SB

447

SEWARD VOLUNTEER AMBULANCE CORPS
P. O. BOX 1136
SEWARD, ALASKA 99664

February 4, 1988

Senate of the State of Alaska
Pouch "V"
Juneau, Ak. 99811

Attn: Senator Arliss Sturgulewski

Re: Senate Bill No. 346

We the undersigned, as members of Seward Volunteer Ambulance Corps. or as concerned citizens of our community do hereby support and request passage of Senate Bill No. 346 into law.

Dated and Signed in Seward, Alaska, this 23 day of February 1988.

1. [signature]
2. [signature]
3. [signature]
4. [signature]
5. [signature]
6. [signature]
7. [signature]
8. [signature]
9. [signature]
10. [signature]
11. [signature]
12. [signature]
13. [signature]
14. [signature]
15. [signature]
16. [signature]
17. [signature]
18. [signature]
19. [signature]
20. [signature]
21. [signature]
22.
23.
24.
25.
26.
27.
28.
29.
30.
31.
32.

SEWARD VOLUNTEER AMBULANCE CORPS
P. O. BOX 1136
SEWARD, ALASKA 99664

February 4, 1988

Senate of the State of Alaska
Pouch "V"
Juneau, Ak. 99811

Attn: Senator Arliss Sturgulewski

Re: Senate Bill No. 346

Please be it known that we the undersigned are members of the Board of Directors for Seward Volunteer Ambulance Corps. and hereby support and recommend Senate Bill No. 346 for approval and passage into law.

Dated and Signed this 23 day of February, 1988 in Seward, Alaska.

1. Michael H. Moore
Mike Moore, President

2.
Patty Krasnansky, V.P.

3. Jean E Cripps
Jean Cripps, Treasurer

4. April L. Tillotson
April Tillotson, Secretary

5. Jerry Tuthill
Jerry Tuthill, Board Member

6. Lloyd McCauley Sr.
Lloyd McCauley, Board Member

7. Rhonda Berklund
Rhonda Berklund, Board Member

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 448
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: SB 448 An Act Relating to Civil Liability of Certain Volunteers
Sponsor: Duncan
Requestor: Senate Judiciary

Agency Affected: Natural Resources
BRU: Parks Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Department will not incur costs to implement this bill.

Prepared by: Lawrence Z. Ostrovsky
Phone: 465-2400
Division: Commissioner's Office
Date: 4/26/88

Approved by Commissioner: Dennie Goode
Date: 4-27-88
Agency: Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

BY SENATOR DUNCAN

Senate Bill 447

"An Act relating to liability for damages or injury resulting from hazardous recreational activities."

Section 1.

Adds another exception to 09.50.250, ACTIONABLE CLAIMS AGAINST THE STATE. The new paragraph provides that legal action may not be taken if the claim, (4) is an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity conducted on property owned, managed, or leased by the state.

Section 2.

Adds a new section with exceptions to section 1. Suit could be filed against the state in some incidences as follows:

When damage or injury is suffered by a participant in a hazardous activity but the damage or injury was caused by another hazardous activity or condition that was not a part of the activity in which the person injured was participating.

When damage or injury occurred as a result of the state or an employee of the state knowing but failing to warn or protect the participant.

When permission to participate is granted for a specific fee.

When injury is suffered as the result of the state or an employee of the state responsible for construction or maintenance of a structure or equipment is negligent in their construction or maintenance responsibilities.

When injury is suffered as the result of the state or an employee or the state recklessly or with gross negligence promotes participation in a hazardous recreational activity.

When injury is suffered as the result of an act of gross negligence by the state or an employee of the state.

"Hazardous recreational activity" means a recreational activity that creates a substantial risk of injury to a participant.

SB 447

Section 3.

Adds reference to "hazardous recreational activity," "participant," "specific fee," and "nonprofit entity" definitions in statute to 09.65.070, Suits Against Incorporated Units of Local Government.

Section 4.

Adds new sections to apply the provisions of section 1 of this bill to:

municipalities,

nonprofit entities whose recreational activities are cosponsored by a municipality, and their

agents, officers, and employees.

JRI Associates

PARK & RECREATION CONSULTANTS
Assessment & Evaluation
Training & Development
Park Safety & Liability
Risk Management

Dec. 26, 1987

Mr. Duncan C. Fowler, Director
Parks & Recreation Department
City/Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Dear Duncan:

I have had a chance to look over the proposed legislation to limit liability for recreation and leisure service agencies in Alaska. Overall, it parallels that of other states. That has both positive and negative connotations. For example, the language of the recreational use statute (5-1488A) lists certain activities. When similar legislation was tested in other states, the plaintiff generally alleged that the specific activity in which he/she was injured was not included in the list, and therefore, the agency should still be liable. Of course, until any specific law has been challenged we just don't know whether it will accomplish that which we intended.

Specifically, with regard to the recreational use statute (5-1488A) the language includes only private property. This excludes municipal, county, and state recreation properties (which means that it is more narrowly drawn than other states'). It may include federally owned land (because of a provision in the Federal Tort Claims Act), but if the federal land managing agency has charged even a nominal entrance or user fee, they also would be excluded.

I have already mentioned my concerns about the specific activities enumerated in subsection (e). Because these have been in controversy in other states, I would broaden the activities listed to include activities like tennis, ball playing, hockey, ice skating, golf, and climbing. The language "not limited to" just opens the question of legislative intent for the courts to examine. Finally, my Webster's lists "willful" as the preferred spelling--see line 28, subsection (c)(1).

With regard to the hazardous recreational activities statute (5-1486A) I have only a couple of criticisms. Primarily, I think that some portions need to be re-drafted into plain English. Lines 9-13 on page 2 (and the corresponding section on page 6, lines 14-20) are particularly muddy. My other concern has to do with section (b)(4): what is a reckless or grossly negligent promotion?

The volunteer liability statute (5-1487A) is also narrowly drawn so that it includes only volunteers who are working for a municipality

12 Seadrift, Irvine, CA 92714 (714) 559-6208

Re: Draft of Reflect Federal Bills-

or are on municipal property. I would like to see volunteers who work for county, state, federal, and non-profit charitable organizations included as well. Also, it is important to note that it excludes gross negligence and we have seen that plaintiffs in other states routinely allege gross negligence. It may be that the problem created for the park board of whether or not to defend a volunteer could be solved by having an independent hearing prior to the trial to determine whether the claim of gross negligence is warranted.

Duncan, I hope that these few comments are helpful. I know that you had planned to meet with the sponsors within a short time. If I'm too late in responding, rest assured that there is nothing here that Alaska parks and recreation professionals can't live with.

We have driven and flown from Southern California to Wyoming to Illinois and back again. Managed to avoid most of the major problems and we're back in the Wyoming cabin 'till the end of January. Now if we could only get some snow!

Best wishes in your new job.

Sincerely,

Janna

Janna Rankin

NS fault Recreational activities
Bill —

Not asking for license to be negligent.

Looking for ways to preserve public assets.

With the unavailability of public entity liability insurance, public agencies have been forced to assume all of the financial risks involved with the business of providing government services, including recreational opportunities.

Some communities and government agencies in similar circumstances have shut down high risk operations like park and recreation programs. Juneau has chosen to bite the bullet by keeping the programs and working harder to prevent mishaps on our facilities.

When possible we try to pass liability on to user groups but they can't always get insurance or it is so expensive they cannot afford it; therefore our only choice is to assume the risk or not allow the activity.

The problem we face is a tort system that says if someone is injured then some one must pay the injured party. When an injury occurs on a CBJ facility/park, the City is the natural deep pocket and we are generally (always) named in these kinds of suits.

This creates a situation where we are forced to settle claims based on economics rather than fault.

Williams

Chuck Williams
Risk Mgmt Officer
Juneau City & Borough
155 South Seward Street
Juneau, AK 99801

NRPA Law Review

No Ordinary Negligence Liability Under Recreational Immunity Statutes

by James C. Kozlowski, J.D.

This month the "NRPA Law Review" enters its fifth year of publication. As reflected in many of the articles, recreational injury liability continues to be the overwhelming law-related concern of the recreation and parks field. During the recent Congress for Recreation and Parks in Dallas, I attended a portion of a session on recreational injury liability. The question and answer period which followed the presentations by two attorneys was characterized by the same sort of anxiety and hand wringing I have encountered following my lectures on this topic.

In my opinion, the recreation field moans and groans about "liability," but does little in the way of a concerted effort to alleviate the problem in a systematic fashion. In the face of the perceived crisis eyes turn hopefully, but mistakenly, toward Washington for the one piece of "silver bullet" legislation which will slay the liability monster once and for all. In Dallas, I voiced this concern to Roy Feuchter, president of the National Society for Park Resources. He suggested that I devote one of the law review columns to a discussion of the issue and any possible solutions. I do not think that there is any one solution to the problem. The following paragraphs, however, attempt to respond to this request by presenting existing legislation which may have an impact upon the situation.

The bad news is that there is no one grandiose federal solution that will resolve this situation in one fell swoop. The good news is that the wheel has already been invented in several state models to make the perceived crisis more manageable, i.e. recreational immunity statutes. Specifically, there is already legislation quietly at work in several jurisdictions which provides public agencies with limited immunity for injuries occurring on recreational

facilities. Most notably, Virginia and Kansas have statutes which require a plaintiff to allege gross negligence or willful/wanton misconduct, rather than mere negligence, to sustain a claim for an injury sustained on public park and recreational facilities.

Virginia Model

Section 15.1-291 of the Virginia Code entitled "Liability of counties, cities, and towns in the operation of recreational facilities" reads as follows:

> No city or town which shall operate any bathing beach, swimming pool, park, playground or other recreational facility shall be liable in any civil action or proceeding for damages resulting from any injury to the person or property of any person caused by any act or omission constituting simple or ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such recreational facility. Every such city or town shall, however, be liable in damages for the gross or wanton negligence of any of its officers or agents in the maintenance or operation of any such recreational facility.
>
> The immunity created by this section is hereby conferred upon counties in addition to, and not limiting on, other immunity existing at common law or by statute.

In the case of *Town of Big Stone Gap v. Johnson*, 184 Va. 375, 35 S.E.2d 71 (1945), the 8-year-old plaintiff was injured while playing on an unattended road grader in a public park. This piece of equipment was being used to level a running track in the park. Plaintiff alleged gross and wanton negligence as required by the Virginia recreational immunity statute. The town argued that their conduct "if negligent at all, does not amount to 'gross or wanton negligence' within the meaning and intent of the statute." A jury returned a verdict against the town; the town appealed to the state supreme court.

The issue before the state supreme court was, therefore, "whether the act of the town's employee in leaving this machine in the public park near the children's playground measures up to the standard of 'gross or wanton negligence' required by the statute." The court defined the standard of gross or wanton negligence as follows:

> Gross negligence is substantially and appreciably higher in magnitude than ordinary negligence. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another. Wanton negligence is of even a higher degree than gross negligence . . . manifesting arrogant recklessness of justice, of the rights or feelings of others, merciless, inhumane.

Applying this standard to the facts of the case, the state supreme court

Continued

found that the conduct of the town through its employee did not constitute "gross or wanton" within the meaning of the statute.

> [T]here is no proof that the town officials or employee knew or ought to have known that the road scraper was attractive to children. While it had been left in the park over a long period, only on two previous occasions, so far as the record shows, had children been on it. Mrs. Barnett, who lived near the park, testified that about a week before the accident she saw some children playing on the machine. Ralph Smith, who was with Johnson at the time the plaintiff was hurt, testified that he had previously played on the scraper. But there is no showing that the town's employees knew of either of these incidents . . . [T]here is no proof that the machine was one which was dangerous to children . . . Not only was the machinery of the road scraper idle, but the blade was left on the ground in a safe position, and it was only by reason of the combined efforts of these two boys [Johnson and Smith] that it was hoisted in such a way as to become dangerous. Whether the act of the town employee in leaving this machine near the children's playground, under the circumstances stated, amounted to ordinary or simple negligence we need not decide. It is certain, we think, that it did not constitute "gross or wanton" negligence within the meaning of the statute.

The state supreme court, therefore, reversed the judgment of the lower court and entered judgment for the town.

Kansas Model

Similarly, section 75-6104 (n) of the Kansas Tort Claims Act provides:

> A governmental entity or employee acting within the scope of the employee's employment shall not be liable for damages resulting from: . . . (n) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of *gross and wanton negligence* proximately causing such injury.

In the case of *Willard v. City of Kansas City*, Kan., 681 P.2d 1067 (1984), plaintiff Willard was injured when he collided with a chain link fence around a baseball diamond in a city park in Kansas City." (This case was reported in the *Recreation and Parks Law Reporter* RPLR Report No. 84-35, Vol. 1, No. 4 at page 134.) Willard alleged that "the City was negligent in installing and maintaining a type of fencing with raw sharp cutting edges running along the top in an area where such accidents were likely to occur." The trial court found the City immune from liability under § 75-6104 (n) of the Kansas Tort Claims Act (KTCA), K.S.A.1983 Supp. 75-1601 et seq. Willard appealed to the Supreme Court of Kansas.

The state supreme court applied the following test for gross and wanton negligence:

> Proof of a willingness to injure is not necessary in establishing gross and wanton negligence. This is true because a wanton act is something more than ordinary

negligence but is something less than willful injury. To constitute wantonness the act must indicate a realization of the imminence of danger and a reckless disregard or a complete indifference or an unconcern for the probable consequences of the wrongful act.

According to the court, Kansas law defined wanton conduct as "an act performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the act." Since plaintiff Willard had provided no evidence of gross negligence or wanton misconduct on the part of the city in maintaining the ballfield, the state supreme court affirmed the summary judgment in favor of the city.

Effect on Plaintiff's Burden of Proof

The plaintiff in a civil (as opposed to criminal) suit has the burden of going forward with his claim. To sustain this burden, the plaintiff must allege the necessary facts to establish his claim. A recreational user injured on the premises would, most likely, allege negligence liability on the part of the public agency landowner.

To meet the burden of going forward with a negligence claim, plaintiff must allege facts demonstrating the following four elements: 1) a standard of care to which a duty is owed; 2) a violation or breach of the applicable standard of care; 3) causation, i.e. a foreseeable connection between the breach and the resulting injury; and 4) damages, actual (as opposed to purely speculative) injury to person or property. If plaintiff's complaint fails to allege sufficient facts to support the negligence claim, plaintiff has not met the burden of going forward. Under such circumstances, defendant may move the court to dismiss the suit for plaintiff's failure to state a claim. However, in reviewing the allegations in plaintiff's complaint, the court will resolve all doubt in favor of allowing the plaintiff an opportunity to go forward with his claim.

Having sustained the burden of going forward, the plaintiff has the burden of proof in a civil suit. In a civil suit, the plaintiff must establish or prove his claim by a preponderance of the evidence. A preponderance of the evidence means more likely than not, better than 50/50, that the credible facts support the claim.

A preponderance of the evidence is much lighter burden of proof than that applied in criminal cases, i.e. beyond a reasonable doubt. In criminal cases, the state must prove beyond a reasonable doubt that the accused committed the alleged crime. Any doubt whatsoever would, therefore, dictate a finding of innocence in a criminal case.

By changing the applicable standard of care from ordinary negligence to gross negligence or willful/wanton misconduct, a recreational immunity statute makes it much more difficult for the plaintiff to sustain his burden of going forward with his claim. As a result, it is more likely that recreational injury claims will be dismissed prior to trial. Furthermore, those claims that do go to trial will be less likely to sustain the burden of proof when the applicable standard of care is gross

Continued on next page

negligence or willful/wanton misconduct, rather than mere negligence.

As the term suggests, negligence is neglect or carelessness. It is a slight deviation from what the reasonable person would, or would not do under the circumstances. On the other hand, gross negligence or willful/wanton misconduct is extreme conduct which demonstrates a reckless disregard for the physical well-being of others.

There is a fine line between careful and careless when the applicable standard is ordinary negligence and the burden of proof is preponderance of the evidence (more likely than not, better than 50/50). This is particularly true when all doubt is resolved in allowing the plaintiff an opportunity to prove his claim. It is, therefore, very difficult to have a case dismissed prior to trial or prevail at trial when the recovery can be predicated upon ordinary negligence. However, when the burden of proof under a recreational immunity statute is gross negligence or willful/wanton misconduct, the likelihood of some wrongdoing on the part of the public entity has to be clear to sustain a claim. A momentary lapse or oversight by the public entity may constitute ordinary negligence, but not gross negligence or willful/wanton misconduct.

Faced with the burden of proving gross negligence or willful/wanton misconduct under the applicable recreational immunity statute, many plaintiffs' attorneys are less likely to even take the case, let alone proceed to trial. This is particularly true where the injury is relatively minor and the alleged negligence of the public park and recreation agency is less than outrageous. Therefore, it is easy to see that the recreational immunity statute, where available in a given jurisdiction, can be a powerful force limiting the number and success of recreational injury lawsuits against public agencies.

Statute Has the Effect of Waiver

A recreational immunity statute has the same legal effect as a valid waiver or signed release. In a valid waiver, the participant waives any claim he or she may have for mere negligence on the part of the provider of the recreational opportunity. A valid waiver, however, does not release any claim the participant may have based upon allegations of reckless misconduct or gross negligence by the provider of the recreational activity or facility. In similar fashion, the recreational immunity statute changes the applicable standard of care. It precludes recovery for ordinary negligence and requires allegations of gross negligence or other more extreme misconduct to sustain a claim.

In most instances, signed releases or waiver forms for public recreational activities are deemed to be against public policy and, therefore, void. On the other hand, a recreational immunity statute is a valid expression of public policy by the state legislature. Further, this statutory waiver is more comprehensive since it covers all recreational activities and/or participants within the scope of the recreational immunity statute, rather than a single individual who signs a release.

More Recreational Immunity

The Virginia and Kansas statutes described above are not the only laws providing recreational immunity for public entities. For example, an Illinois statute requires claims for injuries on playgrounds to be based upon willful/wanton misconduct. A South Dakota statute immunizes municipalities from "tort liability arising out of the construction and maintenance of public parks, recreation areas, and playgrounds." A California statute provides limited immunity to public entities for injuries occurring in hazardous recreational activities.

