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STATE OF ALASKA  
THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

2-15-85

1:30 pm

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 97  
 Title: "An Act relating to government liability..."  
 Sponsor: Repr. Duncan  
 Requestor: House Judiciary  
 Date of Request: 1/31/85

FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: General Government  
 BRU, Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill amends AS 09.50.250 to partially shield the state and municipalities from actionable claims growing out of hazardous recreational activities on property owned or leased by the state and municipalities. The bill would limit the state's liability for those hazardous activities outside its direct supervision or absent the state's failure to warn of dangerous conditions or to warn of another hazardous activity, or absent the state's negligent failure to construct or maintain recreational facilities, and absent the state's gross negligence.

Prepared By: Richard I. Pegg, Director Phone: 465-3672  
 Division: Administrative Services Date: 2/4/85

Approved by Commissioner: Norman C. Gorsuch Date: 2/4/85  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

FISCAL NOTE

HB 97

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ANALYSIS (Cont'd.)

As recreational uses of state property increase, this bill would protect the state from an increasing exposure to claims arising from hazardous recreational activities of individuals and private organizations that are, for the most part, outside of the state's direct control. Consequently, the bill would tend to limit the growing cost of such claims. Litigation costs will probably not decrease because of the very nature of tort claims.

*Alaska Recreation and Park Association*

P.O. Box 2664-DT  
Anchorage, Alaska 99510



December 21, 1984

The Honorable Jim Duncan  
P.O. Box 690  
Juneau, AK 99802

Dear Representative Duncan:

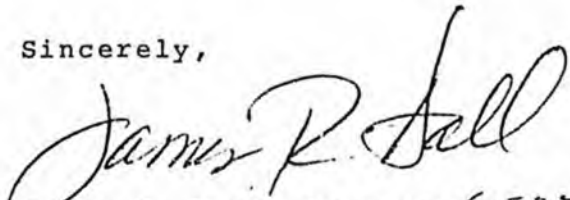
Several months ago, we spoke concerning a possibility of seeking legislation for "public liability". Alaska is currently one of seven state's in the United States that does not have such legislation on the books. As a recreation professional in Alaska, I believe it would be very worthwhile to seek approval of such legislation. The public liability would aid in balancing out the responsibility for recreational activities between the participant or user of a facility vs. the governmental body offering that service.

Please review the California bili (attached), who many believe to be the nation's model in this area.

If I or Alaska Recreation and Park Association can be of assistance please advise. I would be willing to help in any way I can.

Continued Best Wishes.

Sincerely,

  
James R. Hall, Director 6-5226-7-8  
Parks & Recreation Department

cc: Alaska Recreation and Park Association Board

JRH/drb

*"Parks for People"*

## Recreational Use Immunity Protection for Public Entities

Donn L. Black, Patricia Farrell, Donald A. McIsaac

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**ABSTRACT:** Recent efforts by California park and recreation professionals have resulted in a unique recreational use immunity bill. It was enacted in 1983 by the California legislature and took effect as of January 1, 1984. Recreational immunity use is granted to public entities, but with some important limitations. The focus of the bill is on "hazardous recreational activities". The bill, known as AB 555, adds a section to California Tort Claims Act which governs public entity immunity and liability. A sound, reasonable balance appears to have been struck between personal responsibility in recreational pursuits and reasonable protection for the park user.

**KEY WORDS:** Liability, immunity, hazardous recreational activity, public entity, negligence, reasonable responsibility.

**THE AUTHORS:** Donn L. Black is legal counsel for the East Bay Regional Park District from the firm of Wendel, Lawlor, Rosen and Black. He graduated from the NYU School of Law.

Patricia Farrell is an associate professor at The Pennsylvania State University where she has served as department head for seven years. Her doctorate was from Penn State.

Donald A. McIsaac is an associate with Wendel, Lawlor, Rosen and Black. He graduated from the University of California at Berkeley, Boalt Hall.

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On Easter Sunday in 1977, in the town of Gridley, California, Vernon Nelsen was on his motorcycle, heading home from the drugstore. As he entered a service road alongside the town park, a sign warned "NOT A THROUGH STREET". Farther along, the road was chained off. A sign hanging from the chain warned, "STOP". But Vernon didn't stop; he plowed through the chain barrier and was seriously injured. In the lawsuit that followed, California public entities came to the end of an era in which they had enjoyed "recreational use immunity".

### The Public Interest in Recreational Use Immunity Protection for Public Entities

This uncertainty about recreation use immunity protection, or the lack of such protection, is an increasingly serious problem for park and recreation agencies throughout most of the country. Park providers' exposure to liability and lawsuits by recreational users is clearly growing. Increasing numbers of recreational enthusiasts are using the nation's parks each year. Many of them

are participating in a host of new, high-risk recreational activities.<sup>2</sup> In rural and mountain areas snowmobiles, off-road vehicles, and white water rafters are being used with increased frequency. Technology and human innovation is constantly producing new high-risk forms of recreational techniques in such increasingly popular sports as windsurfing, skydiving, and hang gliding. Recreational providers in urban settings are also experiencing an increase in risky sports and as a result, a greater potential for lawsuits.

