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Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 648:

SB 648 expands the definition of "employee" under the Workers Compensation Act to include an offender performing community work service as an alternative to sentencing. Currently, if an offender becomes injured while working, his only recourse is to pursue a tort remedy, with uncertain compensation to the injured person, and the possibility of exceedingly large judgements against the negligent party.

The development of State alternative sentencing programs has been hampered by the reluctance of many organizations to accept referrals, fearing the liability to the organization in the event of an offender becoming injured.

CS SB 648 designates the employee as an employee of the state, working at the direction of the state, and assures that the state will assume the insurance liability for worker's compensation coverage.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION PRETRIAL SERVICES SECTION

JAY S. HAMMOND, GOVERNOR

465-3678

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

The Honorable Robert Mulcahy
Chairman, Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

In response to your request for a position on the proposed committee substitute for Sentate Bill 648 whereby the State of Alaska would assume the total cost of worker's compensation for individuals placed in community work service, the Department of Law supports the additional provision of the committee substitute.

In the memorandum of advise on the issue of liability for injuries to offenders performing community work service, dated February 4, 1982, and made available to your committee, analysis of the current provisions of the Worker's Compensation Act indicated that these offenders are excluded from worker's compensation coverage as they are not "employees" within the meaning of the Act. Exclusion of these offenders from coverage under the Act was problematic in that an offender injured in the performance of community work service could only recover damages for the injury by proving both fault and negligence in a common law tort suit action contrary to the underlying purposes of worker's compensation statutes. Additionally, in that this class of individuals is not within the coverage provisions of the Worker's Compensation Act, the exclusive remedy provisions (AS 23.30.055) are not applicable, thus greatly increasing the potential liability for employers in those instances where fault and negligence are proven. The original version of SB 648, requested by the governor at the behest of the Department of Law, attempted resolution by merely redefining "employee" for purposes of the Worker's Compensation Act to include offenders performing community work service. However, as was pointed out at hearings on SB 648 in your committee, merely redefining "employee" to include this class of individual could result in significant problems in implementation. Chief among these problems is the premium rate that would be charged employers for worker's compensation coverage for offenders

performing community work service. In that offenders processed by the State into community work service perform a variety of functions, each of which may require a differing level of job injury risk (the method by which worker's compensation insurance premiums are determined), the result would be a separate risk premium determination for each placement rather than a standardized risk premium that had been assumed to be the result. Alternatively, if placements were limited to a few risk classes, the ability of the community work service referral program to creatively place these offenders by matching their existing job skills or interest areas with community referral needs would be severely hampered. Similarly, the risk assessments are comparatively higher for certain job classes which positively impact a greater segment of a community than for other classes which do not; e.g., litter pickup along the highways commands a substantially higher premium than performing janitorial duties in a local agency.

This uncertainty of premium rates likewise results in a continued reticence on the part of agency-employers to accept such referrals, although these agency-employers derive a substantial benefit from the labor provided. Agencies accepting community work service referrals either would need to restrict the type of work to be performed or would have to budget uncertain amounts of funds to pay increased risk premiums should they determine in the course of the budget year that they could substantially benefit from another type of work. This uncertainty would result in the agency-employers realizing a substantially diminished benefit from the program.

The alternative to this legislation is the maintenance of the status quo, whereby the State would continue to assume the excess of any tort liability that would result from community work service placements. As this state of the law promotes lawsuits to enable recovery, and is an uncertain remedy for injured individuals, it belies the purposes of worker's compensation and is unacceptable to the Department of Law.

The proposed committee substitute appears to be the best alternative in terms of achieving statewide acceptance of the program, and thus meaningful implementation. With the proposed committee substitute no determination as to premium rates needs to be accomplished as the State is a self-insurer under the Worker's Compensation Act. As there won't be a variance in premium rates for the type of community work service assigned, the placements can continue to be creative, sensible and worthwhile. Furthermore, with over 2,000 referrals and 50,000 hours of community work service performed to date under the aegis of the State, we have not yet experienced any liability situations, thus making even a speculative cost of this assumption extremely low.