In addition, several jurisdictions have found state recreational use statutes applicable to states and political subdivisions. These statutes were originally enacted to encourage private landowners to open their land for public recreational use. These statutes provide that the landowner owes no duty of care to the recreational user who enters the premises free of charge. This immunity is lost, however, if the landowner is guilty of willful/wanton misconduct. On the other hand, a number of jurisdictions have denied that these statutes are applicable to public entities.

Under the Federal Tort Claims Act, the federal government is liable for negligence like a private individual under the law of the juris-

Continued on page 79

NRPA NEWS

Continued from page 7

tion consultant to discuss the final report. For the first time, actual costs were defined. The figure quoted by the consultant was one-third the savings originally envisioned by the committee. The consultant also defined transition costs, which had not previously been considered. The committee reached a consensus on the minimum figure they could present to the Board of Trustees and recommend approval.

In March 1985, the negotiating committee met with Mayor Hudnut at his Indianapolis office to review the consultant's findings and explain NRPA's specific needs. Hudnut, as expected, asked for time to study the proposal and reply. The city's final proposal was received September 5, 1985.

In his November 4, 1985 letter to Mayor Hudnut, Davis said, "Without exception, our board was impressed with your generous offer and felt honored that your leadership is disposed to making NRPA an integral part of your growing and exciting city. Without question, your cooperative arrangements with several national associations and the renewed vitality of your own recreation and park system are inspiring. This noticeable similarity between Indianapolis' way of life and NRPA's primary objectives made the decision to decline even more difficult."

Such organizations as the National Fitness Foundation, the American College of Sports Medicine, the Amateur Athletic Union (AAU), the United States Gymnastics Federation, and the United States Rowing Association, among others, are headquartered in Indianapolis.

FROM THE FIELD

Continued from page 14

town's participants an opportunity to display their skills and dedication. It also proved to be a highly effective way to expose large numbers of people to the recreation department's offerings while meeting public needs for fun and eye-opening special events. The success of this event generated enthusiasm among the young children, teens, and adults as well as attracted public attention, media coverage, and boosted staff morale.

NRPA LAW REVIEW

Continued from page 24

diction where the injury occurred. Consequently, where a recreational use statute provides limited immunity to private landowners, federal courts have uniformly held that this defense to ordinary negligence liability is also available to the federal government.

Proposed legislation based upon the Kansas or Virginia statutes may appear rather simple and potentially effective. However, this simplistic view ignores the individual peculiarities which govern public liability in every jurisdiction. Further, any attempt to lower the applicable standard of care from mere negligence to willful/wanton misconduct can expect fierce and highly organized opposition from the trial lawyers who represent plaintiffs in recreational injury claims. In many instances, public park and recreation interests will have to enlist the aid of other units of government and the insurance industry if any proposed recreational immunity legislation is to have the slightest chance of being enacted. As a result, the ultimate solution to the liability problem may be found in effective legislative advocacy at the state level.

Mr. Kozlowski is an attorney in Springfield, VA. He is the author of the Recreation and Parks Law Reporter *and a member of the National Society for Park Resources Board of Directors.*

CONGRESS SPEAKERS

Continued from page 30

thinks that things will get better during the next 30 years but there will be major bumps along the way.

Cornish enumerated six potential catastrophies that could befall the human race in the next 20 years: World War III; a global depression; a race war; nuclear terrorism; a global plague (such as AIDS) like the Black Death; and civil war in the United States.

In addition, he listed six possible "benestrophies" (a newly coined word meaning the opposite of catastrophie): an anti-aging drug that not only slows but even reverses the aging process; controlled fusion will be achieved providing a virtually unlimited amount of clean energy at extremely low cost; a happiness pill will be perfected; a moon colony will become self-sufficient; a world parliament will effectively regulate disputes among nations; and brain drugs will boost human intelligence an average of 50 percent.

INCLUDING DISABLED

Continued from page 52

must rid themselves of their self-fulfilling prophecies, arrogance, petty ego defenses, and rationalizations for not involving individuals with handicapping conditions at policy-making levels and in leadership positions. Qualified individuals with handicapping conditions know best what is needed and how it can be accomplished most efficiently.

Important in this continuum of leadership roles and responsibilities for individuals with handicapping conditions is recruiting, training, and placement of such individuals in direct leadership positions—as teachers, coaches, and program leaders, as well as in administrative and supervisory positions. Those able-bodied persons who provide services must lead the charge for greater involvement of individuals with handicapping conditions in the full range of leadership positions. No greater contribution can be made than such advocacy of self-advocacy.

NRPA LAW REVIEW

A "Cut and Paste" of Model Rec Use Law to Include Public

By James C. Kozlowski, J.D., Ph.D.

At its meeting in Anaheim, California on October 21, 1986, the Board of Trustees of the National Recreation and Park Association endorsed the following policy: "It is the policy of the Trustees of the National Recreation and Park Association to encourage and help promote the enactment of state recreational use statutes." This policy was one of several statements adopted regarding the perceived "liability crisis." Under a recreational use statute, the landowner owes no duty of care to a recreational user on the premises free of charge. Although there is no liability for ordinary negligence, liability will be imposed for willful or wanton misconduct. Willful or wanton misconduct, unlike ordinary negligence, goes beyond mere carelessness; it is more outrageous behavior which demonstrates an utter disregard for the physical well being of others.

Despite the NRPA policy statement, enactment of recreational use statutes is not the real issue. Forty-nine jurisdictions have already enacted recreational use statutes. My research on this topic identified the following state code citations for existing recreational use statutes. To the best of my knowledge, each of these statutes is still good law.

Alabama: Ala. Code § 15-1.

Arizona: Ariz. Rev. Stat. Ann. § 3351.

Arkansas: Ark. Stat. Ann. §§ 50-1101-1107 (1971).

California: Cal. Civil Code § 846 (West Supp. 1981).

Colorado: Col. Rev. Stat. §§ 33-41-101-105 (1974).

Connecticut: Conn. Gen. Stat. Ann. §§ 52-557f-557i (Supp 1981).

Delaware: Del. Code Ann. tit. 7, §§ 5901-5907 (1975).

Florida: Fla. Stat. Ann. § 375.251 (West 1974).

Georgia: Ga. Code Ann. §§105-403-409 (1968).

Hawaii: Haw. Rev. Stat. §§ 520-1 to -8.

Continued

Idaho: Idaho Code § 36-1604 (Supp. 1981).

Illinois: Ill. Ann. Stat. ch. 70 §§ 31-37 (Smith-Hurd Supp. 1981).

Indiana: Ind. Code Ann. § 14-2-6-3.

Iowa: Iowa Code Ann. §§ 111C.1-111C.7 (West Supp. 1981).

Kansas: Kan. Stat. Ann. §§ 58-3201-3207 (1976).

Kentucky: Ky. Rev. Stat. Ann. § 150.645 (Baldwin Supp. 1980).

Louisiana: La. Rev. Stat. Ann. § 9:2795 (West Supp. 1981).

Maine: Me. Rev. Stat. Ann. tit. 12, §§ 3001-3005 (Supp. 1981).

Maryland: Md. Nat. Res. Code Ann. §§ 5-1102-1108 (1974).

Massachusetts: Mass. Gen. Laws Ann. ch. 21 § 17C (West 1973).

Michigan: Mich. Comp. Laws Ann § 300.201 (1967).

Minnesota: Minn. Stat. Ann. §§87.01-87-026 (1977).

Mississippi: Miss. Code Ann. § 89-2-1- et seq. (1985).

Missouri: Mo. Stat. Ann. §§ 537.345-537.347.

Montana: Mont. Code Ann. §§ 70-16-301-302.

Nebraska: Neb. Rev. Stat. §§ 37-1001-1008 (1978).

Nevada: Nev. Rev. Stat. § 41.510 (1979).

New Hampshire: N.H. Rev. Stat. Ann. § 212:34 (1978).

New Jersey: N.J. Stat. Ann. §§ 2A:42A-2-42A-5 (West Supp. 1981).

New Mexico: N.M. Stat. Ann. § 17-4-7 (1978).

New York: N.Y. Gen. Oblig. Law § 9-103 (McKinney Supp. 1981).

North Carolina: N.C. Gen. Stat. §§ 113-120.5-120.6 (1975).

North Dakota: N.D. Cent. Code §§53-08-01-06 (1974).

Ohio: Ohio Rev. Code Ann. 1533.181 (Page 1978).

Oklahoma: Okla. Stat. Ann. 76, §§ 10-15 (West 1976).

Oregon: Ore. Rev. Stat. §§105.655-105.680 (1979).

Pennsylvania: Pa. Stat. Ann. tit. 68, §§ 477-1-477-8 (Purdon Supp. 1981).

Rhode Island: R.I. Gen. Laws §, 32-6-1- to -7.

South Carolina: S.C. Code §§27-3-10-70 (1977).

South Dakota: S.D. Comp. Laws Ann. § 20-9-5 (Supp. 1979).

Tennessee: Tenn. Code Ann. §§ 51-801-805 (1977).

Texas: Tex. Rev. Civ. Stat. Ann. art. 16 (Vernon 1969).

Utah: Utah Code Ann. §§ 5714-1 to -7.

Vermont: Vt. Stat. Ann. tit. 10 § 5212 (1973).

Virginia: Va. Code § 29-130.2 (Supp. 1981).

Washington: Wash. Rev. Code Ann. §§ 4.24.200-210 (Supp. 1981)

West Virginia: W.Va. Code §§ 19-25-25-6 (1977).

Wisconsin: Wis. Stat. Ann. § 2968 (West 1973).

Wyoming: Wyo. Stat. § 34-19-101-106 (1977).

With minor variations, many of the above cited forty-nine laws

adhere to the format of a model statute described below. This model statute, entitled "Public Recreation on Private Lands: Limitations on Liability," appeared in the 1965 edition of *Suggested State Legislation* from the Council State Governments. To date, state courts in only nineteen jurisdictions have considered directly or indirectly the applicability of these statutes to public entities. Of this number, twelve jurisdictions have extended limited recreational use immunity to public entities. Under the terms of the Federal Tort Claims Act, these statutes are uniformly held applicable to the federal government. (For a further discussion of the applicability of recreational use statutes to public entities, see the "NRPA Law Review" for October and November 1986, and February 1987.)

Perhaps the real policy issue before the National Recreation and Park Association is, therefore, to encourage and help promote the modification of existing recreational use statutes to broaden existing immunity to include public park and recreation agencies. With this objective in mind, I have superimposed language from existing recreational use statutes in various jurisdictions. The purpose of this rather crude "cut and paste" endeavor is to illustrate the manner in which minor modifications to the 1965 model statute can broaden the immunity of this legislation to expressly include most public entities. Further, these suggested modifications would extend such immunity to most lands and activities involving public park and recreation agencies. (Modifications to the 1965 model statute appear in italicized capital letters. The state statutes from which this language is derived are also noted in parentheses.)

1965 Model Act as Modified

[Title should conform to state requirements. The following is a suggestion: "An act to encourage landowners to make land and water areas available to the public by limiting liability in connection therewith."]

(Be it enacted, etc.)

Section 1. The purpose of this act is to encourage owners of land to make the land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

Section 2. As used in this act:

(a) "Land" means *PRIVATE OR PUBLIC, (Idaho, Washington)* land, *IMPROVED OR UNIMPROVED (Maine), WHETHER URBAN OR RURAL, (Washington),* [including] roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the

Continued on next page

premises, *including ANY PRIVATE CITIZEN, A MUNICIPALITY, THE STATE OR THE FEDERAL GOVERNMENT, AND ANY EMPLOYEE OR AGENT OF THE FOREGOING, (Wisconsin).*

, OR ANY PUBLIC ENTITY AS DEFINED IN THE (applicable provision of the state code) WHICH HAS AN INTEREST IN LAND. (Colorado).

"PERSON" INCLUDES ANY INDIVIDUAL REGARDLESS OF AGE, MATURITY OR EXPERIENCE, OR ANY CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, OR ASSOCIATION, OR ANY OTHER LEGAL ENTITY. (Colorado).

(c) "Recreational Purpose" includes, but is not limited to, any *SPORTS OR RECREATIONAL ACTIVITY OF WHATEVER UNDERTAKEN BY A PERSON WHILE USING THE LAND, INCLUDING PONDS, LAKES, RESERVOIRS, STREAMS, PATHS, AND TRAILS APPURTENANT THERETO. OF ANOTHER AND INCLUDES, BUT IS NOT LIMITED TO, ANY HOBBY, DIVERSION, OR OTHER SPORTS OR OTHER RECREATIONAL ACTIVITY SUCH (Colorado)* the following, or any combination thereof: hunting, fishing, CAMPING (Colorado), swimming, boating, camping, picnicking, hiking, *HORSEBACK RIDING, SNOWSHOEING, CROSS COUNTRY SKIING, BICYCLING, RIDING OR DRIVING MOTORIZED RECREATIONAL VEHICLES, SWIMMING, ROCK CLIMBING... OR ENGAGING IN ANY OTHER FORM OF SPORTS OR OTHER RECREATIONAL ACTIVITY (Colorado), INCLUDING PRACTICE AND INSTRUCTION IN ANY THEREOF (New Jersey),* pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites, *OR OTHER SIMILAR ACTIVITIES UNDERTAKEN FOR RECREATION, EXERCISE, EDUCATION, RELAXATION, OR PLEASURE ON LAND OWNED BY ANOTHER (Missouri). IT SHALL INCLUDE ENTRY, USE OF AND PASSAGE OVER PREMISES IN ORDER OT PURSUE THESE ACTIVITIES. (Maine).*

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. *However, charge or consideration DOES NOT INCLUDE ... THOSE ENTRANCE FEES PAID TO THE STATE. ITS AGENCIES OR DEPARTMENTS, MUNICIPALITIES, OR THE U.S. GOVERNMENT. (Wisconsin)*

Section 3. Except as specifically recognized by or provided in Section 6 of this act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

Section 4. Except as specifically

recognized by or provided in Section 6 of this act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby;

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of such persons.

Section 5. Unless otherwise agreed in writing, the provisions of Section 3 and 4 of this act shall be deemed applicable to the duties and liability if an owner leases to the state or any subdivision thereof for recreational purposes.

Section 6. Nothing in this act limits in any way any liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

Section 7. Nothing in this act shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

Section 8. [Insert effective date.]

Remove Statute Ambiguity

It has been said that no one should witness how laws or hot dogs are made. Because if you do, you will not be able to stomach either. One of the ways laws are made is to adopt language from similar statutes in other jurisdictions. This is the approach taken in the "cut and paste" public immunity statute described above. In determining whether a particular recreational use statute applies to public entities in a given jurisdiction, state courts will look primarily to the expressed language of the statute. Consequently, the modifications described above are intended to remove any uncertainty or ambiguity that the state legislature intended to confer broad public immunity under an existing recreational use statute.

Expand "Land" definition: Expanding the definition of land to

Continued on next page

expressly include public land effectively rebuts the original presumption of the model statute that such statutory immunity was intended for private landowners, not governmental units. In addition, the inclusion of references to urban and improved land would reverse the interpretation by some state courts (e.g. New York, New Jersey, Louisiana) that this statutory immunity is limited to rural or unimproved land. Further, the statutory definitions of "owner" and "person" have been modified with language from recreational use laws in Wisconsin and Colorado to expressly include governmental units.

Expand Scope of "Recreational Purpose": Some jurisdictions, most notably Louisiana, have limited the scope of recreational use immunity to activities traditionally conducted in the "true outdoors," i.e. primarily rural in nature. Expanding the enumerated list of recreational activities to include sports, hobbies, diversions, and any other recreational activity with language from the Colorado effectively rejects this narrow construction of the statute.

Entrance Fees not a "Charge": Ordinarily, recreational use immunity is lost if a fee is charged for the use of the premises. Including language from the Wisconsin statute expressly excludes entrance fees from this statutory definition of "charge" as an exception to recreational use immunity.

Dr. Kozlowski is an attorney/consultant in recreational injury liability in Springfield, Virginia. He is the author of the Recreation and Parks Law Reporter.

RISK MANAGEMENT IS THE BEST INSURANCE

As park and recreation administrators are turning to new methods of insuring the nation's parks, they're finding that it also pays to learn effective risk management techniques.

Park and recreation departments around the country continue to face problems obtaining liability insurance: higher rates for reduced coverage, difficulty in obtaining insurance in the first place, and an ever-litigious society.

It seems, however, that the worst part of what some have termed a "crisis" has passed, as administrators are turning to self-insurance, insurance pools and an increased emphasis on risk management to do battle with rising insurance costs.

While opinions vary on how serious the "crisis" is, some observers actually feel the events of the past few years may have helped administrators realize that they can't continue to rely on insurance to solve their problems, but instead must learn how to prevent accidents—and lawsuits—from occurring in the first place.

"The bottom line on all of this is what does it take to cut down on the number of accidents and injuries?" says Ronald Kaiser, an attorney and associate professor of sports law at Texas A&M University in College Station, Texas. "If that number is rising and the park director doesn't worry about it because the department has insurance, then to me, that's bad management."

Kaiser says park and recreation administrators shouldn't be practicing risk management just to stay out of court, but to protect the public and cut down on the number of accidents and injuries.

> "If you're big enough to self-insure and you're a good administrator, it's the cheapest way to go."

The law doesn't require that park and recreation departments guarantee participant safety; all it requires is that they assume the degree of prudence of a reasonable man, says Kaiser.

"If they know that somebody else is going to pay the tab, there's no incentive for (the department) to manage risk," says Kaiser. "But, if you have to pay the tab, that means you'd better practice risk management."

James Kozlowski, an attorney and recreation consultant in Springfield, Va., agrees.

"Maybe what good will come out of this so-called crisis is that people are starting to have to pay attention to the attitude of 'We'll just turn it over to our insurance carrier.' That's a cop-out."

Now, Kozlowski says, park and recreation administrators will have to look to the past to see what they've been receiving for their insurance dollar.

"They're learning to become better risk managers," says Kozlowski.

WHO'S TO BLAME? Whom to place the blame on—insurance companies, the legal system or suit-happy citizens—remains highly controversial. There are conflicting statistics as to what caused the crisis on the part of both trial lawyers and the insurance industry.

Both Kozlowski and Kaiser place some of the blame on bad business decisions made by insurance companies the past few years.