The nation's parks and beaches might be just as safe as they ever were, but that is little consolation; these high risk activities put recreational users in greater danger of injury. If injured for any reason, these same recreational users are also more likely to sue as numerous articles and statistics in our increasingly litigious society have demonstrated. All of these factors - a growing number of recreational users, the advent of higher risk recreational activities, and the trend towards the courtroom - put park districts and other public entities in ever greater danger of expensive lawsuits.

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At the same time that governmental agencies are encountering mounting litigation expense, many are also experiencing budget cutbacks. If dwindling revenues are being spent in defending personal injury suits and on costly liability insurance premiums, even less money is available to provide the recreational facilities sought after by the public, and to repair and maintain existing facilities. Government agencies today must be increasingly cautious in yielding to recreational demands. They may find themselves compelled to prohibit or restrict riskier forms of recreation, and may also find themselves allocating larger portions of their budgets for litigation reserves and insurance expense. Thus the litigation spiral tends to deflect park agencies away from offering services to the public and pulls them toward providing insurance protection.

Although court and legal commentators have assumed otherwise, recreational use immunity would encourage public entities to provide greater recreational opportunities to the public. Park and recreation agencies would be encouraged to accommodate the public's growing interest in more active and innovative recreational pursuits. They would also be secure in the principle that participants must assume greater personal responsibility for their own conduct and safety. The same immunity would also encourage park providers to commit more of their funds to recreational programs and facilities, both traditional and innovative, in the knowledge that marginal or specious lawsuits could be terminated in pre-trial proceedings so that fewer resources would be

diverted to litigation. When recreational use immunity for public entities is properly balanced between personal responsibility in recreational pursuits, and reasonable protection for the park user, the public interest is advanced. Indeed, that balancing is the core public issue in this whole liability debate.

In *Nelsen v. City of Gridley*<sup>1</sup>, the court held that governmental entities are not covered by California Civil Code Section 846. That statute dating from 1963, gives "property owners" immunity from liability to injured recreational users of their property, under most circumstances. Forty-two other states have similar recreational use immunity laws. (Alaska, Arizona, Indiana, Missouri, North Carolina, Rhode Island, and Utah are the seven exceptions.) Like recreational use immunity statutes in most other states, California's C.C. 846 does not specifically say whether its protection extends to public as well as private landowners. (Only four of the statutes—Alabama, Ohio, Washington and Wisconsin—are expressly applicable to public entities; only Iowa's statute expressly excludes public entities).

#### The Courts: Application of Recreational Use Immunity Statutes to Government Agencies

Many court decisions and legal commentators have stated that recreational use immunity statutes have no application to public entities. Their rationale is typically that these statutes were enacted to encourage owners of private property to open their lands to public recreation; public agencies need no such encouragement, since their lands are already open to the public. This was one of the arguments the appellate court adopted in *Nelsen v. City of Gridley*.

The decisions of state courts opinions on the subject are about evenly divided. Florida, Illinois, and Oregon appellate courts have held or strongly suggested that parks or public entities cannot rely on recreational use immunity. Courts in New Hampshire, Georgia, and New Jersey have reached the opposite conclusion. In California, the *Nelsen* court disagreed with other California appellate courts that found protection for public entities under C.C. 846. But in the vast majority of jurisdictions the issue has not reached an appellate court, so that public entities remain blissfully uncertain as to whether they are protected by their state's recreational use immunity statute.

#### AB 555: California's New Approach.

Public park and recreation providers without specific recreational use immunity protection must be prepared to present their needs to their state legislatures. This was the approach recently taken by the East Bay Regional Park District (headquartered in Oakland, California) and other California local governments in the wake of *Nelsen v. City of Gridley*. The East Bay Regional Park District is an example of a public agency that has important needs when it comes to recreational use immunity. The district operates 44 regional parks

and 550 miles of trails on 58,000 acres of land in two California counties located in the San Francisco Bay Area. Its developed facilities and its undeveloped open spaces are used for a diverse spectrum of recreational activities. The district needs its own helicopters to conduct the search and rescue operations that are often necessary over its far-ranging parklands.

The East Bay Regional Park District was the first to propose a new statutory approach. It was an amendment to California's Tort Claims Act and came to be known as Assembly Bill 555 ("AB 555"). The bill became law on January 1, 1984, as Section 831.7 of the California Government Code. This statute is currently the only statute in the United States addressed solely to recreational use immunity coverage for public entities. AB 555 has many of the provisions found in other recreational use immunity statutes and also contains many other terms which improve and clarify the scope of the limited immunity. At the same time, AB 555 provides important protections for the park user. AB 555 represents a balancing of protections for public entities and recreational users which could serve as a model for examination by other states.