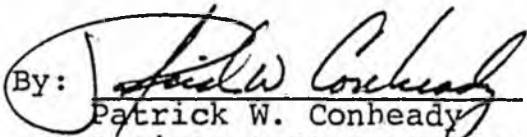
In conclusion, as a matter of strong public policy, the Department supports the proposed committee substitute and views it as a vehicle for uniform implementation of an innovative alternative in the criminal justice system. The speculative costs which attend this version are far outweighed by the benefits provided to both the recipients of the community work service and to the individuals performing it.

If you have further questions regarding this legislation, please feel free to contact me.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 
Patrick W. Conheady
Assistant Attorney General
Chief, Pretrial Services

PWC/ks

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RISK MANAGEMENT

JAY S. HAMMOND, GOVERNOR

POUCH C (MS 0218)
JUNEAU, ALASKA 99811
(907) 465-2180

February 26, 1982

Mr. Michael Thill
Administrative Assistant
Senate Labor and Commerce Committee
MS 3100 - Pouch Y
Juneau, AK 99811

Dear Mr. Thill:

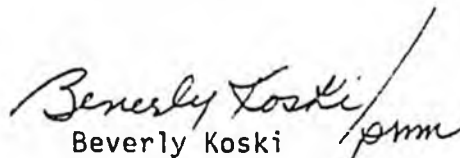
Re: Position Paper
CS Senate Bill 648

The Division of Risk Management does oppose this bill, which has the effect of automatically transferring all liability to the State of Alaska in connection with community work which the court has ordered.

Risk Management has communicated with both The Honorable Judge James Hornaday, and Arthur Snowden, relative to the issues addressed in this proposed bill.

We believe that this bill should not be acted upon. If further information is desired, please do not hesitate to call upon myself, or John Haywood, the Director of Risk Management, at 465-2180.

Sincerely,


Beverly Koski
Loss Control Manager

BK/rmm
LRMA/B

(MS 0218)

July 23, 1981

The Honorable James C. Hornaday
District Court
State of Alaska
Third Judicial District
P.O. Box 136
Homer, AK 99603

Dear Judge Hornaday:

In response to your letter of June 30, 1981, the Division of Risk Management did oppose the bills which were introduced and had the effect of automatically transferring all liability to the State of Alaska in connection with community work which the Court had ordered.

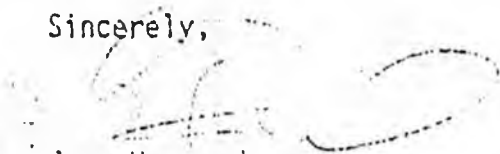
We believe there is a better way of handling the situation in which the organization responsible for the work program does not have adequate insurance protection.

Since some of the entities are municipalities which do have insurance, it would be a situation in which the State were assuming liability for a responsible entity which has its own protection. There would be no control by the State as far as ensuring that proper safeguards were being taken, and the State would automatically pay all losses which occurred.

I would suggest that the State provide excess insurance over and above any basic insurance which the entity responsible may or may not possess. In this way, the municipality of Anchorage or other large organizations would assume their own losses whereby a small non-profit organization or entity which does not carry insurance would in effect receive coverage from the first dollar of loss from the State's insurance. I believe that this would be an acceptable solution to the problem and would enable this valuable program to continue.

If you have any further thoughts concerning this please let us know.

Sincerely,


John Haywood
Director

JH/jb
RMS/JCH

(MS 0218)

November 20, 1981

Mr. Arthur H. Snowden, II
Administrative Director
Alaska Court System
303 "K" Street
Anchorage, AK 99501

Dear Mr. Snowden:

Re: Liability of State for Court
Ordered Community Work


The Division of Risk Management, Department of Administration, is responsible for the disposition of claims which arise out of State operations. In the absence of a contractual agreement, the liability of the State would be determined by the facts pertaining to an injury or damage to property of others.

The Division of Risk Management would provide insurance coverage for injury to Court ordered persons providing community work and for bodily injury or property damage liability to third parties caused by these persons while under Court order. This insurance would be primary in the absence of other valid and collectable insurance coverage. If the municipal or nonprofit organization sponsor has insurance for workers' compensation and comprehensive general liability which applies to these persons, then the State insurance will provide coverage on an excess basis only.