"I think the insurance industry will readily admit that they wrote insurance policies at ridiculously low premiums that didn't cover their risk," says Kaiser.

A few years ago, when the country was experiencing a period of inflation, "insurance companies were able to take the money they received for insurance premiums and invest it in real estate, for example. And public agencies didn't mind, because it was a great way to transfer risk to a third party at a low price," says Kaiser.

Now that inflation is under control, Kaiser says, insurance companies lost money—from the standpoint that insurance premiums didn't cover the risk—and higher premiums resulted.

During the past year, however, Kaiser feels the insurance industry has tightened up and profits have increased.

The crisis was really at its high point in 1986, and most insurance companies are now underwriting policies again, says Kaiser.

The insurance industry and others say much of the fault lies with an unpredictable tort system that allows attorneys to bring frivolous lawsuits and win million-dollar judgments.

"There's a lot of finger pointing between lawyers and the insurance industry over who is really at fault," says Kaiser. "It's a pretty complicated situation."

COVERAGE OPTIONS. Placing the blame on any one party now is rather a moot point. More important are the options park and recreation departments face in obtaining liability coverage.

The options vary from departments that close down facilities for fear of injuries and litigation at one extreme, to departments that have self-insured or "gone bare" at the other. These departments don't carry any insurance and continue to operate programs, but practice increased risk management to try to minimize accidents.

Dallas is one city that chose to go bare. Each year, the city puts money into a contingency fund to cover its pattern of cases. The city also has several attorneys on staff who, rather than settle out-of-court, fight every case that's brought against the city. So far, the venture into self-insuring has been successful.

"I've talked to individuals who self-insure," says Kozlowski, "and they've said, 'We're kind of nervous. We haven't had that big claim; we're waiting for the other shoe to drop.'

"But, they're putting the money away that they would ordinarily pay for insurance premiums and they're really earning a lot of money on that amount," says Kozlowski.

Another approach, says Kaiser, is to buy insurance with a very high deductible and then self-insure up to the amount of the deductible.

Yet another option, currently practiced or being considered in a number of states, is a risk management pool.

The city of Woodridge, Ill., located 32 miles west of downtown Chicago, has joined a risk management pool. Faced with an increase in liability insurance premiums from about $4,500 to more than $56,000 in one year, and a "take it or leave it" attitude from its insurance carrier, the city turned to the pool to obtain the coverage it needed.

"Insurance wasn't denied to us, it was just priced too high," says Keith Franklin, Woodridge's director of parks and recreation. The pool "cut

(Continued on next page)

RISK MANAGEMENT

(Continued from page 37)

my insurance from a total of $76,000 down to about $26,000."

The pool the Woodridge Park District joined was the Park District Risk Management Agency, located in nearby Wheaton. Betsy Kutska, executive director of the agency, says many Chicago-area park and recreation departments have experienced similar problems obtaining or paying for insurance and, as a result, have joined the pool.

"In 1984, when we organized, there wasn't necessarily an 'insurance crisis,' but we anticipated the benefits of being able to pool together our resources and share the risk for our park district programs," says Kutska.

"We feel that we've been able to control costs by being in a market with a large group. A lot of agencies that weren't pool members were getting exclusions for different types of facilities, such as water slides or sledding hills. So we've been able to get that out of the way.

"I think that one of the biggest benefits we've had from pooling together is that bid by bid, we're getting to where we can be more independent from the insurance companies and not have to suffer through up-and-down cycles of boom and bust," says Kutska. "It would be great if we could eventually not purchase any insurance, but just self-fund. The less we have to buy, the better."

> "We anticipated the benefits of being able to pool together our resources and share the risk."

Further south in Illinois, Mike Wilson, controller for the Champaign Park District, says his district also has experienced higher premiums, but has not yet considered entering a pooling arrangement.

"Last year, we paid 75 percent more for roughly one-half the coverage," says Wilson. This year, however, he says the premiums will decrease slightly.

"We had a good year last year and we've increased our safety programs, so the insurance has come down a bit, but not much. I don't think we'll have trouble getting insurance, although it will cost us more," says Wilson.

For some, joining a pool raises some doubts.

Even though Youngstown, Ohio, park and recreation officials were forced to close down several facilities for a short time last year when their commercial insurance was canceled, Jack Franken, risk manager for the department, says they chose to continue commercially insuring through another carrier. The policy, however, cost Youngstown four times as much as its previous policy.

Franken says his department didn't consider the increase out of line though, and prefers to remain with a commercial carrier rather than enter a pooling arrangement.

(Continued on page 40)

RISK MANAGEMENT

(Continued from page 38)

"Ohio is talking about insurance pools, but we're not overly enthusiastic about them," says Franken. "If we can't get commercial insurance, then we'll have to give consideration to self-funding and probably close down parks and other recreation facilities."

In California, another option exists. There, 51 park and recreation departments are covered by their cities' participation in the Southern California Joint Powers Insurance Authority, a completely self-insured public entity.

"We manage the self-insurance programs of the cities that belong to this organization," says Program Manager James Moore. "We perform many of the functions of an insuring company, but we do it under contract with (the cities). In other words, we take that problem off their hands.

"We decided a year ago to go completely self-insured," says Moore. "If you're big enough to do it and you're a good administrator, self-insurance is the cheapest way to go."

MANAGING RISK. A common thread among all of these new methods of insuring is an increased need for park and recreation departments to become better risk managers.

"Risk management is part of the new vernacular of park and recreation departments," says Kaiser, who agrees with Kozlowski that the insurance crisis was the best thing that has happened to park departments, because it forced them to look at other alternatives to dealing with accident prevention.

> The insurance crisis was the best thing that's happened to park departments, because it forced them to look at other alternatives to dealing with accident prevention.

As a result, cities are now looking at the design of facilities and putting greater emphasis on safety. This is particularly true of playgrounds, where many recent accidents have occurred.

Kaiser says municipalities are beginning to look at the utility, or social benefit, of having a particular piece of playground equipment—in other words, examining what benefit a child receives from having that piece of equipment vs. what the chance is that the child will fall and be injured.

"If they find that the social benefit exceeds the risk, they're going to continue with it," says Kaiser, "but, where the risk of harm is so great that it outweighs the social utility, they're doing away with it."

Kaiser feels that once administrators understand the parameters of legal risk and aren't intimidated by lawyers, they'll discover that management of accidents and legal liability is very much within their realm.

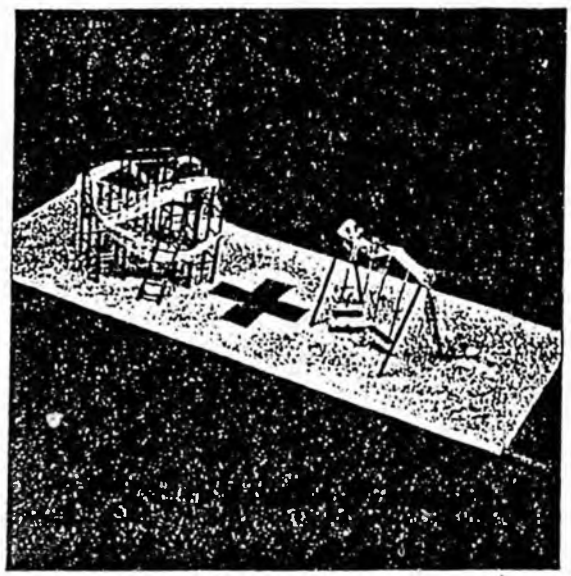
"If they're good managers, they'll learn the techniques of managing risk," says Kaiser. "Thank the insurance industry, because it's making people better managers." ■

Chuck Williams

Accidents, Liability Confront Park Staffs

Officials across the country are being swamped by a multitude of court judgments, many dealing with the operation of parks and recreation facilities.

By Frances Wallach



Parks and Recreation

Thirty years ago, when a youngster was injured at play, the injury was considered part of the growing-up process. Minor injuries s..ch as scrapes, cuts and bruises were treated at home with peroxide, iodine or mercurochrome. And the youngster would be chastised for the torn pants or shirt caused by the accident.

Naturally, more serious injuries were hospital-treated. But the broken arm was held by the parent to be the responsibility of the child, who probably could have avoided the accident by being more careful. Today, the first step in an accident, after emergency assistance, is to file suit for personal injury. There are legitimate claims in many instances of serious injury, but the courts are now clogged with overwhelming numbers of lawsuits for injuries that, in years past, would have been ignored.

In April 1985, the Advisory Commission on Intergovernmental Relations reported to Congress that legal judgments were becoming one of the most serious financial problems confronting American cities, especially smaller cities. Officials in cities and counties across the country are being swamped by a multitude of court judgments in lawsuits, forcing cutbacks in services and threatening bankruptcy.

One of the largest problem areas for lawsuits appears to be in park and recreation facilities. Are our parks and playgrounds so much more dangerous than they were a decade ago? What causes the multitude of lawsuits that threaten the economic well-being and balance of a municipality?

The court decisions and legislation of the 1970s are a causal factor that expanded the cities' responsibility for liability in personal injury lawsuits. The size of the jury awards has encouraged the filing of lawsuits and it would appear that juries take a biased view for plaintiffs against municipalities, at least in determining the awards. The last decade could become known as the era of the "let's sue" syndrome.

Play It Safe At Parks

With the changing attitude of the courts and society toward park and recreation injuries, how can agencies afford to continue providing recreational services to the public?

BY JULIAN A. JOHNSON

Today, aside from its streets and highways, the public agency's most used areas by the general public are its parks and recreation facilities and programs.

Certainly by the sheer number of people who fish, ride, swim, walk, jog, race, motocross, exercise, or bicycle; play team or individual sports such as soccer, football, golf, tennis, badminton, or basketball; and have meetings, functions, use playgrounds and equipment, or simple recreate and enjoy the arts, museums and music, the public agency enters into the everyday world of the public's active lives.

More recently, many of these important functions that are organized and/or managed by the public agency have been threatened to be restricted or discontinued by the litigation explosion and insurance crisis. The public agency has been called upon to waive or reduce vital liability coverage that enables it to, in part, transfer the risk of being drawn into very costly claims and litigation that are filed when someone is injured while engaged in a program sponsored or allowed by the agency.

Park and recreation department heads are very aware of the expanded roles their departments have taken on in the past few years. Rather than simply maintain grounds and facilities, they are now asked to design parks for optimum use and safety for the public as well as initiate and administer sensitive programs for the handicapped. Given these developments, coupled with the public's demand to require the agency to provide the highest degree of care and imposing an almost strict liability for any injuries or damages

that may occur, the agency finds itself in a "no win" position.

In the past, this was not a problem because the agency carried substantial liability insurance—it was a simple matter of turning the claims over to the insurance company and going about business as usual. Now, many public agencies are either unable to find insurance coverage, or if they can, their premiums are astronomical and their deductibles are very high. This has caused public agencies to carefully review programs in the special events area, agreements and leases with tenants of public property, multitudes of temporary use and occupancy permits, agreements with concessionaires, and maintenance contracts.

While it would be impossible to have a liability-free program, the public agency can make substantial inroads to reduce, eliminate, or transfer many of the liability risks that it is exposed to. Following are ways that a public agency can incorporate sound risk management principles to accomplish an overall reduction in its claims and litigation.

IDENTIFICATION OF RISKS

Undoubtedly, this is the most important step in the risk management process. Without the ability to identify potentially dangerous or hazardous conditions, all attempts at correcting problems are hit and miss. A systematic approach to identification will usually involve the inclusion of some or all of the following resources:

Past Experience: This speaks for itself. Unfortunately for many public agencies, these statistics may not be readily available and must be requested from the insurance company. When an insurance company administratively settles a claim, it may not be obligated to give the insured any feedback concerning the reasons for its settlement or how the insured can correct the actions so it doesn't happen again. In many cases, policies are simply canceled or premiums raised.

Once the agency has this information, it's just a matter of sorting through it to determine both the types and kinds of claims that are occurring as well as the frequency and severity of the losses. Additional information such as the location or site is equally important in this identification phase.

To put this in perspective, the agency may determine that one swimming pool is generating a significant number of slips and falls because of a slippery concrete surface. It can then take corrective action based upon the statistical information it has acquired. This same principle can be used in many cases to assess whether the public agency feels the problem warrants immediate attention or should be placed in the normal budget process.

Citizens' Complaints: Before a crisis situation occurs, one of the best ways to detect that the public agency may have a problem is by systematically reviewing complaints by the public. There may be no actual claims filed by the public for injuries, and an agency doesn't always get the opportunity to correct a problem before a serious injury occurs. However, if the agency is brought to court, it will be difficult to explain why it had received several complaints by citizens and did not take some corrective action.

This review process is critical because the courts are quick to determine that the agency had "constructive notice" of the problem and failed to take remedial action. The remedial action could be something as simple as putting up a sign that warns the public of the problem or so complex that it has to be budgeted for in the agency's C. I. P. (Capital Improvement Program).

Other Public Agencies: Why reinvent the wheel? Other public agencies may have already addressed the same problem. The state may have a signing program that can be incorporated into another agency's program without much expense. Information regarding policies and guidelines for successful programs could be adopted by the agency with minor modifications.

Publications And Periodicals: Public agencies can subscribe to resource materials that are available on almost any topic, from new equipment to the outcome of recent litigation in the parks and recreation area. National risk management organizations such as PRIMA and RIMS (Risk and Insurance Management Society) are excellent resources for agencies and both have research departments to accommodate the public agency.

Consultants: Consultants exist in almost every field, and there are many qualified individuals and firms that specialize in the parks and recreation area. For the agency that does not have a risk management department or someone assigned as a risk manager, a consultant can review the agency's policies and procedures, maintenance programs, and staffing, as well as identify the public agency's areas where it may be at risk.

RISK AVOIDANCE

Risk Avoidance: Simply stated, a public agency shouldn't use risk avoidance because the risk of loss or injury is so high that the agency cannot afford to place itself in the position of having to budget for the expected losses resulting from an event, condition, or property. Generally speaking, however, risk avoidance is usually made using practical, common sense judgment and where there is no opportunity to transfer the risk to a third party.

Julian Johnson is the Claims and Insurance Manager for the City of San Diego, CA

RISK TRANSFER

Risk Transfer: There will always be cases where the agency will want to avoid risk at any cost. However, when a public agency decides to allow an event or provide a service because of a duty to the public or political pressures, then risk transfer is a must.

• Transfer By Insurance: This is the traditional and least complicated of the transfer techniques. Ideally, the organization that the agency has an agreement or permit with provides an "insurance certification" from its insurance company and names the agency as a co-insured. The agency is then entitled to the same rights and privileges of the insurance policy as the insured organization. This type of transfer should be mandatory whenever the agency is considering long-term leases such as museums and park facilities; and permits for organized events held on a regular basis such as little league baseball, soccer, bicycle racing, 10K and marathon races, etc.

The agency will always have to assume some risks, simply because of the type of business it's involved in.

• Transfer By Contract Or Agreement: This method of transfer is normally not as desirable as the transfer by insurance method. The agency can enter into almost any agreement or permit where the individual or organization will promise anything and everything so that the agreement will be approved or the permit granted. The problem arises when a loss occurs and the injured party files a claim with both the individual or organization as well as the agency. In many cases, the public agency will find that the individual or organization does not have the resources to either provide a defense on behalf of the agency as provided in the "hold harmless and indemnification clause" of the permit or agreement, let alone have the funds to pay any claims or court judgment.

The rule of thumb in transferring the liability risk in cases where insurance is not available or the cost is unaffordable is two-fold: the agency should only grant permits or enter into agreement with individuals or organizations that have been successful in the past and/or demonstrate that they are financially able to respond if a loss occurs; and the agency has thoroughly reviewed the event or function and addressed the "worst possible scenario." This involves developing some basic questions for the organization or individual such as:

- How large is the group?
- What is the activity?
- Where will it be held?
- Is alcohol being served?
- How long will the function last?
- What is the group's past history of accidents/incidents?

Only when these questions and others are answered can agency personnel make informed decisions to enter into an agreement or allow an event to proceed. As a guideline in assisting personnel responsible for making those decisions, the agency can refer to the frequency severity matrix listed below:

High Frequency High Severity	High Frequency Low Severity
Low Frequency High Severity	Low Frequency Low Severity

For example, public agency personnel could determine if the event or activity would produce relatively few injuries. Assuming that the injuries would be minor in nature, the agency could feel relatively secure in allowing the event or activity to proceed. It would have a low frequency, low severity rating. However, in an activity such as hang gliding or an event such as a sky-diving show where losses are few but the injury consequences are severe, the public agency would want to either transfer the activity or event or not allow it on public property because of the high potential for a large loss.

The public agency must carefully evaluate the areas of high severity for exposure to severe injury. This doesn't mean that the high frequency areas should be eliminated automatically, only that they become more predictable and be budgeted for fairly accurately.

This same matrix can be used to evaluate areas such as the kinds of playground equipment for establishing maintenance schedules, the types of activities and events that require additional personnel, and the types of training programs personnel need to be proficient in to control risk.

RISK ASSUMPTION

Risk Assumption: The agency will always have to assume some risks, simply because of the type of business it's involved in. These are the services that the public doesn't provide for themselves and relies on the agency to provide for them. For example, the agency will grant use of meeting rooms for non-profit groups, allow events such as demonstrations as a matter of freedom-of-speech, promote activities for people who cannot otherwise provide for themselves such as the handicapped and low income, and generally allow people to congregate, recreate, etc.

With good risk management techniques, these risks can be evaluated for potential for loss and dealt with by using sound management principles. Issues such as additional supervision of the activity or event, coordination of personnel, and timing can be anticipated and controls implemented. The agency can accomplish this by using key personnel or committees to evaluate the risk and review sensitive issues that are indigenous to the risk, then determine the best method of control for the activity.

Risk Monitoring: Just as important as the gathering and reviewing information and implementation steps is the monitoring of the pro-

grams. It is critical in creating an ongoing function that will develop and feed itself. As the process of monitoring continues, the data base grows and the identification of risks becomes easier, enabling the public agency to fine-tune the process. This same process of identifying risk, implementing corrective procedures, and monitoring risk is invaluable in court to show that the public agency is conscious of its risks and is making efforts to deliver the best possible programs to the general public with their safety in mind.

