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"An Act repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint and providing for an effective date."

1/30/75

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date Feb 3, 1975

The Committee on Judicial has had SB 53

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR 553 AND THAT

CS FOR 553 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____	recommends:	_____
_____	recommends:	_____
_____	recommends:	_____
_____	recommends:	_____
_____	recommends:	_____

_____ Chairman

HOUSE JOURNAL

Statement of Intent

HCS SB 53 - "An Act repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; and providing for an effective date."

by the House Judiciary Committee
February 6, 1975

The purpose of this bill is to clarify the language of the existing law authorizing suits against incorporated units of local government and to prohibit any requirement that bond be posted before suing the state or any incorporated unit of local government. It is not the committee's intent to amend the rules of court relating to the court's discretionary powers to require security in matters involving injunctive relief.

Requirement to post bond: to sue state

Page 194
of House Journal

1. serves no real purpose
2. Federal govt. doesn't require
3. Courts now only require nominal bonds to be posted

Our bill goes beyond Senate and strikes bond requirements as related to local governments
SB simply repealed 260

A Honey general was mildly opposed and would have preferred discretionary judgement of for bond requirement by the judge

Fed. govt. doesn't require bond to file suit

State insured by tort liability

lawsuits vs. injunctions
court rules

This act affects only wage earners

A.G. - Mildly opposed

Why not have discretionary
provision for the court -

Judge makes decision or v

Spencer wanted it clear
that bill didn't apply to injunctions

Question on drafting on line 14 #15, 16

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February 3, 1975

Mr. Terry Gardner
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

Re: Senate Bill 53

Dear Representative Gardner:

I would urge you to give serious and favorable consideration to Senate Bill 53 which would eliminate the requirement of AS 09.50.260 that a party filing an action against the State file an undertaking or bond in an amount to be fixed by the judge as security for any costs incurred by the State if the party fails to prosecute the action or if the State wins the action. My acquaintance with the problem arises from the fact that I frequently represent the State's insurance carrier in tort actions against the State. Examples of such actions are those arising out of automobile accidents with vehicles driven by State Troopers or actions against the State for personal injuries arising out of alleged negligence of the State Highway Department in highway maintenance. I have handled a number of these cases from the time they were filed until the time when they were settled or tried, and I have yet to see one case in which this statute gave any real protection to either the State or its insurance company, or in which it served to discourage the filing of irresponsible lawsuits. Most of the judges consider the requirement of the undertaking to be rather unfair, and seem to feel that it places an unfair burden upon someone suing the State, that is not placed upon other litigants. As a consequence, the judges tend to fix the bond in a very nominal amount, frequently \$250 or less, which is hardly worth the paper work involved in seeing that the requirement is met. Attorneys who represent litigants against the State generally feel that the requirement is very unfair, and at least one of them, Representative Steve Cowper, has maintained that the requirement constitutes an unconstitutional discrimination among litigants. I think the requirement should be eliminated because it imposes a useless complication in litigation against the State which does not benefit anyone including the State.

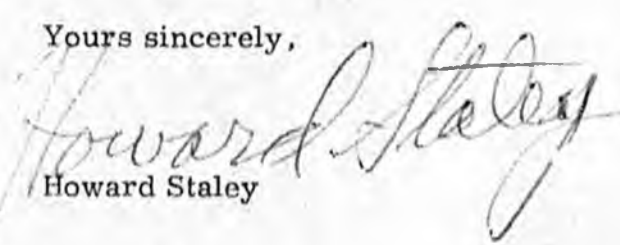
HB92
It is also my understanding that another bill will be introduced to repeal AS 09.50.290, which provides, "Actions against the state under §§ 250-300 of this chapter shall be tried by the court without a jury." This of course means that an action against the

State is tried by a judge without a jury. In virtually all other litigation, either the plaintiff or the defendant can ask for a jury trial. This provision, like the rest of our State Tort Claims Act, has been taken almost word for word from the Federal Tort Claims Act. I believe the intent of this statute is that the State should be protected by any arbitrary or impassioned action of a jury, and that the State's interests would actually be protected by requiring trial before a judge. This has not worked out in practice. As an attorney representing the State and its insurance carrier, I would greatly prefer to have the trial of a personal injury action against the State tried to a jury rather than to a judge. I believe that many judges, either consciously or unconsciously, give considerable weight to the fact that the State does have insurance, and recent awards by judges in personal injury actions against the State have tended to be considerably higher than juries probably would have awarded. Repealing AS 09.50.290 would put the State on the same basis with other litigants. In a personal injury action or other action against the State, both the party suing the State and the State itself would have the same right to a jury trial as other litigants. If neither the State nor the party suing the State requested a jury, of course the action would still be decided by a judge.

I think in the final analysis it is probably immaterial whether repealing this statute would be a benefit or a detriment to the State. Our State Constitution and our legal system is generally based upon respect for the jury trial, and I can't see any good reason why actions involving the State should be an exception. Of course in a jury trial, the judge still determines what is relevant evidence, and the judge can still determine whether or not there is enough evidence on any particular issue of fact that the issue should be submitted to the jury. There is therefore no danger of a jury making new law in regard to actions involving the State tried to a jury because the scope of the jury's decision, the evidence it may consider, and the principles of law to be applied to that evidence are supplied to the jury by the judge.

I would like to thank you in advance for your serious consideration of Senate Bill 53 and the other bill which I expect will be forthcoming during this session, both of which I feel would substantially improve the ground rules laid down by statute regarding litigation against the State.

Yours sincerely,


Howard Staley

HS:jb

Proposed statement of intent

HB 55/SB 53

The purpose of this bill is to clarify the language of the existing law authorizing suits against incorporated units of local government and to prohibit any requirement that bond be posted before suing the state or any incorporated unit of local government. It is not the committee's intent to amend the rules of court relating to the court's discretionary powers to require security in matters involving injunctive relief.

SB 53

February 28, 1975

TO: Mike Miller
FROM: Terry Gardiner
SUBJECT: SB 53

I would suggest that the House not recede to the Senate. The basic difference between our bill and the Senate bill is that our bill includes municipalities. Under the Senate bill a municipality could require that a person post a bond for cost at the filing of a complaint. According to Rep. Cowper the only community that now requires this is Fairbanks. If it's good enough for the state policy, it's good enough for the municipal policy. Furthermore, Rep. Cowper also feels that this requirement is probably unconstitutional. We are not talking about a case of whether the state is trying to set municipal policy, it is more a matter of an individual's right to file a complaint.



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JUNEAU, ALASKA 99801

Terry--
for your information--
Mike M.

Alaska State Legislature
Senate

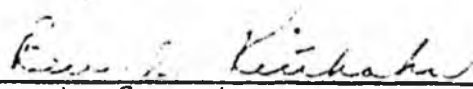
MESSAGE TO THE HOUSE

Date: 2-27-75

MR. SPEAKER

The Senate has failed to concur in the House amendment to SENATE BILL NO. 53 (namely HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53) and respectfully requests that the House recede from its amendment.

SENATE BILL NO. 53 (repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; eff. date)



Senate Secretary