Between the State and the sponsoring entity, there will be adequate coverage to protect both the Court ordered participant and the public.

Any questions pertaining to this procedure should be referred to the Division of Risk Management.

Sincerely,



John Haywood
Director

JH/dab

cc: Pat Conneady
Kathy Kolkhorst
Marie Forsythe

MEMORANDUM

State of Alaska

DEPT Labor
DIV. Commissioner's Office
SEC. _____

TO: Michael Thill
Administrative Assistant
Senate Labor & Commerce Committee

DATE : March 8, 1982

FROM: *Judy Knight*
Judy Knight
Special Assistant
Department of Labor

SUBJECT: CS for SB 648 (L&C)

The Department of Labor has no comments on proposed Committee Substitute and believe that the proposed draft provides a solution to the existing problem. Thanks for the opportunity to review.

MEMORANDUM

State of Alaska

TO: Wilson L. Condon
Attorney General
and
Daniel W. Hickey
Chief Prosecutor

DATE: February 4, 1982

FILE NO:

TELEPHONE NO:

FROM: Patrick W. Conheady
Assistant Attorney General
Pretrial Intervention
Program Director

SUBJECT: Liability During Performance
of Community Work Service

A number of questions have been raised concerning the potential for liability for offenders who are placed in a community work service alternative at both the pretrial (diversion) or post trial (conviction) stages. These questions have primarily arisen as a result of a reluctance on the part of placement agencies to accept community work service referrals if there is an attendant assumption of liability on the part of the agency. Although placements made through the Department of Law's Pretrial Intervention Program (diversion) have not elicited the level of concern about liability that judicially authorized placements have, the liability issue is nonetheless of major concern in continuing an important component of the diversion program.

The liability issue is a double faceted question. First, what type of liability can potentially result, and to whom, for injuries to the offender in the course of performing community work service. Second, where does liability lie for injuries to others, or to property, for tortious conduct on the part of an offender during the performance of community work service. Resolution of these questions should facilitate implementation of the community work service alternative under AS 12.55.055.

During the last several months, I have worked with both the court system and the Division of Risk Management of the Department of Administration on these problems. I have additionally prepared and submitted legislation to ensure that offenders performing community work service are included within the coverage of the Worker's Compensation Act.

I. Factual Basis

An offender can be required to perform community work service in one of four ways: (1) attendant to a diversion agreement between the state and the offender for a felony or

misdemeanor offense; (2) attendant to a diversion agreement between a municipality and the offender for a misdemeanor offense; (3) resulting from a sentence for a felony offense pursuant to AS 12.55.015 (a)(6) and AS 12.55.055; and (4) resulting from a sentence for a misdemeanor offense pursuant to AS 12.55.015 (a)(6) and AS 12.55.055. This department's Pretrial Intervention Program administers the former three possibilities while having only peripheral involvement with the latter one.

To be eligible for pretrial diversion, an offender must be a first offender, or if previously convicted, the prior offense must be sufficiently in the past so as to be considered stale, and the prior conviction must be of a nature that when considered conjointly with the instant offense, it does not evince a pattern of habituation to crime. The offense charged must be a property crime or a drug offense, or, in rare situations a crime of domestic violence. All other violent crimes are excluded. In post-conviction situations, eligibility is determined by the sentencing judge, relying upon the presentence report prepared by probation personnel in the Division of Corrections for felony offenders. For misdemeanants, community work service is totally within the sentencing judge's discretion with no presentence reports or recommendations. There are no eligibility guidelines for post conviction community work service referrals.

All individuals referred to the Pretrial Intervention Program for community work service are subject to an intake interview. For state diversion referrals, this interview is in-depth and also serves as a screening device; for the other referrals, the interview is in the nature of matching the offender with appropriate community work. The majority of placements are with private, non-profit corporations, although a number are with state or municipal government agencies.

After placement, the Pretrial Intervention Program requires only that the agency report back that the offender is undertaking the requisite community work service on a satisfactory basis; the Pretrial Program does not supervise or otherwise control offenders in the performance of community work.