Some programs can be initiated to help develop loss prevention data before the losses occur. Some examples of these programs are as follows:

MAINTENANCE

Sign Inventory And Maintenance: Caution is always the key to placing a sign and warning the public of a hazard. While it can be used as a defense in many cases, it is not an absolute defense. Wording on signs should be reviewed and placing signs for obvious hazards should be avoided. Once the agency decides to place a sign, it has an obligation to maintain it. The sign should be inventoried and scheduled for periodic inspection. Certain signs disappear more frequently than others and should be checked more often. If the sign has reflector capabilities, it must be checked periodically to ensure that it meets reflectivity standards.

Equipment Inspection And Maintenance: Just as inspection and maintenance are performed to ensure that the equipment is still usable, they should also be done to prevent injuries. Regular replacement of a 50-cent chain link on a swing may prevent a very costly claim. Reviewing older playground slides for wear, fences for repair, etc. are relatively small and cost-effective procedures that greatly reduce the public agency's risk exposure. Records of any repairs or inspections are, again, vital to show that the agency is doing what it says it is doing.

Condition Inspections: The condition of facilities should be assessed regularly. The public agency should establish maintenance schedules to ensure that timely maintenance is not overlooked and hazards are caught before a loss occurs. A wet gymnasium floor could be the result of a faulty roof and the next source of an injury.

Condition inspections are not just limited to facilities but extend to all property owned or leased by the public agency. In San Diego, beach cliffs and shorelines are constantly observed to detect changes as they erode. Wave action and wind are responsible for the creation of unstable cliffs that must be dealt with before they collapse under the weight of unsuspecting spectators. They are monitored in reports every 30 days and reviewed for corrective action.

Fences that border areas to ensure public safety such as drainage channels, swimming pools, areas of pollution, etc. should be inspected and documented for maintenance or repairs and filed.

The public agency should inspect the drivers' licenses of personnel that operate its fleet of vehicles at least every year to find out what individuals have demonstrated bad driving habits. These personnel can then receive additional training or be assigned to duties that do not involve driving.

In adopting any changes in programs or creating a risk management process, budget constraints are obviously an issue to be reckoned with, along with staffing. However, with the future of many insurance coverages for public agencies in doubt, coupled with the escalating costs of claims and lawsuits, the question no longer is, "Can I afford to change?" but rather, "I can't afford not to change."

Developing A Defensive Game Plan

PUBLIC RISK interviewed Ronald L. Baron, Esq., on managing risk in sports and recreation programs. Baron is an adjunct professor of sports law at the University of Houston Law Center and The Delaware Law School. He is also the executive director of the Houston-based consulting firm, The Center For Sports Law & Risk Management, which provides risk review programs for athletic facilities and programs. Baron will speak on sports liability at PRIMA's national conference.

Q. How have the courts dealt with the issue of liability in sports and recreation programs in the past?
A. Until recently, athletic programs and facilities enjoyed virtual immunity from civil liability. Generally, the assumption of risk and consent by the participants prevented or barred them from recovering anything if they were injured.

Q. How does this differ from the attitude today?
A. Sports-related injuries and resulting lawsuits are increasing at an alarming rate for two main reasons. Today, the prevalent attitude of society is that if someone gets hurt during an athletic or recreation event, someone should accept responsibility for the injury and be forced to pay. In addition, the courts have eroded the assumption of risk doctrine and sanctioned actions by athletic participants. The courts will search for wrongdoing, especially if the case involves a seriously-injured participant.

Q. Does this new attitude affect public recreation programs?
A. Yes, the new judicial trend is to extend liability to recreation facility operators in all areas of recreation sports. These include team sports such as softball, football, and baseball as well as individual sports such as gymnastics and skating.

Q. How does this trend differ from that of the past?
A. Historically, most of the successful sports injury lawsuits involved football helmet litigation brought on behalf of catastrophically-injured high school or college football players. But the trend has changed and today, every sports program administrator is at risk.

Q. Are there any specific areas where recreation sports personnel face potential liability regarding negligence?
A. Yes, there are four areas which must be addressed by the risk manager: failure to properly supervise an activity or event, failure to maintain the playing surface in a safe manner, failure to distribute safe and proper equipment, and failure to determine the physical condition or impairment of athletic participants.

Q. Can you give me an example of a program administrator who was sued for failing to address one of these areas?
A. An administrator of a public swimming pool decided not to spend additional funds on chlorine for the pool. The water deteriorated and became very murky. Two children playing in the pool collided underwater and the lifeguard could not find them because the water was in such poor condition. The families successfully sued the pool operator for failure to maintain the playing surface—in this case, the pool—in a safe manner.

Q. How can recreation program risk managers help reduce or eliminate the potential for injuries—and subsequent lawsuits?
A. Risk managers must work closely with program administrators and employees to establish and operate successful and safe athletic programs. They should stress the importance of focusing on and adopting preventative measures. And they should take the offensive, not the defensive, and implement aggressive attacks on the potential areas of liability in their sports and recreation programs.

Q. What areas are critical to a successful risk management program?
A. First and foremost, risk managers must have a thorough understanding of sports liability. Oftentimes, recreation program operators and risk managers are unaware of how far their legal duties extend until they are sued and discover what they have done wrong. Risk managers have a responsibility to know and implement programs that conform to their legal duties and to advise recreation administrators of those duties. Once risk managers know their obligations under the law, the rest of the risk management program will fall into place. Other important areas include documenting everything that has to do with safety and being prepared in an emergency.

Q. How critical is documentation to the overall risk management program?
A. This is crucial to a successful program. When employees are trained, they should be certified and those certifications should be kept up to date and on file. Risk managers should ensure that everything is written down when there are periodic inspections or safety checks on equipment. If a case is brought to court, documentation could be the key to winning or losing.

Q. Can risk managers eliminate all risk involved in sports and recreation programs?
A. Risk managers must understand that there are many risks inherent to athletic activities. Under the law, recreation administrators or risk managers cannot be held responsible for every accident that occurs. However, personnel often face potential liability when they don't plan ahead or they try to cut corners.

Q. What areas besides organized sports should be of special concern to recreation personnel?
A. Gymnastics and trampoline equipment is a major concern. A trampoline should never be left outside or in a gym where anybody could jump on it, and participants should always be supervised. Weight rooms should never be left unsupervised, spotters should always be used, and the equipment should be inspected periodically. Playground equipment such as ladders and slides should be checked for wear and tear and

The new judicial trend is to extend liability to recreation facility operators in all areas of recreation sports.

the area surrounding jungle gyms should be checked for safety hazards. If administrators operate racquetball or squash courts, they should post warning signs concerning the use of eyeglasses. If they provide equipment such as racquets and eye protectors, they must ensure that the equipment is safe and in good playing condition.

Q. Have the courts moved into new areas of liability that would affect sports programs?
A. Yes, the case of a Seattle high school football player who sustained quadraplegic injuries will have long-reaching effects on high school, college, and recreation programs. He received a $6.3 million verdict in 1982 against his coach and school district on the theory that they failed to warn him in great detail of the inherent risks of playing high school football. This case shows that a coach and school can be held liable for failing to warn athletes of inherent risks, dangers, and possible injuries that they may sustain while participating in athletic activities. As a result, the standard consent form may no longer be sufficient.

Q. But in the case of recreation sports where there are hundreds of participants, how practical is it to advise every player and his or her family of all the inherent risks that the player could sustain?
A. A recreation administrator has the legal duty to warn and inform all participants and their parents. Players and their parents should sign a detailed "agreement to participate" that specifies all the inherent risks and potential injuries. In addition, recreation personnel should post signs that promote a positive safety image but still cover themselves under the law. Signs such as safety tips offer a more paletable way of digesting warnings without scaring participants away.

Q. Doesn't each facility and each program have its own set of problems and standards?
A. Yes, no two athletic programs or facilities are alike. Depending on the types of sports offered, the size of the program, and the number of athletes participating, each facility or program has its own problems regarding risk. So risk managers must have specifically-designed safety guidelines for each program. If a lawsuit is brought against a facility, the court will look at the size of the community, the facility, its budget, and its overall program to ensure that the administrator did everything reasonably possible under the law to prevent injury.
Q. In summary, what advice would you give recreation program risk managers?
A. Know the extent of your legal duties, document everything, and be prepared in case of an accident. Remember that your facility can be sued for anything that happens on the grounds of the facility during a recreation sports program. But if you have taken reasonable precautions that adhere to your responsibilities under the law, you have established a safe program, and you can document your case, you will be in a much better position to defend yourself if you are brought to court.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 25, 1988

The Honorable Arliss Sturgulewski
Chair, Senate Community
and Regional Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Subject: SB 447, an act relating to liability for damage or injury resulting from hazardous recreational activities.

Position: The Department of Natural Resources supports the concept of further definition and limitation of liability for activities on state land. Discussions with the Attorney General's Office suggest that this legislation requires some further work to achieve those goals, especially with respect to sec. 2(b). The department hopes to work with the sponsor, the Department of Law and committee staff to further refine this bill.

Background: The department's sectional analysis is as follows:

Section 1 The addition of subsection (4) to AS 09.50.250 helps define state liability for property owned, managed or leased by the state.

Section 2 This section negates many of the benefits provided by the addition to AS 09.50.250 in Section 1. For instance, subsection (b)(1)(A) unnecessarily exposes the state to additional claims, from "different hazardous recreational activity or "dangerous conditions." At a minimum, this phrase needs to be defined - "dangerous conditions" should be defined.

Section 2 allows a participant to file a liability claim if he is injured after paying a fee to participate in a hazardous activity. For example, the state may be exposed if a skier at a state and leased ski development skis outside the groomed slopes and dies in an avalanche. This provision may allow his heirs to sue the state because he paid for a lift ticket.

10-J9LH

Subsection (b)(4) may create additional liability problems. It allows claims when the state or an employee recklessly or with gross negligence "promoted" participation in a hazardous recreational activity. Under this language, a snowmachiner or his heirs who stopped to visit with a park ranger at Eklutna Lake could sue the state if the ranger "recommends" that he snowmachine on the lake and the peroson subsequently breaks through the ice. Similarly, a park ranger might "recommend" a good canoe route in a state park and then be sued when someone drowns on that route.

AS 09.50.250(d) should be amended to include "corporation," in addition to "person" and "organization."

AS 09.50.250(e) should be amended to include a definition of "different hazardous recreational activity or dangerous condition" as referenced in AS 09.50.250(b)(A).

Amend AS 09.50.250(e)(1)(C) to include "hot air ballooning," and "parasailing" and change "airplane flying" to "motorized airplane flying". Motorized hang-gliders are not subject to FAA regulations for airplanes.

Section 3 AS 09.50.250(b)(4) and AS 09.65.070(g)(4) should be altered so they treat the state and municipalities similarly.

We will be pleased to continue working with the sponsor and committee staff regarding the questions raised above. If you need additional information or have additional questions, please feel free to contact my office.

Sincerely,

Tom Hawkins
for Judith M. Brady
Commissioner

cc: Bob Evans, Legislative Liaison
Rod Swope, Special Staff Assistant
Senator Duncan

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 447
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: SB 447 An Act Relating to Liability for Hazardous Recreation Activities
Sponsor: Duncan
Requestor: Senate CSRA

Agency Affected: Natural Resources
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		Ø	Ø	Ø	Ø	Ø
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		Ø	Ø	Ø	Ø	Ø

POSITIONS:

FULL-TIME		Ø	Ø	Ø	Ø	Ø
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department will not incur cost to implement this bill. There is no way to project the cost of any liability the Department may incur as a result of this bill.

Prepared by: Richard LeFebvre
Phone: 465-2400
Division: Land Water Management
Date: February 25, 1988

Approved by Commissioner: Tom Hawkins
Date: February 25, 1988
Agency: Department of Natural Resources

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Introduced: 2/16/88
Referred: Community and Regional Affairs and Judiciary

5-1484B

Vol. of nonprofit agencies who work for victims of crimes

IN THE SENATE BY DUNCAN

SENATE BILL NO. 448

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil liability of certain volunteers."

good Samaritan

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

* Section 1. AS 09.65.090 is amended by adding new subsections to read:

(c) An organization and its members are not liable for civil damages as a result of an act or omission in providing first aid, search, rescue, or other emergency services, regardless of whether the organization or members are under a preexisting duty to render assistance, if

(1) the organization exists for the purpose of providing the service rendered; and

(2) the member provided the service while acting as a volunteer member of the organization.

(d) In this section, "volunteer" means a person who receives financial consideration of not more than $500 a year, not including reimbursement for expenses actually incurred, for providing emergency services.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A person working as a volunteer for the division of parks and outdoor recreation, Department of Natural Resources, for a municipality, or for a nonprofit entity is not liable for civil damages as a result of an act or omission while acting in good faith and within the person's official functions and duties.

— volunteer assigned as a volunteer

(b) This section does not preclude liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

(c) This section does not affect

(1) a civil action brought by the state, a municipality, or a nonprofit entity against, respectively, a volunteer of the division of parks and outdoor recreation, the municipality, or the entity;

(2) the liability of the state, a municipality, or a nonprofit entity with respect to injury caused to a person.

(d) In this section,

(1) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality;

(2) "nonprofit entity" means an entity

(A) incorporated under AS 10.20; or

(B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954);

(3) "volunteer" means a person who receives financial consideration of not more than $500 a year, not including reimbursement for expenses actually incurred, for services performed for a municipality or nonprofit entity.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 25, 1988

The Honorable Arliss Sturgulewski
Chair, Senate Community and
Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

Subject: SB 448, An Act relating to civil liability of certain volunteers.

Background: The department has an aggressive volunteer program utilizing over 60,000 hours of volunteer work each year. Volunteers are presently covered under the state's risk management program. SB 448 could be improved by including a limitation of the state's liability for injury caused to another by the action of a volunteer.

Position: As the bill is currently written it helps clarify the state's liability in utilizing volunteers. The department supports the measure which would limit the state's liability for civil damages as a result of an act of a volunteer. SB 448 does not limit the state's liability for personal injury to a volunteer or injury to another from a volunteer's action.

We look forward to working with the sponsor and committee staff on this bill.

Sincerely,

Tom Hawkins

Judith M. Brady
Commissioner

10-J9LH

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 448
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: SB 448 An Act Relating to Civil Liability of Certain Volunteers
Sponsor: Duncan
Requestor: Senate C&RA

Agency Affected: NATURAL RESOURCES
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		Ø	Ø	Ø	Ø	Ø
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		Ø	Ø	Ø	Ø	Ø

POSITIONS:

FULL-TIME		Ø	Ø	Ø	Ø	Ø
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department will not incur cost to implement this bill. There is no way to project the cost of any liability the Department may incur as a result of this bill.

Prepared by: Richard LeFebvre — Phone: 465-2400
Division: Land and Water Management — Date: February 25, 1988

Approved by Commissioner: Tom Hawkins — Date: February 25, 1988
Agency: Department of Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

BY SENATOR DUNCAN

Senate Bill 448

"An Act relating to civil liability of certain volunteers."

Section 1.

Provides protection from civil liability for certain organizations (Civil Air Patrol, National Ski Patrol, Sea Dogs, etc.) and their members. Currently these organizations may face civil liability for an act or omission in providing first aid, search, rescue, or other emergency services.

Section 2.

Extends protection to volunteers for the division of parks and outdoor recreation, Department of Natural Resources, for municipalities, and certain nonprofit entities. However, this protection does not preclude a volunteers liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

An agency, municipality, or nonprofit entity could still be held liable.

A "volunteer" means a person who receives financial consideration of not more than $500 a year, not inculding reimbursement for expenses actually incurred, for services performed for a municipality or nonprofit entity.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501-1990
TELEPHONE 279-3581
TELECOPIER 277-1331
AREA CODE 907
TELEX 25-477

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS
CLAY A. YOUNG

WILLIAM E. MOSELEY
MARC D. BOND
J. D. CELLARS
JAMES D. FRIDERICI
ANDREW GUIDI
DEBORAH K. IVY
DONALD C. THOMAS
JILL E. MICKELSEN
HOWARD A. LAZAR

June 29, 1987

Ronald M. Sturtz, Esq.
Hannoch Weisman
4 Becker Farm Road
Roseland, New Jersey 07068-3788

Re: Coverage of ski patrollers under the Good Samaritan laws

Dear Ron:

I read with interest yours dated June 24, 1987, to Walter with copies to the other members of the National Legal Committee. In particular, I appreciated your enclosure of the decision in Praet v. Borough of Savreville. It reflects, as the case indicates, a 1971 Alaska decision entitled Lee v. State, 490 P.2d 1206 (Alaska 1971). Based on the Lee case, I have consistently advised ski patrollers that they are not protected by the Good Samaritan law as construed by the Alaska Supreme Court.

As you will recall, this matter came up in correspondence to Warren Bowman, National Medical Advisor, from Walter Gregg dated October 16, 1986. At that time, I sent a copy of the Lee case to Walter, along with the suggestion that we discuss the Good Samaritan situation at our next meeting. A copy of my correspondence to Walter is enclosed.

I look forward to our potential meeting during the winter of 1987-88.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.

Marc

Marc D. Bond

MDB:bv:spla001

Encl.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE ALASKA 99501-1990
TELEPHONE 279-3581
TELECOPIER 277-1331
AREA CODE 907
TELEX 25-477

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS
CLAY A. YOUNG

WILLIAM E. MOSELEY
MARC D. BOND
J. D. CELLARS
JAMES B. FRIDERICI
ANDREW GUIDI
DEBORAH K. IVY
DONALD C. THOMAS
JILL E. MICKELSEN
HOWARD A. LAZAR

August 28, 1987

Ron Dippold
Regional Director, South East Region
National Ski Patrol System, Inc.
8318 Counterpane Lane
Juneau, Alaska 99801

Re: Coverage of Ski Patrollers under the Good Samaritan Act.

Dear Ron:

It has come to my attention that the topic of the Good Samaritan Act came up at the Alaska Division Board Meeting recently held in Juneau. I apologize for my inability to attend that meeting, but I had a prior commitment made in January of this year for that week.

The Good Samaritan Act (AS 09.65.090) has been the topic of extensive correspondence between Division legal advisors in recent months. It is an important question, because patrollers have the right to know the potential liability they may incur by participating in ski patrol activities.