#### **The Focus on "Hazardous Recreational Activities"**

AB 555 is different from other recreational use immunity statutes in that it expressly addresses the problem of "hazardous recreational activities". Many recreational use immunity statutes apply simply to "recreational activities" in general. The intent of the authors in limiting AB 555 to "hazardous recreational activities" was to balance the public entities' need for reasonable protection from spurious litigation against the recreational user's reasonable expectations of safety. AB 555 represents a judgment that the enthusiast who goes bicycle racing, tree climbing, trampolining, or plays football should be prepared to assume the risks that are inherent in high risk activities, and that park providers cannot be expected to make those activities risk-free. But AB 555 admits that the casual picnicker and the butterfly collector should be able to expect that they will not encounter any unusual risks—unless of course they go picnicking on the soccer field, or butterfly collecting on the archery range!

The "hazardous recreational activities" listed as examples in AB 555 include a wide variety of organized and individual sports and activities oriented to both rural and urban settings. They include: animal riding, archery, firearm shooting, bicycle racing, skiing, hang gliding, vehicle racing and off-road driving, rock climbing, rodeo, skydiving, body contact sports, trampolining, tree climbing, surfing and white water rafting. Water contact activities are given special attention. Diving from any object other than a diving board or platform is a "hazardous recreational activity". Diving where signs have been posted or other warnings have been given prohibiting diving is also hazardous. Swimming and other water contact activities are expressly defi-

nedas hazardous if conducted at a time or place where no lifeguard is present and the swimmer should have known that there was no lifeguard.

Some states such as Kentucky, New Hampshire and Virginia, have only a finite list of activities which are protected by recreational use immunity. The list of activities included as examples of "hazardous recreational activities" in AB 555 is not exclusive. The bill specifically extends its list to *any* recreational activity "which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury . . ." This definition gives the courts the flexibility to apply the statute in all appropriate situations.

What is a recreational activity which creates a "substantial risk of injury"? While substantial risk of injury formula is open-ended, it is also a formula California courts are familiar with. In drafting its proposal for AB 555, the East Bay Regional Park District drew this "substantial risk of injury" formula from another part of the Tort Claims Act (Section 830), which deals with dangerous conditions of public property. The concept is to allow the judge or jury to consider whether the participant should have anticipated some risk of injury. It does not mean the court must find that the *injury* itself was foreseeable and probable. Rather, the focus is on whether a *risk* of injury was foreseeable. It is possible that courts or juries could be guided in this inquiry by injury statistics, or by the testimony of experts in a given recreational field. The basic standard is likely to be common sense.

It is also reasonably clear that AB 555 is intended by the legislature to apply in the developed, supervised urban playground or park, as well as at the isolated beach, or on undeveloped, open space grasslands. Some of the activities listed in AB 555, such as trampolining or body contact sports are far more likely to take place at the neighborhood playground or gym, than on an undeveloped hillside.

The differentiation between urban and rural recreational activities has an interesting history. In some states, the courts have taken it upon themselves to interpret the recreational use immunity to mean immunity only for those activities associated with rural undeveloped lands. For example, New Jersey Statutes Section 2A:42A-2 grants immunity to landowners who open their property to "hunting, fishing, trapping, horseback riding, training of dogs, hiking, camping, picnicking, swimming, skating, skiing, sledding tobogganing and *any other outdoor sport, game and recreational activity. . .*" Yet, in *Harrison v. Middlesex Water Company*<sup>3</sup>, the New Jersey Supreme Court decided that their recreational use immunity statute does not grant immunity to owners of land situated in residential and populated neighborhoods. The court felt that most of the enumerated activities normally take place upon natural and undeveloped lands located in thinly populated rural or semi-rural areas, and that the legislature's purpose had been to encourage the opening of lands to public use, where safeguards against injury could not be so easily afforded or instituted. Thus, even though the statute said it covered "any . . . outdoor sport, game and recreational activity," and even though swim-

ming was among the recreational activities specifically listed, the court refused to apply this immunity in the case of a drowning in a residential neighborhood.

Similar distinctions between urban/rural or developed/undeveloped lands have been created by appellate courts interpreting the recreational use immunity statutes in Georgia, Nevada, New York, Washington, and Wisconsin. Recreational use immunity statutes in seven other states—Colorado, Illinois, Iowa, Oklahoma, Oregon, South Dakota, Vermont and Virginia—expressly limit owner immunity to recreational activities on rural or non-residential, non-commercial lands. In most states, there is no specific decision on this issue by the courts or by statute. On the other hand, AB 555 focuses on the hazardous or nonhazardous nature of the activity—not where it takes place.

### Participants, Assistants and Spectators

The sponsors of the new recreational use immunity law for California sought clarity in peripheral areas. Besides covering injury and damage to recreational participants, AB 555 specifically covers injury and damage to assistants (such as coaches and officials), and in some cases even spectators. In considering whether to include spectators within the immunity, the legislature again struck a balance between the spectator's reasonable responsibility for assumption of the risk, and the need to provide protection for the unaware. Under AB 555, the public entity is afforded immunity only if the spectator knew or should have known that there was a substantial risk of injury to spectators at the event and was voluntarily in the place of risk.