II. Liability for Injuries to Individuals
Performing Community Work Service
Resulting from "Employment" Related
Accidents.

The first issue that needs to be resolved is whether offenders placed in community work service are "employees" within the meaning of AS 23.30.265(11). If so, they are then subject to the provisions of the Worker's Compensation Act, AS 23.30. This is an issue that has not been directly resolved by Alaska's courts, although there is sufficient precedent to provide considerable guidance on the question.

The definition of employee for purposes of AS 23.30 is not sufficiently clear in determining an offender's status as an employee. AS 23.30.265 provides:

(11) "employee" means an employee employed by an employer as defined in paragraph (12);

(12) "employer" means the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state.

Previous opinions of this office delineated the test for an employee. 1963 Op. of the Attorney General, No. 8. Citing both Larson, Workmen's Compensation, (1C, p. 8-1, §43 and p. 8-231, §47) and Ferrell v. Industrial Commission of Arizona, 79 Ariz. 278, 288 P.2d 492, the opinion stated the rule that a contract of hire, expressed or implied, is essential to create the status of an employee generally, and the word "hire" connotes payment of some kind. This test was likewise utilized by the Alaska Supreme Court:

The relationship of employer-employee can only be created by a contract which may be expressed or implied.

Selid Construction Co. v. Guarantee Ins. Co., 355 P.2d 389, 393 (Alaska 1960).

The existence of an employee-employer relationship is critical for unless that relationship exists between the offender and the placement agency, or the state, or both, then the exclusiveness of liability remedy provided in AS 23.30.055 is not applicable. The Supreme Court of Alaska has emphasized:

. . .the [Worker's Compensation] act's coverage extend[s] only to persons occupying the status of an employee under either an express or implied contract of hire

City of Seward v. Wisdom, 413 P.2d 931, 939 (Alaska 1966). Further support for the "contract of hire" requirement is implicit in AS 23.30.020.

The elements of the "contract of hire" concept were discussed in a subsequent opinion of this office on the issue of worker's compensation for state prisoners working voluntarily on governmental projects. 1965 Op. of the Attorney General, No. 3. After citing numerous authorities denying coverage to prisoners including a similar case before the Alaska Workmen's Compensation Board, the opinion found the lack of an employee-employer relationship when (1) there was an absence of any pecuniary remuneration for the services performed, and (2) the nature of the services performed were involuntary. In sum, for the establishment of an employee-employer relationship, a "contract of hire" encompassing (1) voluntary acts in return for (2) some type of remuneration needs to be present. See, Larson, §47 et seq.

In the instant case, remuneration can be found for both classes of offender performing community work service. For those individuals participating in the Pretrial Intervention Program where community work service is a portion of the offender's treatment plan, it can be said that the recompense realized in part for performance of community work service is the ultimate dismissal of criminal charges pending against the offender, a valuable, albeit unquantifiable, benefit. Similarly, those offenders sentenced to community work service under AS 12.55.015(a)(6) and AS 12.55.055 can be said to be receiving remuneration in the form of substituted or reduced periods of confinement. However, the absence of voluntariness in either instance precludes a conclusion that a contract of hire is present.

It is quite clear that offenders sentenced to community work service are not free to bargain and contract for their services. The apparent voluntariness present in the offender's choice to refuse to perform community work service when sentenced under AS 12.55.015(a)(6) and AS 12.55.055 is belied by the residual right of compulsion present with the sentencing authority. A refusal on the part of the

sentenced offender to perform community work service would most likely lead to the offender's incarceration, a significantly more onerous result.

Likewise, offenders in the Pretrial Intervention Program who "voluntarily" agree to perform community work service as part of an individualized treatment plan developed for them are free to negotiate the place and manner of performance of that obligation, but there is no voluntariness present with respect to what that performance will encompass and how long it will last. While participation in the Pretrial Intervention Program is clearly in the offender's best interest and entry is on a voluntary basis, the alternative to diversion, prosecution, belies a freedom for offenders to bargain and contract for their services.