Based on a 1971 case decided by the Alaska Supreme Court, I have consistently taken the position that it is doubtful whether ski patrollers, either voluntary or professional, have any protection under Alaska's Good Samaritan Act. In Lee v. State, a State Trooper was called to the scene of an incident involving a lion attack against a carnival goer. The Trooper used his pistol to kill the lion. Unfortunately, in so doing, he also wounded the carnival goer. In its opinion, the Alaska Supreme Court held that the purpose of the Good Samaritan statutes is to induce voluntary rescue by removing the fear of potential liability of those that are not under some preexisting duty rescue. The court held that the Trooper could be held liable based on simple negligence, because he was under a duty to go to the aid of the carnival goer. Thus, the Good Samaritan statute was held inapplicable.

A ski patroller who is on duty and in the ski patrol uniform has an existing obligation to rescue injured individuals in the area or on the trails. Since patrollers have this duty, I believe it most likely

the Alaska Supreme Court would rule patrollers are not protected by the Good Samaritan Act.

It should be noted that patrollers who are state-certified Emergency Medical Technicians (AS 18.08.086) or Paramedics (AS 08.64.366) are protected against liability for simple negligence by separate state statutes.

I have enclosed a copy of a monograph titled "The Legal Responsibility of Ski Patrollers," which was published in three installments in Frozen Slats two seasons ago. In addition, I have enclosed correspondence between myself and Walter Gregg, National Legal Counsel, and Ron Sturtz, Eastern Division Legal Counsel, concerning the Good Samaritan Act. I note with interest that Ron was successful in having the New Jersey Legislature specifically name volunteer ski patrollers as being protected by the Good Samaritan Act.

If you have further questions on this topic, or any other legal matters relating to the ski patrol, please do not hesitate to contact me.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.

Marc

Marc D. Bond

MDB:bv:ski.42

Encl.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 12, 1988

SUBJECT: Civil liability of volunteers
(Work Order No. 5-1484)

TO: Senator Jim Duncan

FROM: Edward H. Hein EHH
Legislative Counsel

Enclosed is the draft bill I discussed with your assistant, Dale Staley, relating to providing immunity for volunteers of municipalities and nonprofit organizations. The draft also incorporates provisions of HB 340, introduced by Representative Davis, that extends coverage under the Good Samaritan law to emergency services volunteers, such as ski patrol, search and rescue units, and independent volunteer fire department personnel.

Note that the definition I have provided for "nonprofit entity" at page 2, lines 11-14 makes reference to Section 501(c) of the Internal Revenue Code, which exempts nonprofit organizations from federal income taxes. Section 501(c) encompasses numerous types of organizations, which are spelled out in paragraphs (1) - (25) (see attached copy of IRS code). Nonprofits are often referred to as sec. 501(c)(3) organizations, but the federal bill (H.R. 911) I was given to use as a model defines nonprofits by reference to all of sec. 501(c). You may wish to consider whether you want to include all 25 types of organizations described in 501(c) within the immunity provided in your bill.

If I may be of further assistance, please feel free to contact me at your convenience.

Enclosure

EHH:gc
WKG1:023

CHAPTER 87

SENATE NO. 2705

AN ACT exempting volunteers of certain organizations from liability for damages under certain conditions and supplementing P. L. 1959, c. 90 (C. 2A:53A–7 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1.[30] a. Notwithstanding any other provision of law to the contrary, no person serving without compensation, other than reimbursement for actual expenses, as a trustee, director, officer or voluntary member of any board, council or governing body of any nonprofit corporation, society or association as provided in P. L. 1959, c. 90 (C. 2A:53A–7 to 2A:53A–11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11–3) or to a conference under the jurisdiction of such a voluntary association, shall be liable for damages resulting from the exercise of judgment or discretion in connection with the duties of his office unless the actions evidence a reckless disregard for the duties imposed by the position.

b. Notwithstanding any provisions of law to the contrary, no person who provides volunteer service or assistance for any nonprofit corporation, society or association as provided in P. L. 1959, c. 90 (C. 2A:53A–7 to 2A:53A–11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11–3) or to a conference under the jurisdiction of such a voluntary association shall be liable in any action for damages as a

30. N.J.S.A. 2A:53A-7.1.

result of his acts of commission or omission arising out of and in the course of his rendering the volunteer service or assistance.

Nothing in this subsection shall be deemed to grant immunity to any person causing damage by his willful, wanton or grossly negligent act of commission or omission.

Nothing in this subsection shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.

2.[31] This act shall take effect immediately and shall apply to any cause of action arising on or after that date.

Approved April 6, 1987.

TORT LIABILITY AND MALPRACTICE

Exempts volunteers of certain organizations from civil liability under certain conditions.

Assembly Insurance Committee
Statement Senate, No. 2705—L.1987, c. 87

This bill would give immunity to unpaid trustees, directors, officers, or voluntary members of (1) any board, council, or governing body of any nonprofit corporation, society or association; or (2) a nonprofit federation, council or affiliated group composed of these organizations; or (3) a voluntary interscholastic sports organization or a conference within the jurisdiction of a voluntary interscholarstic sports organization. Immunity would be extended to these individuals for any damages resulting from the exercise of judgment or discretion in connection with the duties of their office, unless the actions evidence a reckless disregard for the duties imposed by the position.

The bill also would extend immunity to individuals who provide volunteer service or assistance for any nonprofit corporation, society or association, or for a nonprofit federation, council or affiliated group composed of these organizations or a voluntary interscholastic athletic association or a conference affiliated with an interscholastic athletic association. These volunteers would not be given immunity for any act of commission or omission which is willful, wanton or grossly negligent or for negligence in connection with the operation of a motor vehicle.

Nonprofit organizations have recently experienced difficulty in attracting and keeping qualified individuals to serve as officers and on boards of directors of nonprofit and charitable associations because of the potential exposure to lawsuits which exists. Exposure to liability in these cases often means that the individual's own assets are placed in jeopardy, and many individuals have been reluctant to subject themselves to this risk. By giving immunity to trustees, officers, directors, and other uncompensated volunteers, the bill's purpose is to permit nonprofit and charitable organizations to continue to attract able people to serve in these capacities.

P. L. 1986, CHAPTER 13, *approved May 12, 1986*

1986 Senate No. 1678 (*Second Official Copy Reprint*)

AN ACT providing civil immunity from liability to certain volunteer athletic coaches *and officials* and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. Notwithstanding any provisions of law to the contrary, no person who provides services or assistance *free of charge, except for reimbursement of expenses,* as an athletic coach *[or]* *, manager*, *or official* for a sports team*[, free of charge, except for reimbursement of expenses.]* *which is organized or performing pursuant to a non-profit or similar charter* shall be liable in any civil action for damages **to a player or participant** as a result of his acts of commission or omission arising out of and in the course of his rendering that service or assistance.

b. The provisions of subsection a. of this section shall apply not only to organized sports competitions, but shall also apply to practice and instruction in that sport.

c. Nothing in this section shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or omission*, *nor to any coach, manager, or official who has not participated in a safety orientation and training program established by the league or team with which he is affiliated*.

**d. Nothing in this section shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted March 24, 1986.

**—Senate amendment adopted April 7, 1986.

e. Nothing in this section shall be deemed to grant immunity to any person for any damage caused by that person permitting a sport competition or practice to be conducted without supervision.

*f. Nothing in this act shall apply to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program.**

2. This act shall take effect immediately.

P. L. 1987, CHAPTER 239, *approved August 17, 1987*

1987 Assembly No. 3718 (*Official Copy Reprint*)

AN ACT exempting certain sports officials from liability for damages under certain conditions.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Notwithstanding any provisions of law to the contrary, *[no]* **a* person who is accredited as a sport official by a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11-3) and who serves that association, a conference under the jurisdiction of the association, or a public entity as defined in Title 59 of the New Jersey Statutes in the capacity of a sports official, whether or not compensated for his services, shall **not* be liable in any action for damages as a result of his acts of commission or omission arising out of and in the course of his rendering the services. Nothing in this act shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or omission, nor to any person causing damage as the result of his negligent operation of a motor vehicle.

2. This act shall take effect immediately and shall apply to all causes of action arising on or after the effective date.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted March 5, 1987.

Pages 4 & 6

I

100TH CONGRESS
1ST SESSION

H. R. 911

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

Mr. PORTER (for himself, Mr. PURSELL, Mr. EDWARDS of Oklahoma, Mr. DENNY SMITH, Mr. LAGOMARSINO, Mr. TOWNS, Mr. MURPHY, Mr. FEIGHAN, Mr. WORTLEY, Mr. MRAZEK, Mr. PENNY, Mr. ECKART, Mr. SUNIA, Mrs. JOHNSON of Connecticut, Mr. PACKARD, Mrs. BENTLEY, Mrs. VUCANOVICH, Mr. ATKINS, Mrs. COLLINS, Mr. ESPY, Mr. ROBINSON, Mr. PASHAYAN, Mr. DARDEN, Mr. MYERS of Indiana, Mr. BEVILL, Mr. WELDON, and Mr. DANIEL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

MAY 27, 1987

Additional sponsors: Mr. HENRY, Mr. MARTINEZ, Mr. QUILLEN, Mr. EVANS, Mr. BILIRAKIS, Mr. GREEN, Mr. BLAGGI, Mr. DAVIS of Illinois, Mr. SAXTON, Mr. KILDEE, Mr. HILER, Mr. SHUMWAY, Mr. INHOFE, Mrs. ROUKEMA, Mr. CRANE, Mr. RICHARDSON, Mr. GOODLING, Mr. MARLENEE, Mr. DAVIS of Michigan, Mr. BARTLETT, Mr. CHANDLER, Mr. HOLLOWAY, Mr. STUMP, Mrs. MORELLA, Mr. CLINGER, Mr. GALLO, Mr. LUJAN, Mr. PEPPER, Mr. CARPER, Mr. SENSENBRENNER, Mr. KOLBE, Mr. SMITH of New Jersey, Mr. YATRON, Mr. BOEHLERT, Mr. HYDE, Mr. UPTON, Mr. SCHULZE, Mr. MCCLOSKEY, Mr. LATTA, Mr. BLILEY, Mr. BADHAM, Mr. RAVENEL, Mr. MCKINNEY, Mr. STALLINGS, Mr. JACOBS, Mr. EMERSON, Mr. BOULTER, Mr. GRAY of Illinois, Mr. BURTON of Indiana, Mr. FUSTER, Mrs. MARTIN of Illinois, Mr. SUNDQUIST, Mr. HASTERT, Mr. ROE, Mr. PETRI, Mr. ROWLAND of Connecticut, Mr. HORTON, Mr. LOWERY of California, Mr. SOLARZ, Mr. GRANDY, Mr. FAWELL, Mr. CLARKE, Mr. MILLER of Washington, Mr. REGULA, Mr. BUNNING, Mr. MCCOLLUM, Mrs. MEYERS of Kansas, Mr. LIPINSKI, Mr. KOLTER, Mr. MACKAY, Mr. SCHUETTE, Mr. BUECHNER, Mr. DONNELLY, Mr. LEWIS of Georgia, Mr. YATES, and Mrs. SMITH of Nebraska

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) within certain States, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve;

(2) as a result of this perception, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer

and higher cost programs than would be obtainable if volunteers were participating;

(4) the unpredictability of liability awards and doctrines has added to the high cost of liability insurance by making it difficult for insurers and self-insurers to project their liability with any degree of confidence and has adversely affected the ability of nonprofit organizations to obtain liability insurance coverage for volunteer directors and officers with respect to their personal capacities; and

(5) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of State laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and governmen-

tal entities for actions undertaken in good faith on behalf of such organizations.

SEC. 3. NO PREEMPTION OF STATE TORT LAW.

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) IMMUNITY FOR VOLUNTEERS.—Except as provided in subsection (b), any volunteer of a nonprofit organization or governmental entity shall be immune from civil liability in any action brought in any court on the basis of any act or omission resulting in damage or injury to any person if—

(1) such individual was acting in good faith and within the scope of such individual's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such individual.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

(a) CERTIFICATION.—(1) Subject to paragraph (2), before the beginning of each fiscal year, commencing with fiscal year 1989, each State shall certify to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a).

(2) In the case of a State whose legislature does not meet in regular session between the date of the enactment of this Act and before the beginning of fiscal year 1989, such State shall provide the certification referred to in paragraph (1) before the beginning of each fiscal year commencing after fiscal year 1989.

(b) REDUCTION OF ALLOTMENT.—If a State fails to provide certification as required under subsection (a), the Secretary shall reduce by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(c) REALLOTMENT TO CERTIFYING STATES.—With respect to any reduction made under subsection (a), the Secretary shall allot such funds among States which provide certification referred to in subsection (a) in proportion to the amount otherwise allotted to such States.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, for such services (other than reimbursement for expenses actually incurred or honoraria not to exceed $300 per year for government service), and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage; and

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

○

100TH CONGRESS
1ST SESSION

S. 929

Entitled the "Volunteer Protection Act of 1987".

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

Entitled the "Volunteer Protection Act of 1987".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) within certain States, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve;

(2) as a result of this perception, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) the unpredictability of liability awards and doctrines has added to the high cost of liability insurance by making it difficult for insurers and self-insurers to project their liability with any degree of confidence and has adversely affected the ability of nonprofit organizations to obtain liability insurance coverage for volunteer directors and officers with respect to their personal capacities; and

(5) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in

connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of State laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and governmental entities for actions undertaken in good faith on behalf of such organizations.

SEC. 3. NO PREEMPTION OF STATE TORT LAW.

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) IMMUNITY FOR VOLUNTEERS.—Except as provided in subsection (b), any volunteer of a nonprofit organization or governmental entity shall be immune from civil liability in any action brought in any court on the basis of any act or omission resulting in damage or injury to any person if—

(1) such individual was acting in good faith and within the scope of such individual's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such individual.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

(a) CERTIFICATION.—(1) Subject to paragraph (2), before the beginning of each fiscal year, commencing with fiscal year 1989, each State shall certify to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a).

(2) In the case of a State whose legislature does not meet in regular session between the date of the enactment of this Act and before the beginning of fiscal year 1989, such State shall provide the certification referred to in paragraph (1) before the beginning of each fiscal year commencing after fiscal year 1989.

(b) REDUCTION OF ALLOTMENT.—If a State fails to provide certification as required under subsection (a), the

Secretary shall reduce by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(c) REALLOTMENT TO CERTIFYING STATES.—With respect to any reduction made under subsection (a), the Secretary shall allot such funds among States which provide certification referred to in subsection (a) in proportion to the amount otherwise allotted to such States.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, for such services (other than reimbursement for expenses actually incurred or honoraria not to exceed $300 per year for government service), and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage;

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

O

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501-1990
TELEPHONE 279-3581
TELECOPIER 277-1331
AREA CODE 907
TELEX 25-477

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS
CLAY A. YOUNG

WILLIAM E. MOSELEY
MARC D. BOND
J. D. CELLARS
JAMES B. FRIDERICI
ANDREW GUIDI
DEBORAH K. IVY
DONALD C. THOMAS
JILL E. MICKELSEN
HOWARD A. LAZAR

January 22, 1988

Tom Smith
Patrol Director
Maverick Patrol
P.O. Box 81071
College AK 99708

Re: Senate Bill 346; House Bill 340

Dear Tom:

I have cogitated about the two problems you directed to my attention. Hopefully the solutions proposed below will be of use to you.

As I understand them, the two problems are as follows:

1. Immunity for the Organization. Some attorneys testifying before the L & C Committee yesterday raised the specter of a candy striper in a hospital pulling the plug on a respirator, and asking if this legislation would exempt the hospital from liability in such a case. I'm not sure that this example has a basis in reality: The candy stripper would not be considered a "member" of the hospital (while the candy striper organization would appropriately be protected), and the candy striper would not be "providing first aid, search, rescue, or other emergency services." If this is the only example of the problem, I would prefer to meet it head on rather than diddle with the language of the bill to meet a highly improbable scenario.

The bigger problem, it seems to me, is whether non-profit organizations that provide medical assistance on a "fee-for-services-rendered" basis would be protected for acts of their "members." Such organizations would include the Lutheran hospital in Fairbanks and the Sisters of Providence hospital in Anchorage. We have no interest in providing immunity to those who charge for their services. One way to solve the problem would be to add a third proviso to the bill, which would read: "(3) the organization does not receive compensation for the services it provides to the public." or "(3) the organization does not receive compensation from the persons for whom it provides the services." This would distinguish ski patrols and the civil air

patrol from "non-profit" organizations that charge for services. Try it out and see what you think.

2. Use of the Word "Regardless". You indicated that someone had a problem with the use of the word "regardless". The same meaning could be had by deleting the word "regardless" and putting "or not" after "whether". That section of the bill would then read: ". . . other emergency services, whether or not the organization or its members are under a preexisting duty to render assistance . . ." The meaning is precisely the same, and the word "regardless" has been eliminated.

We also discussed the effects of H.R. 911 and the state legislation that has been introduced to comply with H.R. 911 if it is adopted. I am enclosing a copy of the letter I sent to Tom Moyer and Katherine Reardon, along with the printout from the BillCast database. While the proposed legislation certainly wouldn't hurt us, I agree with you that the combination could be fatal to our bills.

Well, use this stuff as you see best. If you think direct contact between staff and me would be helpful, that's OK. I prefer to minimize the voices with which we speak, and I know that you and Bob will do a great job. If you need anything else, let me know.

Very truly yours,

Marc Bond

Enc.

cc: Bob Janes

TITLE 26

INTERNAL REVENUE CODE

SUBTITLE A—INCOME TAXES—Continued

CHAPTER 1—NORMAL TAXES AND SURTAXES—Continued

SUBCHAPTER F—EXEMPT ORGANIZATIONS

1976 Amendment. Pub.L. 94–455, Title XXI, § 2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

1975 Amendment. Pub.L. 93–625, § 10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.

1969 Amendment. Pub.L. 91–172, Title I, § 101(j)(58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.

PART I—GENERAL RULE

1984 Amendment. Pub.L. 98–369, Title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505, applicable to years beginning after Dec. 31, 1984.