AB 555 sets up several exceptions to public entity immunity:

#### *1. Exception: Known, Dangerous Conditions.*

In almost all of the states that have recreational use immunity statutes, competing considerations of public policy dictate some exceptions to a blanket grant of immunity. The same is true of AB 555. In several situations, the California legislature decreed that the reasonable safety expectations of the recreator should be considered.

Liability is not limited when the public entity fails to warn or guard against a known, dangerous condition. No immunity is provided then. AB 555 expressly provides that such a known "dangerous condition" may be another hazardous recreational activity, or a dangerous condition of the public entity's property. This "known dangerous condition" exception is similar to the exception found in Alabama's RUI statute, Alabama Code Section 35-15-24.

If the recreational participant should have reasonably assumed the condition "as inherently a part of the hazardous recreational activity," it makes no difference that the dangerous condition was known to the public entity and the public entity failed to give warning. The immunity would still apply. At a reservoir, lake or stream the wader or swimmer would probably be held to have assumed the risk of stepping on a broken soda bottle, and he would

be considered solely responsible, if he risks a dive into such waters. These are reasonably foreseeable risks which we all assume to be inherent in using the "ole swimmin' hole". This is the central idea of AB 555.

### 2. *Exception: Specific Fee Paid.*

All but one of the recreational use immunity statutes in the United States exclude from coverage, situations where there is a fee or "consideration" paid by the recreational user. AB 555 follows suit. There seems to be a universal understanding that when a fee is paid, the entity receiving the fee must exercise ordinary care. There is less than universal understanding as to what constitutes the fee which triggers that expectation. Under court decisions in some states, even the payment of an incidental fee will make the recreational use immunity inapplicable.<sup>4</sup> However in other states, the payment of an incidental fee has no effect under the recreational use immunity.<sup>5</sup>

Courts in other states have interpreted this exception more broadly, holding that a "charge" or "consideration" is paid whenever there is any mutual benefit for the participant and the property owner in the activity.<sup>6</sup> AB 555 is clearer on the subject of the fee exception than any other recreational use immunity statute. Immunity does not apply under AB 555 unless there has been a specific fee charged for participation in the specific hazardous recreational activity out of which the injury arose. This statute states that a specific fee "does not include a fee . . . charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee".

This bill makes it clear that its protection is intended solely for public entities and employees. The statute does not protect concessionaires or others operating a hazardous recreational activity on public property. This is true whether or not the person or organization has a contractual relationship with the public entity to use the public property.

### 3. *Exception: The Agency's Gross Negligence.*

In its final version of AB 555, the California legislature carefully included exceptions for other situations where it deemed immunity inappropriate. For example, the public entity will remain liable if the injury or damage was caused by the public entity's *gross* negligence (as distinguished from *simple* negligence). "Gross negligence" is not an easily defined concept. Black's Law Dictionary labels gross negligence as negligence of "aggravated character".<sup>7</sup> Gross negligence has been termed "an extreme departure from the ordinary standard of conduct".<sup>8</sup>

Gross negligence usually involves two elements: extremely dangerous conduct on the part of the defendant and a very high risk or very serious injury to the plaintiff. In the common, everyday lawsuit for personal injury where no such elements of extreme conduct are involved (such as the failure to post "No Diving" signs on the railed boating ramp), the court might be expected to hold as a matter of law that there is no gross negligence, and

dismiss the case on a summary judgment motion. This motion will avoid the burdensome expense of a full trial. That is the central thrust of AB 555—to minimize the threat of nuisance settlements that recreational providers otherwise face. It would be generally noted that in many states, there may be little or no distinction between gross and simple negligence when it comes to injured young children.

*4. Exception: Reckless or Grossly Negligent Promotion of the Activity.*

As another exception under AB 555, the public entity will not be afforded immunity if it "recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity". Under expressed terms in the statute, an announcement or advertisement by the public agency merely describing available services and facilities does not itself constitute a reckless or grossly negligent promotion. In order to fall into this exception, the public entity would presumably have to engage in highly active promotion of a recreational activity which the public entity knew or should have known was hazardous and likely to produce serious injuries. For example, if the public entity sought out and encouraged unqualified participants from the general public to register for a hang gliding competition it could lose immunity under AB 555.

*5. Exception: Negligent Construction or Maintenance.*

AB 555 does not relieve a public entity from its duty in using normal care to maintain and to repair its recreational equipment, machinery, buildings, or any other substantial works of improvement. In those situations the standard remains simple negligence.

The first area of focus is whether the public entity itself was negligent in the maintenance of the facility. Again, the mere fact that park facilities were involved in the injury is not sufficient by itself to create liability. For example, if an injury on the trampoline is caused not because of any failure to maintain the equipment properly, but because of a manufacturer's defect, AB 555 hopefully provides public entity immunity. The negligence is the manufacturer's, and the public entity should not be vicariously liable.

There is a second area of focus under this immunity exception. Any item causing the injury must have been "utilized in the hazardous recreational activity out of which the damage or injury arose". Thus, if a bicycle racer takes a short cut down a rutted (i.e., negligently maintained) sidewalk or path off the marked racing course, there is a good argument that the public entity should still enjoy the gross negligence standard otherwise applicable in a hazardous recreational activity.