Consequently, the lack of any express provision in the Alaska Worker's Compensation Act, AS 23.30, according offenders performing community work service the status of employees in conjunction with the absence of a true contract of hire between the offender and the state or a referral agency, precludes recovery for offenders performing community work service under worker's compensation. Absent coverage under the Worker's Compensation Act, an offender who is injured performing community work service must bring a common law action in tort to recover for injuries sustained.

III. Tort Liability

A determination of potential liability for tortious conduct occurring either by or to an offender is a much more difficult question. This is due to the large number of variations as to questions of fact that may occur in any given situation. As a matter of law, fact situations can be hypothesized which give rise to liability on the part of the state, political subdivisions of the state, placement agencies and the offender. Similarly, those situations can be altered to exclude tort liability as a matter of law for any of the potentially liable parties. Consequently, the tort liability issue should be resolved in a manner consistent with the legislative intent embodied in AS 12.55.055, that is, to institute a workable community work service program in the state. To this end, two approaches have been formally proposed.

A. HB 255 and SB 285. Under this proposed legislative solution, the state would automatically assume all liability

for tortious conduct to others, or to property, by an offender sentenced to community work service. This approach, however, would only include offenders sentenced by a court under AS 12.55.055, therefore excluding a large portion of offenders performing community work service under diversion agreements. It would additionally place the total financial burden upon the state, ignoring current levels of liability coverage maintained by political subdivisions of the state and non-profit corporations which serve as placement agencies and receive the benefits of the community work service. Moreover, it would hold the state strictly liable, irrespective of the conduct of the various parties involved.

B. Assumption of Excess Liability. The second, and preferable, alternative is that embodied in John Haywood's memoranda of November 20, 1981 and January 6, 1982, copies of which are attached. The Division of Risk Management has determined that it is appropriate for the state to assume all liability for tortious conduct in excess of the liability coverage currently provided by placement agencies. For private non-profit organizations and political subdivision of the state serving as placement agencies currently providing liability coverage, there will be no change. Assumption of placement will not cause an increase in coverage, as the state assumes the excess. Similarly, for those private, non-profits not currently providing liability coverage, the state will assume any liability resulting from placements. This alternative eliminates the possibility of increased costs to placement agencies for accepting referrals while allowing those agencies to directly benefit from the community work service performed. It has the added advantage, however, of retaining the responsibility of those agencies for their interaction with and supervision of offenders performing community work service. Lastly, it eliminates any necessity for the state to underwrite the complete cost of the community work service program.

IV. Conclusion

The questions posed by the implementation of the community work service program are not insoluble. For tort liability, a change in policy as evidenced by Mr. Haywood's memoranda is sufficient, and is an equitable manner in which to ensure the proper functioning of the community work service program. For injuries sustained by offenders themselves,

Wilson L. Condon &
Daniel W. Hickey

-7-

February 4, 1982

a legislative resolution is necessary. This legislation has been submitted and we are working with the appropriate committees on it.

PWC/gb

Attachments

cc: John Haywood
Director
Division of Risk Management
Department of Administration

NOV 24 1981

DEPT. OF LAW
CRIMINAL DIVISION

(MS 0218)

November 20, 1981

Mr. Arthur H. Snowden, II
Administrative Director
Alaska Court System
303 "K" Street
Anchorage, AK 99501

Dear Mr. Snowden:

Re: Liability of State for Court
Ordered Community Work

The Division of Risk Management, Department of Administration, is responsible for the disposition of claims which arise out of State operations. In the absence of a contractual agreement, the liability of the State would be determined by the facts pertaining to an injury or damage to property of others.

The Division of Risk Management would provide insurance coverage for injury to Court ordered persons providing community work and for bodily injury or property damage liability to third parties caused by these persons while under Court order. This insurance would be primary in the absence of other valid and collectable insurance coverage. If the municipal or nonprofit organization sponsor has insurance for workers' compensation and comprehensive general liability which applies to these persons, then the State insurance will provide coverage on an excess basis only.

Between the State and the sponsoring entity, there will be adequate coverage to protect both the Court ordered participant and the public.

Any questions pertaining to this procedure should be referred to the Division of Risk Management.