1976 Amendment. Pub.L. 94–455, Title XIII, § 1307(d)(3)(B), Oct. 4, 1976, 90 Stat. 1728, added item 504.

1969 Amendment. Pub.L. 91–172, Title I, § 101(j)(61), Dec. 30, 1969, 83 Stat. 532, struck out item relating to section 504.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations.—The following organizations are referred to in subsection (a):

(1) any[1] corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(I) under such Act as amended and supplemented before July 18, 1984, or

(II) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists

Act as amended and supplemented before July 18,

tle without regard to any provision of law which is is title and which is not contained in a revenue Act,

ubsection (*l*).

ed for the exclusive purpose of holding title to therefrom, and turning over the entire amount an organization which itself is exempt under this

r community chest, fund, or foundation, organized r religious, charitable, scientific, testing for public nal purposes, or to foster national or international (but only if no part of its activities involve the s or equipment), or for the prevention of cruelty to of the net earnings of which inures to the benefit of individual, no substantial part of the activities of anda, or otherwise attempting, to influence legisla- provided in subsection (h)), and which does not n (including the publishing or distributing of state- ign on behalf of any candidate for public office. anizations not organized for profit but operated n of social welfare, or local associations of employ- n is limited to the employees of a designated person municipality, and the net earnings of which are able, educational, or recreational purposes.

horticultural organizations.

mbers of commerce, real-estate boards, boards of ll leagues (whether or not administering a pension not organized for profit and no part of the net he benefit of any private shareholder or individual.

leasure, recreation, and other nonprofitable pur- e activities of which are for such purposes and no hich inures to the benefit of any private sharehold-

ocieties, orders, or associations—

ne lodge system or for the exclusive benefit of the y itself operating under the lodge system, and payment of life, sick, accident, or other benefits to ciety, order, or association or their dependents.

eneficiary associations providing for the payment r benefits to the members of such association or d beneficiaries, if no part of the net earnings of than through such payments) to the benefit of any ual.

ieties, orders, or associations, operating under the

which are devoted exclusively to religious, chari- educational, and fraternal purposes, and le for the payment of life, sick, accident, or other

und associations of a purely local character, if— earnings inures (other than through payment of benefit of any private shareholder or individual,

solely of amounts received from public taxation, sessments on the teaching salaries of members, nvestments.

rance associations of a purely local character, panies, mutual or cooperative telephone compa- only if 85 percent or more of the income consists

of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop

operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

or other producers, and operated in conjunction
nption shall not be denied any such corporation
f the dividend rate of such stock is fixed at not to
est in the State of incorporation or 8 percent per
on the value of the consideration for which the
bstantially all such stock (other than nonvoting
which are not entitled or permitted to participate,
rofits of the corporation, on dissolution or other-
nds) is owned by such association, or members
be denied any such corporation because there is
by it a reserve required by State law or a reason-
y purpose.
rming part of a plan providing for the payment of
ompensation benefits, if—
impossible, at any time prior to the satisfaction of
to employees under the plan, for any part of the
ithin the taxable year or thereafter) used for, or
other than the providing of supplemental unem-
enefits,
yable to employees under a classification which is
d which is found by the Secretary not to be
employees who are highly compensated employ-
f section 414(q), and
ot discriminate in favor of employees who are
oyees (within the meaning of section 414(q)). A
d discriminatory within the meaning of this clause
s received under the plan bear a uniform relation-
ion, or the basic or regular rate of compensation,
by the plan.
a plan meets the requirements of subparagraph
r any other plan shall not be taken into considera-
ot be considered discriminatory—
enefits under the plan which are first determined
ner within the meaning of subparagraph (A) are
ccident, or unemployment compensation benefits
Federal law (or reduced by a portion of such
nondiscriminatory manner), or
plan provides only for employees who are not
cident, or unemployment compensation benefits
the same benefits (or a portion of such benefits
iminatory manner) which such employees would
such employees were eligible for such benefits,

plan provides only for employees who are not
(which meets the requirements of subparagraph
oloyment compensation benefits provided wholly
e benefits (or a portion of such benefits if
inatory manner) which such employees would
lan if such employees were eligible under such
mployees eligible under both plans would make a
be nondiscriminatory within the meaning of

d to meet the requirements of subparagraph (A)
the plan if on one day in each quarter it satisfies

unemployment compensation benefits" means

id to an employee because of his involuntary
yment of the employer (whether or not such
sulting directly from a reduction in force, the
or operation, or other similar conditions, and
efits subordinate to the benefits described in

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(I) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(II) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions, and

(III) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof).

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an[2] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connec-

tion with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

he trust and the processing of claims against
ung Acts; and
he trust may be used for, or diverted to, any

ed in subparagraph (A), or
v to the extent that the trustee determines
ts is not currently needed for the purposes
(A)) in—
rities of the United States,
State or local government which are not in
or interest, or
d deposits in a bank (as defined in section
edit union (within the meaning of section
redit Union Act, 12 U.S.C. 1752(6)) located in

lack Lung Disability Trust Fund established
to the general fund of the United States
isfaction of any tax or other civil or criminal
o established or contributed to the trust).
e term "Black Lung Acts" means part C of
and Health Act of 1977, and any State law
y or death due to pneumoconiosis.
ed in the United States and established in
ltiemployer plans if—
t is exclusively—
described in section 4223(c) or (h) of the
me Security Act of 1974, and
d necessary administrative expenses in con-
ment and operation of the trust and the
t the trust,
he trust may be used for, or diverted to, any

d in subparagraph (A), or
ecurities, obligations, or time or demand
(ii) of paragraph (21)(B),
uirements of paragraphs (2), (3), and (4) of
applicable, secti 4223(c) of the Employee
t of 1974, and
ides that, on dissolution of the trust, assets
ner than to plans which have participated in
st established under section 4223(h) of such
ich employers have participated in the fund.
before 1880 more than 75 percent of the
past members of the Armed Forces and a
ide insurance and other benefits to veterans

4049 of the Employee Retirement Income
t on the date of the enactment of the
dments Act of 1986).
which—
holders or beneficiaries,
or beneficial interest, and
usive purposes of—
y and holding title to, and collecting income

amount of income from such property (less
ganizations described in subparagraph (C)
such corporation or beneficiaries of such

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing,

(iv) any organization described in paragraph (3), or

(v) any organization described in this paragraph.

(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(d) Religious and apostolic organizations.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing, warehousing, billing and collection, food, clinical industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate
Community and Regional Affairs Committee

March 17, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff

RE: CSSB 447 (C&RA) - "An Act relating to liability for damages or injury resulting from hazardous recreational activities."

RE: CSSB 448 (C&RA) - "An Act relating to civil liability of certain volunteers."

These two committee substitutes respond to concerns raised when these bills were previously heard by the committee. CSSB 447 has had substantial deletion of verbiage but the bill still does the same thing. The CS and a mark up of the original bill showing the deletions is attached.

Section 1 of CSSB 448 adds subsection (d) which makes plain that the immunity provided for volunteers in Section 1 does not include applying advanced life support techniques if the volunteer is not authorized to do so by law. This addition was urged by the Department of Health and Social Services. Section 2 expands coverage of volunteers helping the state from just Division of Parks volunteers to volunteers for any state department.

July 1, 1988 effective dates are added to both bills. Senator Duncan, the sponsor, supports the changes in both CS's.

5-1483L
Lauterbach
3/17/88

Original sponsor: Duncan

IN THE SENATE BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 447 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for damage or injury resulting from hazardous recreational activities; and providing for an effective date."

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

* Section 1. AS 09.50.250 is amended to read:

Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an [NO] action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment,

false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(4) is an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity conducted on property owned, managed, or leased by the state.

* Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

(b) The provisions of (a)(4) of this section do not limit liability that would otherwise exist for an act of gross negligence by the state or an employee of the state that is the proximate cause of the damage or injury.

(c) Nothing in this section limits the liability of an independent concessionaire, or a person or organization other than the state, whether or not the person or organization has a contractual relationship with the state to use the property owned, managed, or leased by the state, for injury or damage suffered as a result of a hazardous recreational activity operated by the concessionaire, person, or organization on property owned, managed, or leased by the state.

(d) In this section,

(1) "hazardous recreational activity" means a recreational activity that creates a substantial risk of injury to a participant;

(2) "participant" means

(A) a participant, regardless of whether the person was directly involved in the activity in question at the time of the injury or damage;

(B) a person who assists another to participate in the activity; or

(C) a spectator who

(i) knew or reasonably should have known that the activity created a substantial risk of injury to the

spectator; and

(ii) was voluntarily in the place of risk or, having the ability to do so, failed to leave.

* Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

(e) In this section

(1) "hazardous recreational activity" and "participant" have the meanings given in AS 09.50.250(d);

(2) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by the municipality;

(3) "nonprofit entity" means an entity

(A) incorporated under AS 10.20; or

(B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954);

(4) "village" means an unincorporated community where at least 25 people reside as a social unit.

* Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

(f) A person may not bring an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity if the action is against

(1) a municipality, or an agent, officer, or employee of a municipality, and the activity was conducted

(A) by the municipality; or

(B) on property owned, managed, or leased by the municipality; or

(2) a municipality, or a nonprofit entity whose recreational activities are cosponsored by a municipality under the terms of an ordinance adopted by the municipality for a period of not more than five years, or an agent, officer, or employee of the municipality or nonprofit entity, and the activity was conducted by the nonprofit

entity, or jointly by the municipality and the nonprofit entity, on property owned, managed, or leased by the municipality.

(g) The provisions of (f) of this section do not limit liability that would otherwise exist for an act of gross negligence by a municipality, a nonprofit entity, or an agent, officer, or employee of a municipality or nonprofit entity that is the proximate cause of the damage or injury.

* Sec. 5. This Act takes effect July 1, 1988.

Introduced: 2/16/88
Referred: Community and Regional Affairs and Judiciary

5-1483B

MARK UP

IN THE SENATE

BY DUNCAN

CS SENATE BILL NO. 447 (C+RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for damage or injury resulting from hazardous recreational activities."

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

* Section 1. AS 09.50.250 is amended to read:

Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an [NO] action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment,

false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(4) is an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity conducted on property owned, managed, or leased by the state.

* Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

(b) The provisions of (a)(4) of this section do not limit liability that would otherwise exist for

(1) damage or injury suffered by a participant in a hazardous recreational activity if

(A) the damage or injury resulted from a different hazardous recreational activity or dangerous condition;

(B) the state or an employee of the state

(i) knew of the different activity or condition; and

(ii) failed to protect or warn the participant; and

(C) the participant, acting reasonably, did not assume that damage or injury from the different activity or condition was an inherent risk of the participation in the hazardous recreational activity;

(2) damage or injury suffered in a case in which permission to participate in the hazardous recreational activity was granted for a specific fee;

(3) injury suffered to the extent proximately caused by the negligent failure of the state or an employee of the state to properly construct or maintain in good repair a structure, recreational equipment or machinery, or substantial work of improvement used in the hazardous recreational activity from which the damage or injury arose;

(4) damage or injury suffered in a case in which the state or an employee of the state recklessly or with gross negligence promoted 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

(5) an act of gross negligence by the state or an employee of the state that is the proximate cause of the damage or injury.

(c) Nothing in (b) of this section creates a duty of care or basis of liability for personal injury or for damage to personal property.

(C) (d) Nothing in this section limits the liability of an independent concessionaire, or any person or organization other than the state, whether or not the person or organization has a contractual relationship with the state to use the property owned, managed, or leased by the state, for injury or damage suffered as a result of a hazardous recreational activity operated by the concessionaire, person, or organization on property owned, managed, or leased by the state.

(e) In this section,

(1) "hazardous recreational activity" means a recreational activity that creates a substantial risk of injury to a participant, and includes activities such as

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

(B) diving into water from other than a diving board

or diving platform, or at a place or from a structure where diving is prohibited and reasonable warning has been given;

(C) airplane flying, animal riding, and equestrian activities, archery, bicycling, boating, cross-country and downhill skiing, gymnastics, hang gliding, hockey and roller hockey, ice skating, kayaking, motorized vehicle racing, off-road motorcycling, off-road four-wheel driving, orienteering, pistol and rifle shooting, rock climbing and ice climbing, rocketeering, rodeo, scuba diving, skateboarding, sky diving, spelunking, sport parachuting, sports in which it is reasonably foreseeable that there will be rough bodily contact by participants, surfing, track and field sports, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and wind surfing;

(2) "participant" means

(A) a participant, regardless of whether the person was directly involved in the activity in question at the time of the injury or damage;

(B) a person who assists another to participate in the activity; or

(C) a spectator who

(i) knew or reasonably should have known that the activity created a substantial risk of injury to the spectator; and

(ii) was voluntarily in the place of risk or, having the ability to do so, failed to leave;

(3) "specific fee"

(A) means a fee charged specifically for participation in the hazardous recreational activity from which the damage or injury arose;

(B) does not include

(i) a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, an administrative or group use application or permit fee, or a fee reasonably necessary for the support of the recreational program that involves the hazardous recreational activity;

(ii) a fee paid in trust to a municipality for the benefit of a private organization that originates, sponsors, or conducts a hazardous recreational activity.

* Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

(e) In this section

(1) "hazardous recreational activity," "participant," and "specific fee" have the meanings given in AS 09.50.250(e);

(2) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by the municipality;

(3) "nonprofit entity" means an entity

(A) incorporated under AS 10.20; or

(B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954);

(4) "village" means an unincorporated community where at least 25 people reside as a social unit.

* Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

(f) A person may not bring an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity if the action is against

(1) a municipality, or an agent, officer, or employee of a municipality, and the activity was conducted

(A) by the municipality; or

(B) on property owned, managed, or leased by the municipality; or

(2) a municipality, or a nonprofit entity whose recreational activities are cosponsored by a municipality under the terms of an ordinance adopted by the municipality for a period of not more than five years, or an agent, officer, or employee of the municipality or nonprofit entity, and the activity was conducted by the nonprofit entity, or jointly by the municipality and the nonprofit entity, on property owned, managed, or leased by the municipality.

(g) The provisions of (f) of this section do not limit liability that would otherwise exist for

(1) damage or injury suffered by a participant in a hazardous recreational activity if

(A) the damage or injury resulted from a different hazardous recreational activity or dangerous condition;

(B) a municipality, a nonprofit entity, or an agent, officer, or employee of the municipality or nonprofit entity

(i) knew of the different activity or condition; and

(ii) failed to protect or warn the participant; and

(C) the participant, acting reasonably, did not assume that damage or injury from the different activity or condition was an inherent risk of the participation in the hazardous recreational activity;

(2) damage or injury suffered in a case in which permission to participate in the hazardous recreational activity was granted for a specific fee;

(3) the owner of recreational equipment or machinery, a

structure, or a substantial work of improvement used in a hazardous recreational activity, or an employee of the owner, for injury proximately caused by the negligent failure by the owner or employee to properly construct or maintain in good repair the equipment, machinery, structure, or improvement;

(4) damage or injury suffered in a case in which a municipality, a nonprofit entity, or an agent, officer, or employee of a municipality or nonprofit entity 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

~~(5)~~ an act of gross negligence by a municipality, a nonprofit entity, or an agent, officer, or employee of a municipality or nonprofit entity that is the proximate cause of the damage or injury.

(g) ~~(f)~~ Nothing in (g) of this section creates a duty of care or basis of liability for personal injury or for damage to personal property.

Eff. July 1, 1988

5-1484L
Lauterbac
3/17/88

Original sponsor: Duncan

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 448 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil liability of certain volunteers and civil liability for emergency aid; and providing for an effective date."

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

* Section 1. AS 09.65.090 is amended by adding new subsections to read:

(c) An organization and its members are not liable for civil damages as a result of an act or omission in providing first aid, search, rescue, or other emergency services, regardless of whether the organization or members are under a preexisting duty to render assistance, if

(1) the organization exists for the purpose of providing the service rendered; and

(2) the member provides the service while acting as a volunteer member of the organization.

(d) The immunity provided under this section does not apply to civil damages that result from providing or attempting to provide any of the following advanced life support techniques unless the person who provided them was authorized by law to provide them:

(1) electric cardiac defibrillation;

(2) administration of antiarrhythmic agents;

(3) intravenous therapy;

(4) intramuscular therapy; or

(5) use of endotracheal intubation devices or esophageal airway devices.

(e) In this section, "volunteer" means a person who is paid not more than $500 a year, not including reimbursement for expenses actually incurred, for providing emergency services.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A person working as a volunteer for the state, Div of Parks for a municipality, or for a nonprofit entity is not liable for civil damages as a result of an act or omission while acting in good faith and within the person's official functions and duties.

(b) This section does not preclude liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

(c) This section does not affect

(1) a civil action brought by the state, a municipality, or a nonprofit entity against, respectively, a volunteer of the state, the municipality, or the entity; Div of Parks

(2) the liability of the state, a municipality, or a nonprofit entity with respect to injury caused to a person.

(d) In this section,

(1) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality;

(2) "nonprofit entity" means an entity

(A) incorporated under AS 10.20; or

(B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954);

(3) "volunteer" means a person who is paid not more than rewording $500 a year, not including reimbursement for expenses actually incurred, for services performed for the state, a municipality, or a nonprofit entity.

* Sec. 3. This Act takes effect July 1, 1988.

POSITION PAPER/Department of Health & Social Services

Position Paper

SB 448

For an Act entitled: "An Act relating to civil liability of certain volunteers."

This Act amends AS 09.65.090 (civil liability for emergency aid) to expand the coverage to a person who provides emergency services (e.g., first aid and search and rescue) while acting as a volunteer for an organization that exists for the purpose of providing the service rendered, regardless of whether the organization or members are under a preexisting duty to render assistance. Currently, AS 09.65.090 provides immunity from liability only to persons who do not have a preexisting duty to act.

This Act also amends AS 09.65 by adding a new section to provide immunity from liability for civil damages for volunteers working for the Division of Parks and Outdoor Recreation, Department of Natural Resources; for a municipality; or for a nonprofit entity if the person is acting in good faith and within the person's official functions and duties. This section does not preclude liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

Impact of Bill

This legislation increases immunity from liability for volunteer workers, many of whom have a preexisting duty to act and, consequently, are not covered by AS 09.65. It is expected that passage of this legislation would increase the number of individuals willing to provide volunteer services and would decrease the rate of attrition among volunteer workers.