### Conclusion

As in the California's original recreational use immunity law (C.C. 846), immunity statutes of many states that do not expressly distinguish between

public and private landowners have been or may yet be, judicially interpreted not to provide any tort claim immunity to public landowners.

Vernon Nelsen's unfortunate accident on Easter Sunday in 1977 set off a chain of events that substantially redefined the recreational use immunity laws in California. Largely as a result of efforts by the East Bay Regional Park District and key legislators, California now has a specific recreational use immunity for park and recreational providers. The immunity recognizes the innovative recreational demands and financial burdens bearing down on those agencies. The new California statute carefully balances personal responsibility against public responsibility. Government agencies in the majority of states are in need of specific protection under their recreational use immunity statutes, and AB 555 might serve as a model for legislation in many of those states.

For those in park and recreation services, it is clearly in the public's interest to have professionals vigorously pursue the development of recreational use immunity legislation throughout the country. When the public interest is served, legislators want to listen. (Copies of the bill are available from the East Bay Regional Park District office, 11500 Skyline Blvd., Oakland, CA 94619).

<sup>1</sup> *Nelsen v. City of Gridley*, 113 Cal. App. 3d 87, 169 Cal. Rptr. 757 (1980). This decision remanded the case to the trial court after denial of motion for summary judgment, as of March, 1984 it has not been scheduled for further proceedings in the trial court.

<sup>2</sup> "Risking It All," *Time*, August 29, 1983, p.52.

<sup>3</sup> *Harrison v. Middlesex Water Company* 80 N.J. 391, 403 A. 2d 910 (1979).

<sup>4</sup> *Farfield v. United States*, 297 F. Supp. 891 (W.D. Wis 1969) (Payment of hunting permit fees made RUI inapplicable.) See also, *Hull v. State Department of Natural Resources*, 62 Ohio St. 2d 143, 431 N.E. 2d 1201 (1980) (Park entrance fee was determined to be sufficient to make RUI inapplicable.)

<sup>5</sup> *Stone Mountain Memorial Association V. Herrington*, 225 Ga. 740, 171 S.E. 2d 521 (1969) (Parking fee was not to be considered a "charge" under the exception to the RUI statute.)

<sup>6</sup> *Kesner v. Trenton*, 216 S.E. 2d 880 (W.Va. 1975) (Marina owner who allowed swimming without charge could have expected to increase marina sales to the public, and therefore fell within the exception.) See also, *Copeland v. Larsen*, 46 Wis. 2d 337, 174 N.W. 2d 745 (1970) Other courts clearly disagree with such a broad interpretation. See e.g., *Epps v. Chattahoochee Brick Company*, 140 Ga. App. 426, 231 S.E. 2d 443 (1976) Development of "goodwill" was not the payment of a "charge"; *Hahn v. United States*, 483 F. Sup. 57 (M.D. Pa. 1980) (Payment of taxes does not constitute payment of a fee.)

<sup>7</sup> Henry Campbell Black, *Black's Law Dictionary (5th Edition)*, West Publishing Co., St. Paul, MN, 1979, p. 932.

<sup>8</sup> *Van Meter v. Bent Construction Co.*, 46 Cal. 2d 588, 297 P. 2d 644 (1956).

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Drafting  
12-31-84

CHAPTER 863

An act to add Section 831.7 to the Government Code, relating to public liability.

[Approved by Governor September 15, 1983. Filed with Secretary of State September 16, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 555, Campbell. Public liability.

Under existing law, a public entity or public employee may be liable for an injury caused by a dangerous condition of public property in certain circumstances. However, existing law provides that a public entity or a public employee is not liable for an injury caused by a natural condition of unimproved property, or by an injury caused by the condition of a reservoir, or, in some circumstances, by an injury caused by the condition of canals, conduits, or drains.

This bill would provide that a public entity or public employee is not liable to any person who participates in a hazardous recreational activity, as defined or to any assistant or spectator as specified for any damage or injury to property or persons arising out of that hazardous recreational activity. However, that immunity would not apply for a failure to warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the activity, where a specific fee was charged to participate, or to the extent that injury was caused by the negligent failure to construct or maintain any structure or work of improvement, as specified, or to damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity, or an act of gross negligence by the public entity or public employee which is the proximate cause of the injury.

The bill would also specifically provide that nothing contained therein shall limit the liability of an independent concessionaire or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

*The people of the State of California do enact as follows:*

SECTION 1. Section 831.7 is added to the Government Code, to read:

831.7. (a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

(b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and wind surfing.

(c) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose.

(2) Damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific hazardous recreational activity out of which the damage or

injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury.

Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

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ALASKA  
STATE LEGISLATURE  
**MEMORANDUM**

FEB 11 1985

February 8, 1985

TO: Representative Mike Miller, Chairman  
House Judiciary Committee

FROM: Representative Jim Duncan

RE: HB 97 ks

HB 97 concerning Government Liability for Hazardous Recreational Activities has been referred to your committee.