-Sincerely,

John Haywood
Director

JH/bab

cc: Pat Conbeady ✓
Kathy Kolkhorst
Karla Forsythe

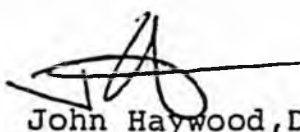
MEMORANDUM

State of Alaska

TO: Patrick W. Conheady
Assistant Attorney General
Pretrial Intervention Program, FILE NO:

DATE: January 6, 1982

TELEPHONE NO:

FROM: 
John Haywood, Director
Division of Risk Management
Department of Administration

SUBJECT: Community Work Service

This memo is to further clarify my letter of November 20, 1981 to Arthur H. Snowden regarding liability of the State for community work service. It is the intention of the Division that the coverage provided will extend likewise to community work service arranged by the Department of Law, Criminal Division, Pretrial Intervention Program.

I trust this clarifies this matter.

COMMITTEE MINUTES FORM

This form is to be prepared and submitted to the Committee Records Staff within the next legislative day following the public hearing or committee meeting. Please submit this form completed with the following information pursuant to Rule 23 of the Uniform Rules.

Committee Name: Senate Labor and Commerce
Members Present:

Date: 10 February, 1982

Senator Mulcahy, Chairman

Senator Fahrenkamp

Senator Zifler . . . Senator Rodey was excused from a call of the Senate;

Public hearing or committee meeting on: SB 648, SB 663, SB 700

COMMITTEE CALENDAR

<u>bill number</u>	<u>bill title</u>
SB 648	"An act relating to workers' compensation coverage for certain persons providing community work service."
<u>bill number</u>	<u>bill title</u>

WITNESS REGISTER

Witness Name: Mr. Pat Conheady , Assistant A.G.
Affiliation: Department of Law
Address: Juneau, Alaska
Phone:

Summarized Position Statement: Testified in support of the bill, provided the committee with background information pertaining to the bill, and answered questions of the committee.
PREVIOUS ACTION

Reference Number:
Statutory Reference:
Amendments Formally Considered:

Member Moving Adoption: Senator Fahrenkamp: Move the bill with individual recommendations;
Action: Passed or Failed
Voting Record: 3 do pass

ACTION NARRATIVE

Tape Recording Number 0000 Chair opens at 024 with members 3 present
etc.
Testimony of Mr. Conheady begins at tape reading 024 and continues through tape reading 125.

COMMITTEE MINUTES FORM

This form is to be prepared and submitted to the Committee Records Staff within the next legislative day following the public hearing or committee meeting. Please submit this form completed with the following information pursuant to Rule 23 of the Uniform Rules.

Committee Name: Senate Labor and Commerce

Date: 10 February, 1982

Members Present: Senator Mulcahy, Chairman

Senator Fahrenkamp

Senator Ziegler

Senator Rodey was excused from a call of the Senate;

Public hearing or committee meeting on:

SB 648, SF 663, and SB 700;

COMMITTEE CALENDAR

SB 648 "An act relating to workers' compensation coverage for certain
bill number bill title persons providing community work service."

_____ bill number _____ bill title _____

WITNESS REGISTER

Witness Name: Ms. Bev Koski

Affiliation: Division of Risk Management, Department of Administration

Address: State Office Building

Phone:

Summarized Position Statement: Supported the testimony of Pat Conheady and urged passage of the bill.

PREVIOUS ACTION

Reference Number:

Statutory Reference:

Amendments Formally Considered:

Member Moving Adoption: Senator Fahrenkamp: Move the bill with individual recommendations;

Action: Passed or Failed

Voting Record: 3 do pass

ACTION NARRATIVE

Tape Recording

Number 0000

Chair opens at 127 with members 3 present etc.

Ms. Koski testimony occurs at tape reading 127, and supports the testimony of Mr. Conheady (tape log 024-125).

