one very important component of this proposal that creates a strong incentive for States to enact primary safety belt laws or achieve high safety belt use rates, while at the same time streamlining NHTSA's grant programs to make them more performance-based.

The Administration's SAFETEA proposal, transmitted to Congress in 2003 and adjusted this February, proposes a major consolidation of NHTSA highway safety grant programs that would provide authorizations over the 6-year period to fund the basic formula grant program to the States under Section 402, but add two important new elements—a Safety Belt Performance Grant and a General Performance Grant.

The Safety Belt Performance Grant provides up to $100 million each year to reward States for passing primary safety belt laws or achieving 90 percent safety belt use rates in two consecutive years. Under our proposal, a State that has already enacted a primary safety belt use law for all passenger motor vehicles (effective by December 31, 2002) would receive a grant equal to 2.5 times the amount of its FY 2003 formula grant for highway safety. A State that enacts a new primary belt law or achieves 90 percent belt use for two consecutive years will receive a grant equal to five times the amount of

its FY 2002 formula grant for highway safety. This significant incentive is intended to prompt State action needed to save lives. States achieve high levels of belt use through primary safety belt laws, public education using paid and earned media, and high visibility law enforcement programs, such as the *Click it or Ticket* campaign.

A State that receives a Safety Belt Performance Grant for the enactment of a primary safety belt law can elect to use all of those funds for a wide range of highway safety programs, including infrastructure investments eligible under the Federal Highway Administration's (FHWA) Highway Safety Improvement Program in accordance with the State's Comprehensive Strategic Highway Safety Plan.

Under another provision of the Safety Belt Performance Grant, a State can receive additional grants by improving its safety belt use rates. This incentive, alone, would provide up to $182 million over the 6-year authorization period. Any State that receives a grant for improved safety belt use rates is permitted to use up to 50 percent of those funds for activities eligible under the new Highway Safety Improvement Program.

The six-year General Performance Grant component of our consolidated highway safety grant program not only eases the administrative burdens of the States but also rewards States with increased Federal funds for measurable improvements in their safety performance in the areas of overall motor vehicle fatalities, alcohol-related fatalities, and motorcycle, bicycle, and pedestrian crash fatalities. Any State that receives a General Performance Grant is permitted to use up to 50 percent of those funds for activities eligible under the new Highway Safety Improvement Program.

These grants reflect a different approach to addressing the Nation's substantial highway safety problems. While formulating the Department's reauthorization proposal, the FHWA and NHTSA embraced the guiding principle that States should receive resources to address their own, unique transportation safety issues, should be strongly encouraged to increase their safety belt use rates—the single most effective means of decreasing deaths and injuries—and should be rewarded for performance with increased funds and greater flexibility to spend those funds on either infrastructure safety or behavioral safety programs.

But with the flexibility comes the accountability. States will be held accountable for setting realistic and appropriate performance goals, devising corresponding plans, and ultimately improving performance and achieving the goals.

These guiding principles of flexibility and accountability underlie all aspects of the Administration's highway safety reauthorization proposal. In fact, our Nation's governors speak with one voice on this issue – and they all want maximum flexibility to distribute highway safety funds where the need is the greatest.

Mr. Chairman, the single most important safety measure Congress could pass this decade is SAFETEA's proposal to provide incentive grants for States to pass primary belt laws. As the Nation's chief highway safety official, I urge you to pass a bill that gives

States the strongest incentives possible to enact primary belt laws. No vehicle safety mandate, no elaborate rulemaking, no public relations campaign that NHTSA could undertake would have the life-saving impact of Congress providing meaningful incentives to the States to pass primary belt laws.

I'd like to give you a brief overview of some of the other provisions of our SAFETEA proposal transmitted to Congress in 2003.

SAFETEA would establish a new core highway safety infrastructure program, in place of the existing Surface Transportation Program safety set-aside. This new FHWA program, called the Highway Safety Improvement Program (HSIP), would more than double funding over comparable TEA-21 levels, providing more funds for safety projects over the 6-year authorization period. In addition to increased funding, States would be encouraged and assisted in their efforts to formulate comprehensive highway safety plans. Those States with such comprehensive plans could flex up to 50 percent of their HSIP funds for behavioral safety programs.

SAFETEA also is designed to help the States deter impaired driving. Reducing the number of impaired drivers on our roadways is a complex task requiring interconnected strategies and programs. In 2003, an estimated 17,013 people died in alcohol-related crashes (40 percent of the total fatalities for the year), a 29-percent reduction from the 23,833 alcohol-related fatalities in 1988, and a decline of 3 percent over 2002. Our data show that 2003 was the first year since 1999 that the number of alcohol-related fatalities decreased. The proportion of traffic deaths of individuals with a blood-alcohol content above .08—the legal limit in every State—was highest in 2003 for 21-24 year olds, at 32 percent, followed by 25-34 year olds, at 27 percent.