This bill is intended to limit the liability of governmental entities in situations where individuals are injured on public property.

Please schedule this bill for a hearing as soon as possible.

CITY/BOROUGH OF JUNEAU  
★ ALASKA'S CAPITAL CITY

LAW DEPARTMENT (907) 586-5242

February 15, 1985

The Honorable Mike Miller  
Chairman of House Judiciary Committee  
House of Representatives  
Alaska State Legislature

Dear Chairman and Members of the Committee:

The City and Borough of Juneau, Alaska supports the adoption of House Bill Number 97. This legislation will be a boost to the creativity and the availability of recreational programs while still protecting the fundamental interests of the participants in those programs. We understand that this bill has been based on California legislation that has so far been successful, and we suggest the following modifications as further improvement:

(1) The bill does not protect municipalities against claims based on hazardous recreational activities for which a "specific fee" has been paid. If such fees amount to profits being realized by municipalities, it is reasonable to task them with liability, but that purpose could be better realized by refining the definition of "specific fee" contained at page 4, line 11 of the bill. Since it often happens that fees are paid to community organizations using municipal facilities, and sometimes paid to municipalities on behalf of such organizations, the definition should reflect these arrangements. In addition, reference in the definition to "administrative" fees seems an invitation to litigation. Is a fee paid for the purchase of balls and bats to be used in the program an administrative fee? We suggest a definition something like the following:

(3) "Specific Fee" does not include a fee or consideration charged by a municipality for a general purpose such as a general park admission charge, a vehicle entry or parking fee, a group use application or permit fee, or any fee reasonably necessary for the support of the recreational program involving the hazardous recreational activity. Fees paid in trust to a municipality for the benefit of a private organization organizing, sponsoring, or conducting the hazardous recreational activity shall not be considered paid to the municipality.

(2) Our recreation department often conducts hikes, skiing trips, and other recreational activities on state and federal property. We suggest that the exemption set out on page 5, line 16 of the bill be amended to read:

(6) Is an action for property damage or personal injury arising of the person's participation in a hazardous recreational activity conducted by a municipality or on property owned or leased by the municipality.

(3) We suggest that model airplane flying, gymnastics, outdoor ice skating, hockey, and field sports be included in the definition of "hazardous recreational activity." These popular activities, especially gymnastics, present significant opportunities for liability.

(4) The definition of "participation in a hazardous recreational activity" contained at page 4, line 3 of the bill does not directly address the case of a participant waiting his or her turn or participating in a nearby event. We suggest that the definition be amended to read:

(2) "Participation in a hazardous recreational activity" includes assisting another to participate in the activity and being present at the site of the activity as a spectator or a participant not directly involved in the activity in question who.

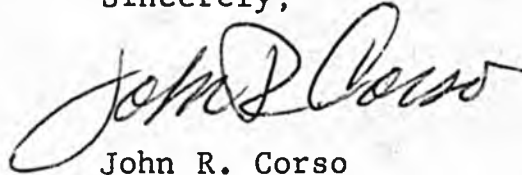
(5) The bill, at page 6, line 22 leaves liable any municipality which "promotes" a hazardous recreational activity. If the purpose of this provision is to discourage hazardous recreational activities, the present wording should be retained. If, however, the purpose is to discourage municipalities from misrepresenting the nature of hazardous recreational activities, then we suggest this provision be amended to provide:

(4) Damage or injury suffered in a case in which a municipality or an agent, officer, or employee of a municipality recklessly or with gross negligence promoted as safe the participation in a hazardous recreational activity; for purposes of this paragraph, promotional literature or a public announcement or advertisement that merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion; or

The Honorable Mike Miller  
February 15, 1985  
Page 3

Mr. Jim Hall, director of our parks and recreation department, and I will be in attendance at today's hearing if there is any way we can assist the committee.

Sincerely,

A handwritten signature in cursive script that reads "John R. Corso". The signature is written in dark ink and is positioned above the typed name and title.

John R. Corso  
Assistant City-Borough Attorney

JRC/mjm

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

February 19, 1985

Ames Luce  
Attorney at Law  
1015 W. 7th Ave.  
Anchorage, Alaska 99501

Re: HB 97 by Duncan "An Act relating to government liability for damage or injury resulting from hazardous recreational activities"

Dear Mr. Luce:

On Friday, February 15, the House Judiciary Committee held its first hearing on HB 97, "An Act relating to government liability for damage or injury resulting from hazardous recreational activities". Testifying in favor of the bill were the Assistant City Attorney of Juneau, John Corso, and the Director of the Juneau Parks and Recreation Division, Jim Hall.

Because the bill was drawn so broadly and further limited governmental liability, the committee felt that members of the plaintiffs' bar should be heard from on this matter. Representative John Sund asked that you be sent a copy of the bill and your comments solicited. If you would care to respond to this bill and the issues it raises, the committee would like to hear from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Mike Miller".