Position

The Department of Health and Social Services supports the intent of this legislation. However, the department recommends that SB 448 be amended to add the following statement:

> AS 09.65.090(e) This section does not apply to persons who provide advanced life support medical procedures, including cardiac defibrillation,

POSITION PAPER/Department of Health & Social Services

administration of antiarrhythmic agents, intravenous therapy, intramuscular therapy, or use of esophageal airway devices or endotracheal intubation devices, or other invasive medical procedures, unless the person is authorized by law to perform these procedures.

Recommended by: Elizabeth Ward

Elizabeth Ward, M.N.
Director
Division of Public Health

Date: February 18, 1988

Approved by: Myra M. Munson

Myra M. Munson
Commissioner
Department of Health and Social Services

Date: Feb 23, 1988

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 448
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 2/16/88
Title: An Act relating to civil liability of certain . . .
Sponsor: Duncan
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: EMS Certification and Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The enactment of SB 448 would have no direct fiscal impact on the Department of Health and Social Services.

148

Prepared by: Elizabeth Ward, Director Phone: 465-3090
Division: Public Health Date: 2-19-88

(1) Approved by Commissioner: Mona N. Munson Date: 2-23-88
Agency: Department of Health & Social Services

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

BILL NO: SB 448 DATE: 3/2/88

TITLE: "An Act relating to civil liability of certain volunteers." CONTACT: Col. Robert E. Jent 269-5641

DEPARTMENT OF PUBLIC SAFETY

Search and rescue missions in Alaska are the responsibility of the Alaska State Troopers, U.S. Air Force, and U.S. Coast Guard. All three agencies use volunteers to aid in the search activities. Probably 70% of all Trooper searches are conducted by volunteers acting under the direction of the Troopers. The organized volunteers are trained, equipped, and ready on a moment's notice. All search and rescue agencies depend on the volunteers. Without volunteers our job would be more difficult and time consuming. This bill provides the volunteers with a degree of civil protection if someone is inadvertently injured during the rescue.

Uncompensated volunteers are often reluctant to assist state agencies dealing with emergency services because of a fear of civil liability. Others are unwilling to become volunteers for the same reason.

The Department of Public Safety supports this legislation.

for J. Arthur English
Commissioner

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 448
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date:
Title: "An Act granting immunity . . . for providing . . . emergency services."
Sponsor: Sen. Duncan
Requestor: Senate C&RA

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No increase or decrease in the level of expenditures in anticipated as a result of the passage of this legislation.

Prepared by: Francis C. Allan F.C.A.
Phone: 269-5691
Division: Alaska State Troopers
Date: 2/23/88

Approved by Commissioner: D Hoffbeck, Dep. Comm.
Date: 3-1-88
Agency: Public Safety

Distribution: (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/10/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED Yes **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88
Mr. President:

DATE TURNED INTO OFFICE 3/18/88

C&RA Committee considered SB 447

liability for damage or injury resulting from hazardous recreational activities

and recommended:

[ ] replace with CS for SB 447 [ ] same tit
[X] new tit

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [X] attached or [ ] adopted fiscal note(s)
[X] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mel Sharmdi Do not pass
Tim Kelly - No Rec

Chairman signature and recommendation

[ ] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/10/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED YES **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88

DATE TURNED INTO OFFICE 3/18/88

Mr. President:

C&RA Committee considered SB 448

civil liability of certain volunteers

and recommended:

[X] replace with CS _____ [ ] same title
[X] new title

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [X] attached or [ ] adopted fiscal note(s)
[X] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

M Lewis (No Rec)
Tim Kelly (No Rec)

Chairman signature and recommendation

[ ] Committee Backup Attached

5-1663B
Cook
3/14/88

Original sponsor: Duncan

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 367 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to optional exemptions from municipal taxes."

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

* Section 1. AS 29.45.050(b) is amended to read:

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage;

(2) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

(B) historic sites, buildings, and monuments;

(C) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

(3) exempt personal property from taxation;

(4) exempt business inventories from taxation;

(5) classify as to type and exempt or partially exempt any

or all types of motor vehicles from taxation;

(6) classify as to type and exempt or partially exempt any or all inventories produced from the processing or manufacturing in the state of a natural resource originating in the state;

(7) exempt, for a period not to exceed five years, personal property used in the processing of fisheries resources from up to 100 percent of the rate of taxes levied on other property; for purposes of this paragraph "fisheries resources" includes all aquatic plants and animals.

Introduced: 2/16/88
Referred: Community and Regional Affairs and Judiciary

5-1483B

IN THE SENATE CS BY DUNCAN

SENATE BILL NO. 447 (C+RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for damage or injury resulting from hazardous recreational activities."

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

* Section 1. AS 09.50.250 is amended to read:

Sec. 09.50.250. (a) ACTIONABLE CLAIMS AGAINST THE STATE. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an [NO] action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment,

false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(4) is an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity conducted on property owned, managed, or leased by the state.

* Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

(b) The provisions of (a)(4) of this section do not limit liability that would otherwise exist for

(1) damage or injury suffered by a participant in a hazardous recreational activity if

(A) the damage or injury resulted from a different hazardous recreational activity or dangerous condition;

(B) the state or an employee of the state

(i) knew of the different activity or condition; and

(ii) failed to protect or warn the participant; and

(C) the participant, acting reasonably, did not assume that damage or injury from the different activity or condition was an inherent risk of the participation in the hazardous recreational activity;

(2) damage or injury suffered in a case in which permission to participate in the hazardous recreational activity was granted for a specific fee;

(3) injury suffered to the extent proximately caused by the negligent failure of the state or an employee of the state to properly construct or maintain in good repair a structure, recreational equipment or machinery, or substantial work of improvement used in the hazardous recreational activity from which the damage or injury arose;

(4) damage or injury suffered in a case in which the state or an employee of the state recklessly or with gross negligence promoted 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

(5) an act of gross negligence by the state or an employee of the state that is the proximate cause of the damage or injury.

(c) Nothing in (b) of this section creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section limits the liability of an independent concessionaire, or any person or organization other than the state, whether or not the person or organization has a contractual relationship with the state to use the property owned, managed, or leased by the state, for injury or damage suffered as a result of a hazardous recreational activity operated by the concessionaire, person, or organization on property owned, managed, or leased by the state.

(e) In this section,

(1) "hazardous recreational activity" means a recreational activity that creates a substantial risk of injury to a participant, and includes activities such as

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

(B) diving into water from other than a diving board

or diving platform, or at a place or from a structure where diving is prohibited and reasonable warning has been given;

(C) airplane flying, animal riding and equestrian activities, archery, bicycling, boating, cross-country and downhill skiing, gymnastics, hang gliding, hockey and roller hockey, ice skating, kayaking, motorized vehicle racing, off-road motorcycling, off-road four-wheel driving, orienteering, pistol and rifle shooting, rock climbing and ice climbing, rocketeering, rodeo, scuba diving, skateboarding, sky diving, spelunking, sport parachuting, sports in which it is reasonably foreseeable that there will be rough bodily contact by participants, surfing, track and field sports, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and wind surfing;

(2) "participant" means

(A) a participant, regardless of whether the person was directly involved in the activity in question at the time of the injury or damage;

(B) a person who assists another to participate in the activity; or

(C) a spectator who

(i) knew or reasonably should have known that the activity created a substantial risk of injury to the spectator; and

(ii) was voluntarily in the place of risk or, having the ability to do so, failed to leave;

(3) "specific fee"

(A) means a fee charged specifically for participation in the hazardous recreational activity from which the damage or injury arose;

(B) does not include

(i) a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, an administrative or group use application or permit fee, or a fee reasonably necessary for the support of the recreational program that involves the hazardous recreational activity;

(ii) a fee paid in trust to a municipality for the benefit of a private organization that originates, sponsors, or conducts a hazardous recreational activity.

* Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

(e) In this section

(1) "hazardous recreational activity," "participant," and "specific fee" have the meanings given in AS 09.50.250(e);

(2) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by the municipality;

(3) "nonprofit entity" means an entity

(A) incorporated under AS 10.20; or

(B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954);

(4) "village" means an unincorporated community where at least 25 people reside as a social unit.

* Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

(f) A person may not bring an action for property damage or personal injury arising out of the person's participation in a hazardous recreational activity if the action is against

(1) a municipality, or an agent, officer, or employee of a municipality, and the activity was conducted

(A) by the municipality; or

(B) on property owned, managed, or leased by the municipality; or

(2) a municipality, or a nonprofit entity whose recreational activities are cosponsored by a municipality under the terms of an ordinance adopted by the municipality for a period of not more than five years, or an agent, officer, or employee of the municipality or nonprofit entity, and the activity was conducted by the nonprofit entity, or jointly by the municipality and the nonprofit entity, on property owned, managed, or leased by the municipality.

(g) The provisions of (f) of this section do not limit liability that would otherwise exist for . . .

(1) damage or injury suffered by a participant in a hazardous recreational activity if

(A) the damage or injury resulted from a different hazardous recreational activity or dangerous condition;

(B) a municipality, a nonprofit entity, or an agent, officer, or employee of the municipality or nonprofit entity

(i) knew of the different activity or condition; and

(ii) failed to protect or warn the participant; and

(C) the participant, acting reasonably, did not assume that damage or injury from the different activity or condition was an inherent risk of the participation in the hazardous recreational activity;

(2) damage or injury suffered in a case in which permission to participate in the hazardous recreational activity was granted for a specific fee;

(3) the owner of recreational equipment or machinery, a

structure, or a substantial work of improvement used in a hazardous recreational activity, or an employee of the owner, for injury proximately caused by the negligent failure by the owner or employee to properly construct or maintain in good repair the equipment, machinery, structure, or improvement;

(4) damage or injury suffered in a case in which a municipality, a nonprofit entity, or an agent, officer, or employee of a municipality or nonprofit entity 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

(5) an act of gross negligence by a municipality, a nonprofit entity, or an agent, officer, or employee of a municipality or nonprofit entity that is the proximate cause of the damage or injury.

(h) Nothing in (g) of this section creates a duty of care or basis of liability for personal injury or for damage to personal property.

ALASKA RAILROAD CORPORATION

P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

VIA TELECOPY

March 17, 1988

Honorable Arliss Sturgulewski
Chairman, Senate Community & Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: SB 447, An Act Relating to Liability for Damage or Injury Resulting from Hazardous Recreational Activities

Dear Arliss,

I understand that Senate Bill No. 447 will be considered by your committee this afternoon. Thank you for this opportuinity to express support for the legislation on the behalf of the Alaska Railroad Corporation ("ARRC").

As you know, SB 447 will protect the state and municipalities by placing limitations on their liability to those who engage in hazardous recreational activities on public lands and in public facilities. Examples include airplane flying, animal riding, archery, bicycling, boating, gymnastics, etc. By encouraging public authorities to open their lands and facilities for these activities, SB 447 will directly benefit tens of thousands of recreationalists and help maintain a tradition of active and vigorous Alaska living.

Since we anticipate that others will do a better job of generally explaining how litigation prosecuted by a few has closed indoor and outdoor recreational opportunities for many in Alaska, I would like to discuss the "no trespass" policy which ARRC has been forced to implement on its lands and facilities in light of the risk and reality of lawsuits by unauthorized users. Clearly, this is not a policy we are fond of enforcing. However, unless legislative relief is forthcoming, ARRC must act responsibility to protect its assets and income by continuing to deny access to rail lands and facilities for recreational use.

The Alaska Railroad Corporation owns and operates more than 500

miles of track winding through remote wilderness areas and congested urban settings. The property 100 feet either side from the center line of the track is called the "right-of-way." Currently, railroad rights-of-way are offlimits to joggers, walkers, biclyclers, hikers, hunters, fishermen, three-wheelers, snowmobilers, berry pickers, and others out of concern for their safety and the safety of our train crews and passengers. The most dangerous portion of the right-of-way is, of course, its roadbed. The roadbed consists of gravel or ballast and supports rails and ties. Trains passing over the roadbed cannot stop quickly or swerve to avoid people. Although trains are huge machines, environmental conditions can muffle sounds, whistles, and other train noises. Snowmachines, three-wheelers, and joggers with head sets pose special problems because approaching trains may not be heard over the roar of private vehicles or radios. Flying debris stirred up by passing trains is also a safety concern. Also, trains do not usually run according to a fixed timetable. Trains can come from any direction at any time. For these reasons, safety will always require that recreationalists keep a safe distance from the roadbed.

Nonetheless, there are land parcels, facilities such as walkways fixed to bridges, climbing rocks, tidelands, and other portions of the right-of-way which ARRC could open for recreational use and access if protection from unwarranted litigation was assured. These lands and facilities are not inherently dangerous, but have been offlimits for fear trial attorneys will cite a growing list of troublesome court decisions and argue that some unknown danger lead to a client's injury or that the practice of opening other rail properties to public use also "invited" or "attracted" their client to the roadbed area where injury resulted.

We regret that the majority of hikers, fishermen, hunters, canoeists, snowmachiners, mushers, and others who do exercise caution as they enjoy their activities bear the brunt of closed recreation opportunities and our "no trespass" policy. SB 447 can make a difference and is important legislation for a traditionally open Alaska.

As a technical matter, we recommend that the definition of "hazardous recreational activity" be modified to either include additional activities or adopt a broad, generic standard. Activities which may have been overlooked include snowmachining, mushing, all-terrain vehicle operation, rock climbing, and windsurfing.

Finally, SB 447 will permit liability against the state or municipality for "an act of gross negligence...that is the proximate cause of the damage or injury." Section 2(b)(5); section 4(g)(5). To truly effect its purpose to encourage the opening of public lands and facilities for recreation these

sections should be changed to: "a willful or malicious act by the [state or municipality] or an employee of the [state or municipality] that is the sole cause of the damage or injury."

Clearly, this exception to a general limitation of liability is intended to prevent public authorities from actively taking steps to injure recreationalists. Unfortunately, "gross negligence" will not effect that purpose without subjecting public authorities to arguments by trial attorneys that acts of simple negligence are really acts of gross negligence. There is simply too much room left for argument as to what is "simple" and what is "gross" negligence. For example, will a borough be subjected to liability for opening its hockey rink for "pick up" games if it fails to supervise a group of unsupervised teenagers who have been known to suffer injuries on other occasions? Is that "gross" negligence? Courts will disagree and, of equal importance, public authorities will be put to the same tremendous expense of defending lawsuits under this exception as presently drafted as they do today. As it stands now, SB 447's effectiveness may be entirely vitiated by the wording of this single exception.

A public authority's defense costs are not significantly defrayed by an award of <u>partial</u> attorney's fees against unsuccessful claimants who frequently cannot afford to pay. And these costs cannot be assessed against trial attorneys who may advise injured recreationalists to pursue claims of "gross" negligence, even if a claim is mariginal or unfounded. <u>Concern</u> about depleting public budgets through payment of unreimburseable defense costs will continue to be a deterrent to many recreational activities. On the other hand, a "willful or malicious" standard will better effect the purpose of this legislation, discourage spurious litigation, and encourage the opening of public lands and facilities for recreatonal activities by signficantly reducing the risk of adverse claims and related defense costs.

Thank you again for this opportunity to comment. We are hopeful that SB 447 will be amended in these important respects and reported favorably from your committee. I have asked our legislative liaison, Rick Urion, to present this letter to you on my behalf. We will stand by here to help address questions which may be raised by our letter or Rick's comments.

Sincerely,

F.G. Turpin
President & CEO

cc: Mr. Rick Urion

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

FURTHER

2/16/88 DATE TURNED INTO OFFICE _____

Mr. President:

C&RA Committee considered SB 447

liability for damage or injury resulting from hazardous recreational activities

and recommended:

[ ] replace with CS for SB 447 [] same title
[] new title

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [ ] attached or [ ] adopted fiscal note(s)
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mike Lazarus Do not pass
Tim Kelly - No Rec

Chairman signature of recommendation

[ ] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88 DATE TURNED INTO OFFICE _____

Mr. President:

C&RA Committee considered SB 448

civil liability of certain volunteers

and recommended:

[ ] replace with CS _____ [] same title
[] new title

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [ ] attached or [ ] adopted fiscal note(s)
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Lyda Green (No Rec)
Tim Kelly (No Rec)

Chairman signature and recommendation

[ ] Committee Backup Attached

Introduced: 2/16/88
Referred: Community and Regional Affairs and Judiciary

5-1484B

IN THE SENATE BY DUNCAN

SENATE BILL NO. 448

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil liability of certain volunteers."

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

* Section 1. AS 09.65.090 is amended by adding new subsections to read:

(c) An organization and its members are not liable for civil damages as a result of an act or omission in providing first aid, search, rescue, or other emergency services, regardless of whether the organization or members are under a preexisting duty to render assistance, if

(1) the organization exists for the purpose of providing the service rendered; and

(2) the member provided the service while acting as a volunteer member of the organization.

(d) In this section, "volunteer" means a person who receives financial consideration of not more than $500 a year, not including reimbursement for expenses actually incurred, for providing emergency services.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A person working as a volunteer for the division of parks and outdoor recreation, Department of Natural Resources, for a municipality, or for a nonprofit entity is not liable for civil damages as a result of an act or omission while acting in good faith and within the person's ~~official~~ functions and duties as a volunteer

(b) This section does not preclude liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

(c) This section does not affect

(1) a civil action brought by the state, a municipality, or a nonprofit entity against, respectively, a volunteer of the division of parks and outdoor recreation, the municipality, or the entity;

(2) the liability of the state, a municipality, or a nonprofit entity with respect to injury caused to a person.

(d) In this section,

(1) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality;

(2) "nonprofit entity" means an entity

(A) incorporated under AS 10.20; or

(B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954);

(3) "volunteer" means a person who receives financial consideration of not more than $500 a year, not including reimbursement for expenses actually incurred, for services performed for a municipality or nonprofit entity. Div of Parks

only "Div of Parks" Graden

Define Div of Parks

BY SENATOR DUNCAN

Senate Bill 448

"An Act relating to civil liability of certain volunteers."

Section 1.

Provides protection from civil liability for certain organizations (Civil Air Patrol, National Ski Patrol, Sea Dogs, etc.) and their members. Currently these organizations may face civil liability for an act or omission in providing first aid, search, rescue, or other emergency services.

Section 2.