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

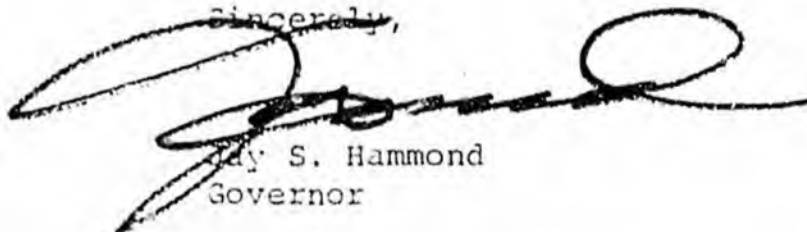
Dear Mr. President:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill to amend the definition of "employee" contained in the Workers' Compensation Act to provide workers' compensation for offenders injured during the performance of community work service.

Under the current definition of "employee" contained in the Act, an offender performing community work service resulting either from an alternative sentence under AS 12.55.015(a)(6) or from a diversion agreement with state or municipal prosecutors executed under the Department of Law's Pretrial Intervention Program is not eligible for compensation for injuries sustained during the performance of community work service. In attempting to implement the legislature's intent that the state develop alternative sentencing programs, this exclusion has proven to be a problem in that the sole remedy provision of workers' compensation is not applicable and an injured offender may recover only by means of a tort action. Pursuing a tort remedy is much less certain in terms of compensating the person for an injury, and it could result in exceedingly large judgments against a negligent party -- contrary to the purposes of workers' compensation Acts.

Additionally, the absence of a workers' compensation exclusive remedy provision is creating a reticence on the part of some organizations to accept referrals, in view of the potential liability which may result. By including offenders injured in the performance of community work service within the scope of the Workers' Compensation Act, additional costs for liability are minimal and implementation of the community work service sentencing alternative included in the revised criminal code will be facilitated.

Sincerely,



Rudy S. Hammond
Governor

For cases construing former statute directing imprisonment on judgment for payment of fine, see Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, 26 L.

Ed. 2d 586 (1970); Hood v. Smedley Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

Sec. 12.55.055. Community work. (a) The court may order a defendant convicted of an offense to perform community work as a condition of a suspended sentence or suspended imposition of sentence, or in addition to any fine or restitution ordered. If the defendant is also sentenced to imprisonment, the court may recommend to the Department of Health and Social Services that the defendant perform community work.

(b) Community work includes work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public lands, forests, parks, roads, highways, facilities, or education. Community work may not confer a private benefit on a person except as may be incidental to the public benefit. (§ 12 ch 166 SLA 1978)

Secs. 12.55.060 — 12.55.075.

Repealed by § 21 ch 166 SLA 1978.

Cross references. — For provisions as to sentencing reports, see AS 12.55.025. As to sentences of imprisonment for felonies, see AS 12.55.125. As to sentences of imprisonment for misdemeanors, see AS 12.55.135.

Editor's note. — The repealed sections derived from §§ 8.06, 8.07, ch. 34, SLA 1962; § 1, ch. 6, SLA 1966; § 1, ch. 60, SLA 1974.

Sec. 12.55.080. Suspension of sentence and probation. Upon entering a judgment of conviction of a crime, or at any time within 60 days from the date of entry of that judgment of conviction, a court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution or balance of the sentence or a portion thereof, and place the defendant on probation for a period and upon the terms and conditions as the court considers best. (§ 8.08 ch 34 SLA 1962; am. § 24 ch 43 SLA 1964; am § 8 ch 68 SLA 1965)

Cross references. — See Cr. R. 35 (k). For additional circumstances where a defendant's sentence may be modified, see AS 12.55.088.

The power to suspend sentence is not inherent in the judicial branch of government. *Pete v State*, Sup. Ct. Op. No. 137 (File No. 290), 379 P.2d 625 (1963).

Such power must be conferred by the legislature. — The power to suspend sentences exists only when conferred upon the judiciary by the legislature. *Pete v. State*, Sup. Ct. Op. No. 137 (File No. 290), 379 P.2d 625 (1963).

Parallels 18 U.S.C. § 3651. — Alaska's probation statutes, this section, AS 12.55.090 and AS 12.55.100 closely parallel the federal statute, 18 U.S.C. § 3651, which empowers federal district courts to grant probation. *Brown v. State*, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

This section and AS 12.55.090 appear to have been modeled after the federal statute, 18 U.S.C. § 3651. *Tiedeman v. State*, Sup. Ct. Op. No. 1592 (File No. 3394), 576 P.2d 114 (1978).