M. Mike Miller, Chairman  
House Judiciary Committee

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

February 19, 1985

Bernard Kelly  
Attorney at Law  
1015 W. 7th Ave.  
Anchorage, Alaska 99501

Re: HB 97 by Duncan "An Act relating to government liability for damage or injury resulting from hazardous recreational activities"

Dear Mr. Kelly:

On Friday, February 15, the House Judiciary Committee held its first hearing on HB 97, "An Act relating to government liability for damage or injury resulting from hazardous recreational activities". Testifying in favor of the bill were the Assistant City Attorney of Juneau, John Corso, and the Director of the Juneau Parks and Recreation Division, Jim Hall.

Because the bill was drawn so broadly and further limited governmental liability, the committee felt that members of the plaintiffs' bar should be heard from on this matter. Representative John Sund asked that you be sent a copy of the bill and your comments solicited. If you would care to respond to this bill and the issues it raises, the committee would like to hear from you.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Mike Miller".

M. Mike Miller, Chairman  
House Judiciary Committee

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

February 19, 1985

Clifford Smith  
Attorney at Law  
620 Dock St., Suite 201  
Ketchikan, Alaska 99901

Re: HB 97 by Duncan "An Act relating to government liability for damage or injury resulting from hazardous recreational activities"

Dear Mr. Smith:

On Friday, February 19, the House Judiciary Committee held its first hearing on HB 97, "An Act relating to government liability for damage or injury resulting from hazardous recreational activities". Testifying in favor of the bill were the Assistant City Attorney of Juneau, John Corso, and the Director of the Juneau Parks and Recreation Division, Jim Hall.

Because the bill was drawn so broadly and further limited governmental liability, the committee felt that members of the plaintiffs' bar should be heard from on this matter. Representative John Sund asked that you be sent a copy of the bill and your comments solicited. If you would care to respond to this bill and the issues it raises, the committee would like to hear from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Miller".

M. Mike Miller, Chairman  
House Judiciary Committee

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF PARKS AND OUTDOOR RECREATION

225A CORDOVA STREET  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-2653

MAILING ADDRESS:  
POUCH 7001  
ANCHORAGE, ALASKA 99510

February 28, 1985

Re: HB 97

MAR 4 1985

The Honorable Mike Miller, Chairman  
House Judiciary Committee  
Alaska State Legislature  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative Miller:

The Division of Parks and Outdoor Recreation has reviewed HB 97 as requested and finds the bill acceptable for the most part. However, Sec. 09.50.250 ACTIONABLE CLAIMS AGAINST THE STATE should have an (a) designation prior to the beginning of the first paragraph. We also find (b)(2) "damage or injury suffered in a case in which permission to participate in the hazardous recreational activity was granted for a specific fee;" as needing clarification. The subsection seems to contradict (a)(4). Would a person participating in a guided mountaineering activity, which is operating under a concession permit because it is a commercial activity on state park land, be able to file suit against the state if he or she is injured during the activity which has official permission to operate and for which a specific fee has been paid?

Thank you for the opportunity to comment.

Sincerely,

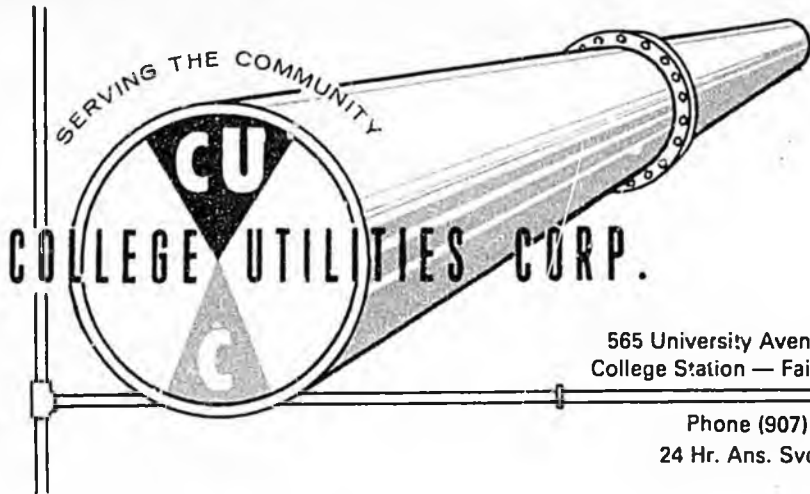
Neil C. Johannsen  
Director



By: Pete J. Panarese  
Chief of Operations Services

cc: Jim Hall, Director, Parks & Recreation Department, Juneau

PJP:clk



MAR 4 1985

565 University Avenue — P.O. Box 80370  
College Station — Fairbanks, AK 99708-0370

Phone (907) 479-3118 or  
24 Hr. Ans. Svc. (907) 479-2760

February 26, 1985

Representative M. Mike Miller  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

RE: HOUSE BILL #162 - AN ACT RELATING TO PUBLIC UTILITY  
REPRESENTATION

Sir:

The Alaska Public Utilities Commission is charged with regulating the utilities of the State of Alaska and further with protecting consumer interests. With their present makeup of five commissioners, two of which are consumer members, they have done an admirable job of regulation of utilities and protection of consumer interests in the State of Alaska. We do not believe that a separate office advocating a select group of consumers before the commission needs to be created. Other states which have these mechanisms do not have the kind of make up on their respective utility commissions as does the State of Alaska. The system works well as duly and presently constituted and I believe that it does not need to be amended or changed as is proposed in House Bill #162. We are not in favor of that bill and respectfully request that you do not pass it.