A component of our revised Section 402 program would focus significant resources on a small number of States with particularly severe impaired driving problems by creating a new $50-million-a-year impaired driving discretionary grant program. The grant program would include support for up to 10 States with an especially high number of alcohol-related fatalities and a high rate of alcohol-related fatalities relative to vehicle miles traveled and population. A team of outside experts would conduct detailed reviews of the impaired driving systems of these States to assist them in developing a strategic plan for improving programs and reducing impaired driving-related fatalities and injuries. Additional support would be provided for training, for technical assistance in the prosecution and adjudication of driving while intoxicated (DWI) cases, and to help licensing and criminal justice authorities close legal loopholes.

NHTSA believes that this targeted State grant program and supporting activities, together with continued nationwide use of high-visibility enforcement and paid and earned media campaigns, would lead to a continuation of the downward trend in alcohol-related fatalities. Also, through the comprehensive safety planning process, all States could elect to use a significant amount of their FHWA Highway Safety Infrastructure funding, in addition to their consolidated highway safety program funds, to address impaired driving.

SAFETEA's highway safety title includes a key provision to authorize a comprehensive national motor vehicle crash causation survey to enable us to determine the factors responsible for the most frequent causes of crashes on the Nation's roads. This comprehensive survey would be funded at $10 million a year out of the funds authorized for our highway safety research and development program. The last comprehensive update of crash causation data was generated in the 1970s. Congress has recognized the importance of this survey and so far has appropriated $14 million for this effort. Appropriations have been used to develop protocols and methodology, procure equipment, hire and train new researchers, establish data collection methodology and structure and begin field data collection.

SAFETEA also would create a new $50-million-a-year incentive grant program that builds upon a TEA-21 program to encourage States to improve their traffic records data. Accurate State traffic safety data are critical to identifying local safety issues, applying focused safety countermeasures, and evaluating the effectiveness of countermeasures. Improvements are needed for police reports, driver licensing, vehicle registration, and citation/court data to provide essential information. Additionally, deficiencies in data negatively impact national databases including the Fatality Analysis Reporting System, General Estimates System, National Driver Register, Highway Safety Information System, and Commercial Driver License Information System.

For the past 20 years, Federal support for Emergency Medical Services (EMS) has been both scarce and uncoordinated. As a result, the capacity of this critical public service has seen little growth, and support for EMS has been spread among a number of agencies throughout the Federal government, including NHTSA. Except for NHTSA, most of the support offered by these agencies has focused only on specific system functions, rather than on overall system capacity, and has been inconsistent and ineffectively coordinated.

SAFETEA would establish a new $10 million-a-year State formula grant program to support EMS systems development, including 9-1-1 nationwide, and would provide for a Federal Interagency Committee on EMS to strengthen intergovernmental coordination of EMS with NHTSA providing staff support. The States would administer the grant program through their State EMS offices and coordinate it with their highway safety offices. Enactment of this section would result in comprehensive support for EMS systems, and improved emergency response capacity nationwide.

SAFETEA also would provide a total of over $500 million for NHTSA's highway safety research and development program. This program supports State highway safety behavioral programs and activities by developing and demonstrating innovative safety countermeasures and by collecting and disseminating essential data on highway safety. The results of our Section 403 research provide the scientific basis for highway safety programs that States and local communities can tailor to their own needs, ensuring that precious tax dollars are spent only on programs that are effective. The States are

encouraged to use these effective programs for their ongoing safety programs and activities.

Highway safety behavioral research focuses on human factors that influence driver and pedestrian behavior and on environmental conditions that affect safety. This research addresses a wide range of safety problems through various initiatives, such as impaired driving programs, safety belt and child safety seat programs and related enforcement mobilizations, pedestrian, bicycle, and motorcycle safety initiatives, enforcement and justice services, speed management, aggressive driving countermeasures, emergency medical services, fatigue and inattention countermeasures, and data collection and analysis efforts. These efforts have produced a variety of scientifically sound data and results.

Finally, SAFETEA would provide a total of over $23 million for the National Driver Register. This system facilitates the exchange of driver licensing information on problem drivers among the States and various Federal agencies to aid in making decisions concerning driver licensing, driver improvement, and driver employment and transportation safety.