The Alaska probation statutes, this section, AS 12.55.090 and 12.55.100, use

much of the same language as 18 U.S.C. § 3651, and were apparently modeled after the federal law. *Gonzalez v. State*, Sup. Ct. Op. No. 2040 (File No. 1980).

This section and AS 12.55.085(a) are construed in pari materia together in § 1, ch. 19 of Title 17. This section and AS 12.55.085(a) are construed with reference to each other in pari materia. *Jackson v. State*, Sup. Ct. Op. No. 1194 (File No. 1975).

This section and AS 12.55.085(a) apply to Chapters 10 and 11 of Title 17. — The provisions of this section govern the imposition of sentence applicable to violations of AS 12 of Title 17. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1973); *Call v. State*, Sup. Ct. Op. No. 1844, 511 P.2d 130 (1973).

The two-year minimum requirement of AS 12.55.085(a) has thus been implicit in the application of this section contrary to more recent legislative intent. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1973); *Call v. State*, Sup. Ct. Op. No. 1844, 511 P.2d 130 (1973).

This section and AS 12.55.085(a) both the mandatory minimum provision of AS 17.10.200 where specific provisions are made" language of AS 17.10.200. *State, Sup. Ct. Op. No. 8511 P.2d 130 (1973).*

The mandatory requirement of AS 17.10.200 have been applied to this section and AS 12.55.085(a) suspended imposition of sentence or parole. *White v. State*, Sup. Ct. Op. No. 1055 (File No. 1907), 52 P.2d 130 (1973).

State law prohibits a city from enacting an ordinance that would establish a mandatory minimum sentence for a crime. *Kodiak v. Jackson*, Sup. Ct. Op. No. 3480, 584 P.2d 130 (1973).

Mandatory minimum sentences provided by city ordinances are in conflict with state law. *Municipality of Anchorage v. State*, Sup. Ct. Op. No. 1793 (File No. 390), 511 P.2d 130 (1973).

The mandatory sentencing provisions providing for a mandatory minimum sentence on conviction of a crime by a police officer were irreconcilable with this section and AS 12.55.085(a).

(5) "grandchild" means a child as defined in (4) of this section of a child as defined in (4) of this section;

(6) "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers and married sisters unless wholly dependent on the employee;

(7) "child," "grandchild," "brother," and "sister," include only persons who are under 19 years of age, persons who, though 19 years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, and persons of any age while they are attending the first four years of vocational school, trade school, or college, and persons of any age while they are attending high school;

(8) "compensation" means the money allowance payable to an employee or his dependents as provided for in AS 23.30.005 — 23.30.270, and includes the funeral benefits provided for in AS 23.30.005 — 23.30.270;

(9) "death" as a basis for a right to compensation means only death resulting from an injury;

(10) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;

(11) "employee" means an employee employed by an employer as defined in paragraph (12);

(12) "employer" means the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of AS 23.30.005 — 23.30.270 and carried on in this state;

(13) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury, and includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of his employment;

(14) "insurance commissioner" refers to the person who heads the insurance division or section of the Department of Commerce and is charged with the administration of the state insurance laws;

(15) "married" includes a person who is divorced but is required by the decree of divorce to contribute to the support of his former spouse;

(16) "medical and related benefits" includes but is not limited to physicians' fees, nurses' charges, hospital services, hospital supplies, medicine and prosthetic devices, physical rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required which arises out of or is necessitated by an

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. Senate Bill No.
 Title "An Act relating to Workers' Compensation coverage . . ."
 Requested by Rules Committee Date 1/8/82

II. FISCAL DETAIL
 Agency Affected Labor
 Program Category Affected Public Protection
 BRU, Program, Or Subprogram(s) Affected Workers' Compensation
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE January 8, 1982 PREPARED BY Judy Knight
 AGENCY Labor
 Original: Legislative Finance PHONE 465-2700
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)