Sincerely,

GEORGE E. GORDON  
President/Manager

COLLEGE UTILITIES CORPORATION

GEG:pw



WILLING WATER  
AT YOUR SERVICE



# SENATOR FRED F. ZHAROFF

## ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 488-5259

DURING SESSION:

P.O. BOX 11, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474 • 485-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

March 28, 1985

Jurate Mazeika  
Director  
Dept. of Parks, Culture and Recreation  
City of Unalaska  
P.O. Box 89  
Unalaska, AK 99685

Dear Jurate;

Thank you for your letter of support for HB 97, by Representative Duncan, which would protect the state in legal cases involving participants in hazardous recreational activities conducted on property owned or leased by the state.

I have not thoroughly familiarized myself with this lengthy bill, but I concur with the general intent. It appears that HB 97 may be a low priority bill this session as it has received only one hearing February 15 in the House Judiciary committee, its first committee of referral. There were a number of problems raised concerning the breadth of the bill and no further action has been taken nor does it appear on the schedule through mid-April. Facing the 120 day session limit, it is very possible that HB 97 will be held until next session, however, things do change in last minute negotiations.

As a courtesy, I will forward a copy of your letter to Representative Duncan as well as the House Judiciary committee. I appreciate your interest and thank you again for contacting me. Please do so again if I can be of further assistance to you.

Sincerely,

Fred F. Zharoff  
Senator

cc: Representative Duncan  
House Judiciary Committee

# CITY OF UNALASKA

P.O. BOX 89  
UNALASKA, ALASKA 99685  
(907) 581-1251

"Capital of the Aleutians"



March 11, 1985

Senator Fred Zharoff  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Zharoff,

The legal profession has become deeply involved with the entire world of the recreation provider. Administrators across the country have seen a litigation explosion very much in keeping with what has happened to society in general. Even professional sports has seen significant rule changes as a result of successful litigation. At every level of competition, from pee-wee football to motorcycle riding to skiing, the potential is ever present for bodily injury, and perhaps death.

Technology and human innovation is constantly producing new high-risk forms of recreational techniques in such increasingly popular sports as windsurfing, skydiving, and hang gliding.

The Nation's parks and beaches might be just as safe as they ever were, but there is little consolation; these high risk activities put recreational users in greater danger of injury.

At the same time that governmental agencies are encountering mounting litigation expense, many are also experiencing budget cutbacks. If dwindling revenues are being spent in defending personal injury suits and on costly liability insurance premiums, even less money is available to provide the recreational facilities sought after by the public, and to repair and maintain existing facilities.

Thus, the litigation spiral tends to deflect park agencies away from offering services to the public and pulls them toward providing insurance protection.

The same immunity would also encourage park providers to commit more of their funds to recreational programs and facilities, both traditional and innovative, in the knowledge that marginal or specious lawsuits could be terminated in the pretrial proceedings so that fewer resources would be diverted to litigation.

Recreational immunity represents a judgement that the enthusiast who goes motorcycle racing, tree climbing, trampolining, or plays football should be prepared to assume the risks that are inherent in high risk activities, and that park providers cannot be expected to make those activities risk-free.

HB 97

## CITY OF UNALASKA

P.O. BOX 89  
UNALASKA, ALASKA 99685  
(907) 581-1251

*"Capital of the Aleutians"*



Page 2

Diving where signs have been posted or other warnings have been given prohibiting diving is also hazardous. Swimming and other water contact activities are as hazardous if conducted at a time or place where no lifeguard is present and the swimmer should have known that there was no lifeguard.

House Bill 97 is necessary because of the ever increasing number of people involved in hazardous recreational pursuits. The increased leisure time, the abundance of facilities, the income to purchase equipment, the teaching of lifetime sports in our schools, even the watching of television exposes more and more people, who in turn participate in all levels of sports; i.e., gymnastics. In addition, excessive violence and product liability have played a large part in the increase of lawsuits nationwide.

To combat the probability of lawsuits in the recreation setting resulting from hazardous recreational activities, we must:

1. Operate our facilities in a safe condition;
2. Seek passage of this bill which would place the burden of injuries of participating in hazardous recreational activities upon the participant. (Currently, Alaska is one of seven states without such protection for the recreational provider.)

As a professional in the field of recreation in the State of Alaska, I strongly support House Bill 97, and also note to you that the Alaska Recreation and Park Association equally supports this legislation; passage of this legislation is strongly urged.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jurate Mazeika". The signature is written in dark ink and is positioned above the typed name of the signatory.

Jurate Mazeika, Director  
Dept. of Parks, Culture  
and Recreation