Overall, SAFETEA is a groundbreaking proposal that offers States more flexibility than they have ever had before in how they spend their Federal-aid safety dollars. It reduces State administrative burdens by consolidating multiple categorical grant programs into one. It would reward States for accomplishing easily measurable goals and encourage them to take the most effective steps to save lives. It is exactly the kind of proposal that is needed to more effectively address the tragic problem of highway fatalities.

On the motor vehicle safety side of NHTSA's mission, we focus our efforts on actions offering the greatest potential for saving lives and preventing injury. In 2003, we published the first ever NHTSA multi-year vehicle safety rulemaking priorities and supporting research plan. It sets forth the agency's rulemaking goals for 2003 through 2006. We have transmitted to Congress the January 2005 update of the plan, which covers the years 2005 through 2009.

In addition, we are committed to reviewing all Federal Motor Vehicle Safety Standards systematically over a 7-year cycle. NHTSA is a data-driven and science-driven agency, and we decided that such a review is needed in light of changing technology, vehicle fleet composition, safety concerns and other issues that may require changes to a standard. Our regulatory reviews are in keeping with the goals of the Government Performance and Results Act, to ensure that our rulemaking actions produce measurable safety outcomes. Several decades of vehicle safety rulemaking have demonstrated that quality data and research produce regulations that are technically sound, practicable, objective, and repeatable. Our rulemaking priorities plan was crafted with these principles in mind.

NHTSA's priority rulemakings for the immediate future include enhanced side crash protection; improved rollover crash protection through advanced prevention technologies, reduced occupant ejection, and upgraded roof crush protection; reduction in light vehicle tire failures; and shorter stopping distances for heavy trucks. Our longer-term priorities include research and rulemaking decisions to address vehicle "aggressivity" toward other vehicles; improved visibility through enhanced mirrors and other technologies; reduction in crashes associated with driver distraction; improved heavy truck tires; ensuring the safety of hydrogen, fuel cell, and alternative-fueled vehicles; and advancing crash avoidance technologies, such as driver-assist systems. We have integrated our rulemaking priorities plan and our supporting research plan to ensure that research is available when needed to conduct rulemakings that advance safety.

I would ask the Subcommittee not to include rulemaking mandates in your bill to reauthorize NHTSA's programs. Mandates take away NHTSA's ability to prioritize its work based on its most important safety priorities, to revise those priorities as circumstances change, and to have the time needed to ensure that our regulations are based on sound science. Mandates that dictate timelines and the regulatory approach impair our ability to provide the public with the best safety solutions.

Mr. Chairman, the Secretary named the Administration's proposal "SAFETEA" for a very good reason. This Subcommittee literally has the power to save thousands of lives in the years to come at no cost to the consumer. I urge you to support the Administration's SAFETEA proposal, and especially to give the States the necessary incentives to pass primary belt laws. It is worth repeating that nothing Congress will do in this bill will have a greater and a more lasting impact on safety.

Thank you for your consideration of my views. I will be pleased to answer any questions you may have.

Kenai Peninsula SAFE KIDS For The Central Peninsula Area
Central Peninsula General Hospital
250 Hospital Place
Soldotna, Alaska 99669
907-714-4539
safekids@cpgh.org

April 1, 2005

Dear Representative:

Please support (SB 87) making Seat Belt violation a Primary Offense in the State of Alaska. This will allow law enforcement officers to stop and issue tickets or warn people who are not wearing their seat belts.

According to recent studies, the most effective way of reducing the number of deaths in traffic crashes is through primary enforcement seat belt laws. The average increase in usage has been around 10-15 percent. In Alaska, this would mean lives saved and injuries lessened or prevented. It would, also, mean money saved. Most of the costs of serious injury are taken on by the state or by the public. It is estimated that by increasing seat belt usage by 10% in Alaska it would mean five lives saved, 58 major injuries prevented, and a savings of $10,000,000 in medical care, rehabilitation, lost productivity, and funeral expenses, annually.

People argue that safety belt laws infringe on personal freedom, but I believe wearing a safety belt is a **responsibility**. Deciding not to wear a safety belt is not a decision to exercise personal freedom, but one to gamble huge amounts of family and taxpayer money. Plus, the person whom is not wearing their safety belt (exercising their personal freedom) puts other passengers in the vehicle at risk of serious injury and death due to the unbuckled passenger's body becoming a lethal weapon during a crash.

Please act to improve safety and save lives on the road. Please support SB 87 for primary enforcement of seat belts.

Thank you for your continued service to our state.

Jane B. Fellman RN
Coordinator Kenai Peninsula SAFE KIDS
For The Central Peninsula Area