Extends protection to volunteers for the division of parks and outdoor recreation, Department of Natural Resources, for municipalities, and certain nonprofit entities. However, this protection does not preclude a volunteers liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

An agency, municipality, or nonprofit entity could still be held liable.

A "volunteer" means a person who receives financial consideration of not more than $500 a year, not inculding reimbursement for expenses actually incurred, for services performed for a municipality or nonprofit entity.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501-1990
TELEPHONE 279-3581
TELECOPIER 277-1331
AREA CODE 907
TELEX 25-477

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS
CLAY A. YOUNG

WILLIAM E. MOSELEY
MARC D. BOND
J. D. CELLARS
JAMES B. FRIOERICI
ANDREW GUIDI
DEBORAH K. IVY
DONALD C. THOMAS
JILL E. MICKELSEN
HOWARD A. LAZAR

June 29, 1987

Ronald M. Sturtz, Esq.
Hannoch Weisman
4 Becker Farm Road
Roseland, New Jersey 07068-3788

Re: Coverage of ski patrollers under the Good Samaritan laws

Dear Ron:

I read with interest yours dated June 24, 1987, to Walter with copies to the other members of the National Legal Committee. In particular, I appreciated your enclosure of the decision in Praet v. Borough of Savreville. It reflects, as the case indicates, a 1971 Alaska decision entitled Lee v. State, 490 P.2d 1206 (Alaska 1971). Based on the Lee case, I have consistently advised ski patrollers that they are not protected by the Good Samaritan law as construed by the Alaska Supreme Court.

As you will recall, this matter came up in correspondence to Warren Bowman, National Medical Advisor, from Walter Gregg dated October 16, 1986. At that time, I sent a copy of the Lee case to Walter, along with the suggestion that we discuss the Good Samaritan situation at our next meeting. A copy of my correspondence to Walter is enclosed.

I look forward to our potential meeting during the winter of 1987-88.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.

Marc D. Bond

MDB:bv:spla001

Encl.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501-1990
TELEPHONE 279-3581
TELECOPIER 277-1331
AREA CODE 907
TELEX 25-477

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS
CLAY A. YOUNG

WILLIAM E. MOSELEY
MARC D. BOND
J. D. CELLARS
JAMES B. FRIDERICI
ANDREW GUIDI
DEBORAH K. IVY
DONALD C. THOMAS
JILL E. MICKELSEN
HOWARD A. LAZAR

August 28, 1987

Ron Dippold
Regional Director, South East Region
National Ski Patrol System, Inc.
8318 Counterpane Lane
Juneau, Alaska 99801

Re: Coverage of Ski Patrollers under the Good Samaritan Act.

Dear Ron:

It has come to my attention that the topic of the Good Samaritan Act came up at the Alaska Division Board Meeting recently held in Juneau. I apologize for my inability to attend that meeting, but I had a prior commitment made in January of this year for that week.

The Good Samaritan Act (AS 09.65.090) has been the topic of extensive correspondence between Division legal advisors in recent months. It is an important question, because patrollers have the right to know the potential liability they may incur by participating in ski patrol activities.

Based on a 1971 case decided by the Alaska Supreme Court, I have consistently taken the position that it is doubtful whether ski patrollers, either voluntary or professional, have any protection under Alaska's Good Samaritan Act. In Lee v. State, a State Trooper was called to the scene of an incident involving a lion attack against a carnival goer. The Trooper used his pistol to kill the lion. Unfortunately, in so doing, he also wounded the carnival goer. In its opinion, the Alaska Supreme Court held that the purpose of the Good Samaritan statutes is to induce voluntary rescue by removing the fear of potential liability of those that are not under some preexisting duty rescue. The court held that the Trooper could be held liable based on simple negligence, because he was under a duty to go to the aid of the carnival goer. Thus, the Good Samaritan statute was held inapplicable.

A ski patroller who is on duty and in the ski patrol uniform has an existing obligation to rescue injured individuals in the area or on the trails. Since patrollers have this duty, I believe it most likely

the Alaska Supreme Court would rule patrollers are not protected by the Good Samaritan Act.

It should be noted that patrollers who are state-certified Emergency Medical Technicians (AS 18.08.086) or Paramedics (AS 08.64.366) are protected against liability for simple negligence by separate state statutes.

I have enclosed a copy of a monograph titled "The Legal Responsibility of Ski Patrollers," which was published in three installments in Frozen Slats two seasons ago. In addition, I have enclosed correspondence between myself and Walter Gregg, National Legal Counsel, and Ron Sturtz, Eastern Division Legal Counsel, concerning the Good Samaritan Act. I note with interest that Ron was successful in having the New Jersey Legislature specifically name volunteer ski patrollers as being protected by the Good Samaritan Act.

If you have further questions on this topic, or any other legal matters relating to the ski patrol, please do not hesitate to contact me.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.

Marc

Marc D. Bond

MDB:bv:ski42

Encl.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 12, 1988

SUBJECT: Civil liability of volunteers
(Work Order No. 5-1484)

TO: Senator Jim Duncan

FROM: Edward H. Hein
Legislative Counsel

Enclosed is the draft bill I discussed with your assistant, Dale Staley, relating to providing immunity for volunteers of municipalities and nonprofit organizations. The draft also incorporates provisions of HB 340, introduced by Representative Davis, that extends coverage under the Good Samaritan law to emergency services volunteers, such as ski patrol, search and rescue units, and independent volunteer fire department personnel.

Note that the definition I have provided for "nonprofit entity" at page 2, lines 11-14 makes reference to Section 501(c) of the Internal Revenue Code, which exempts nonprofit organizations from federal income taxes. Section 501(c) encompasses numerous types of organizations, which are spelled out in paragraphs (1) - (25) (see attached copy of IRS code). Nonprofits are often referred to as sec. 501(c)(3) organizations, but the federal bill (H.R. 911) I was given to use as a model defines nonprofits by reference to all of sec. 501(c). You may wish to consider whether you want to include all 25 types of organizations described in 501(c) within the immunity provided in your bill.

If I may be of further assistance, please feel free to contact me at your convenience.

Enclosure

EHH:gc
WKG1:023

CHAPTER 87

SENATE NO. 2705

AN ACT exempting volunteers of certain organizations from liability for damages under certain conditions and supplementing P. L. 1959, c. 90 (C. 2A:53A–7 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1.[38] a. Notwithstanding any other provision of law to the contrary, no person serving without compensation, other than reimbursement for actual expenses, as a trustee, director, officer or voluntary member of any board, council or governing body of any nonprofit corporation, society or association as provided in P. L. 1959, c. 90 (C. 2A:53A–7 to 2A:53A–11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11–3) or to a conference under the jurisdiction of such a voluntary association, shall be liable for damages resulting from the exercise of judgment or discretion in connection with the duties of his office unless the actions evidence a reckless disregard for the duties imposed by the position.

b. Notwithstanding any provisions of law to the contrary, no person who provides volunteer service or assistance for any nonprofit corporation, society or association as provided in P. L. 1959, c. 90 (C. 2A:53A–7 to 2A:53A–11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11–3) or to a conference under the jurisdiction of such a voluntary association shall be liable in any action for damages as a

38. N.J.S.A. 2A:53A-7.1.

result of his acts of commission or omission arising out of and in the course of his rendering the volunteer service or assistance.

Nothing in this subsection shall be deemed to grant immunity to any person causing damage by his willful, wanton or grossly negligent act of commission or omission.

Nothing in this subsection shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.

2.[31] This act shall take effect immediately and shall apply to any cause of action arising on or after that date.

Approved April 6, 1987.

TORT-LIABILITY AND MALPRACTICE

Exempts volunteers of certain organizations from civil liability under certain conditions.

Assembly Insurance Committee
Statement Senate, No. 2705—L.1987, c. 87

This bill would give immunity to unpaid trustees, directors, officers, or voluntary members of (1) any board, council, or governing body of any nonprofit corporation, society or association; or (2) a nonprofit federation, council or affiliated group composed of these organizations; or (3) a voluntary interscholastic sports organization or a conference within the jurisdiction of a voluntary interscholarstic sports organization. Immunity would be extended to these individuals for any damages resulting from the exercise of judgment or discretion in connection with the duties of their office, unless the actions evidence a reckless disregard for the duties imposed by the position.

The bill also would extend immunity to individuals who provide volunteer service or assistance for any nonprofit corporation, society or association, or for a nonprofit federation, council or affiliated group composed of these organizations or a voluntary interscholastic athletic association or a conference affiliated with an interscholastic athletic association. These volunteers would not be given immunity for any act of commission or omission which is willful, wanton or grossly negligent or for negligence in connection with the operation of a motor vehicle.

Nonprofit organizations have recently experienced difficulty in attracting and keeping qualified individuals to serve as officers and on boards of directors of nonprofit and charitable associations because of the potential exposure to lawsuits which exists. Exposure to liability in these cases often means that the individual's own assets are placed in jeopardy, and many individuals have been reluctant to subject themselves to this risk. By giving immunity to trustees, officers, directors, and other uncompensated volunteers, the bill's purpose is to permit nonprofit and charitable organizations to continue to attract able people to serve in these capacities.

P. L. 1986, CHAPTER 13, *approved May 12, 1986*

1986 Senate No. 1678 (*Second Official Copy Reprint*)

AN ACT providing civil immunity from liability to certain volunteer athletic coaches **and officials** and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. Notwithstanding any provisions of law to the contrary, no person who provides services or assistance **free of charge, except for reimbursement of expenses,** as an athletic coach **[or]** **, manager**, *or official* for a sports team**[, free of charge, except for reimbursement of expenses.]** **which is organized or performing pursuant to a non-profit or similar charter** shall be liable in any civil action for damages ***to a player or participant*** as a result of his acts of commission or omission arising out of and in the course of his rendering that service or assistance.

b. The provisions of subsection a. of this section shall apply not only to organized sports competitions, but shall also apply to practice and instruction in that sport.

c. Nothing in this section shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or omission**, *nor to any coach, manager, or official who has not participated in a safety orientation and training program established by the league or team with which he is affiliated***.

d. Nothing in this section shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted March 24, 1986.

**—Senate amendment adopted April 7, 1986.

e. Nothing in this section shall be deemed to grant immunity to any person for any damage caused by that person permitting a sport competition or practice to be conducted without supervision.

*f. Nothing in this act shall apply to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program.***

2. This act shall take effect immediately.

P. L. 1987, CHAPTER 239, *approved August 17, 1987*

1987 Assembly No. 3718 (*Official Copy Reprint*)

AN ACT exempting certain sports officials from liability for damages under certain conditions.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Notwithstanding any provisions of law to the contrary, '[no]' *a* person who is accredited as a sport official by a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11-3) and who serves that association, a conference under the jurisdiction of the association, or a public entity as defined in Title 59 of the New Jersey Statutes in the capacity of a sports official, whether or not compensated for his services, shall *not* be liable in any action for damages as a result of his acts of commission or omission arising out of and in the course of his rendering the services. Nothing in this act shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or omission, nor to any person causing damage as the result of his negligent operation of a motor vehicle.

2. This act shall take effect immediately and shall apply to all causes of action arising on or after the effective date.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted March 5, 1987.

Pages 4 & 6

100TH CONGRESS
1ST SESSION

H. R. 911

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

Mr. PORTER (for himself, Mr. PURSELL, Mr. EDWARDS of Oklahoma, Mr. DENNY SMITH, Mr. LAGOMARSINO, Mr. TOWNS, Mr. MURPHY, Mr. FEIGHAN, Mr. WORTLEY, Mr. MRAZEK, Mr. PENNY, Mr. ECKART, Mr. SUNIA, Mrs. JOHNSON of Connecticut, Mr. PACKARD, Mrs. BENTLEY, Mrs. VUCANOVICH, Mr. ATKINS, Mrs. COLLINS, Mr. ESPY, Mr. ROBINSON, Mr. PASHAYAN, Mr. DARDEN, Mr. MYERS of Indiana, Mr. BEVILL, Mr. WELDON, and Mr. DANIEL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

MAY 27, 1987

Additional sponsors: Mr. HENRY, Mr. MARTINEZ, Mr. QUILLEN, Mr. EVANS, Mr. BILIRAKIS, Mr. GREEN, Mr. BIAGGI, Mr. DAVIS of Illinois, Mr. SAXTON, Mr. KILDEE, Mr. HILER, Mr. SHUMWAY, Mr. INHOFE, Mrs. ROUKEMA, Mr. CRANE, Mr. RICHARDSON, Mr. GOODLING, Mr. MARLENEE, Mr. DAVIS of Michigan, Mr. BARTLETT, Mr. CHANDLER, Mr. HOLLOWAY, Mr. STUMP, Mrs. MORELLA, Mr. CLINGER, Mr. GALLO, Mr. LUJAN, Mr. PEPPER, Mr. CARPER, Mr. SENSENBRENNER, Mr. KOLBE, Mr. SMITH of New Jersey, Mr. YATRON, Mr. BOEHLERT, Mr. HYDE, Mr. UPTON, Mr. SCHULZE, Mr. MCCLOSKEY, Mr. LATTA, Mr. BLILEY, Mr. BADHAM, Mr. RAVENEL, Mr. MCKINNEY, Mr. STALLINGS, Mr. JACOBS, Mr. EMERSON, Mr. BOULTER, Mr. GRAY of Illinois, Mr. BURTON of Indiana, Mr. FUSTER, Mrs. MARTIN of Illinois, Mr. SUNDQUIST, Mr. HASTERT, Mr. ROE, Mr. PETRI, Mr. ROWLAND of Connecticut, Mr. HORTON, Mr. LOWERY of California, Mr. SOLARZ, Mr. GRANDY, Mr. FAWELL, Mr. CLARKE, Mr. MILLER of Washington, Mr. REGULA, Mr. BUNNING, Mr. MCCOLLUM, Mrs. MEYERS of Kansas, Mr. LIPINSKI, Mr. KOLTER, Mr. MACKAY, Mr. SCHUETTE, Mr. BUECHNER, Mr. DONNELLY, Mr. LEWIS of Georgia, Mr. YATES, and Mrs. SMITH of Nebraska

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) within certain States, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve;

(2) as a result of this perception, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer

and higher cost programs than would be obtainable if volunteers were participating;

(4) the unpredictability of liability awards and doctrines has added to the high cost of liability insurance by making it difficult for insurers and self-insurers to project their liability with any degree of confidence and has adversely affected the ability of nonprofit organizations to obtain liability insurance coverage for volunteer directors and officers with respect to their personal capacities; and

(5) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of State laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and governmen-

tal entities for actions undertaken in good faith on behalf of such organizations.

SEC. 3. NO PREEMPTION OF STATE TORT LAW.

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) IMMUNITY FOR VOLUNTEERS.—Except as provided in subsection (b), any volunteer of a nonprofit organization or governmental entity shall be immune from civil liability in any action brought in any court on the basis of any act or omission resulting in damage or injury to any person if—

(1) such individual was acting in good faith and within the scope of such individual's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such individual.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

(a) CERTIFICATION.—(1) Subject to paragraph (2), before the beginning of each fiscal year, commencing with fiscal year 1989, each State shall certify to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a).

(2) In the case of a State whose legislature does not meet in regular session between the date of the enactment of this Act and before the beginning of fiscal year 1989, such State shall provide the certification referred to in paragraph (1) before the beginning of each fiscal year commencing after fiscal year 1989.

(b) REDUCTION OF ALLOTMENT.—If a State fails to provide certification as required under subsection (a), the Secretary shall reduce by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(c) REALLOTMENT TO CERTIFYING STATES.—With respect to any reduction made under subsection (a), the Secretary shall allot such funds among States which provide certification referred to in subsection (a) in proportion to the amount otherwise allotted to such States.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, for such services (other than reimbursement for expenses actually incurred or honoraria not to exceed $300 per year for government service), and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage; and

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

○

100TH CONGRESS
1ST SESSION

S. 929

Entitled the "Volunteer Protection Act of 1987".

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

Entitled the "Volunteer Protection Act of 1987".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) within certain States, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve;

(2) as a result of this perception, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) the unpredictability of liability awards and doctrines has added to the high cost of liability insurance by making it difficult for insurers and self-insurers to project their liability with any degree of confidence and has adversely affected the ability of nonprofit organizations to obtain liability insurance coverage for volunteer directors and officers with respect to their personal capacities; and

(5) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in

connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of State laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and governmental entities for actions undertaken in good faith on behalf of such organizations.

SEC. 3. NO PREEMPTION OF STATE TORT LAW.

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) IMMUNITY FOR VOLUNTEERS.—Except as provided in subsection (b), any volunteer of a nonprofit organization or governmental entity shall be immune from civil liability in any action brought in any court on the basis of any act or omission resulting in damage or injury to any person if—

(1) such individual was acting in good faith and within the scope of such individual's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such individual.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

(a) CERTIFICATION.—(1) Subject to paragraph (2), before the beginning of each fiscal year, commencing with fiscal year 1989, each State shall certify to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a).

(2) In the case of a State whose legislature does not meet in regular session between the date of the enactment of this Act and before the beginning of fiscal year 1989, such State shall provide the certification referred to in paragraph (1) before the beginning of each fiscal year commencing after fiscal year 1989.

(b) REDUCTION OF ALLOTMENT.—If a State fails to provide certification as required under subsection (a), the

Secretary shall reduce by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(c) REALLOTMENT TO CERTIFYING STATES.—With respect to any reduction made under subsection (a), the Secretary shall allot such funds among States which provide certification referred to in subsection (a) in proportion to the amount otherwise allotted to such States.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, for such services (other than reimbursement for expenses actually incurred or honoraria not to exceed $300 per year for government service), and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage; and

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

○

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501-1990
TELEPHONE 279-3581
TELECOPIER 277-1331
AREA CODE 907
TELEX 25-477

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS
CLAY A. YOUNG

WILLIAM E. MOSELEY
MARC D. BOND
J. D. CELLARI
JAMES B. FRI[illegible]CI
ANDREW GU[illegible]
DEBORAH K. [illegible]
DONALD C. TH[illegible]IAS
JILL E. MICKELSEN
HOWARD A. LAZAR

January 22, 1988

Tom Smith
Patrol Director
Maverick Patrol
P.O. Box 81071
College AK 99708

Re: Senate Bill 346; House Bill 340

Dear Tom:

I have cogitated about the two problems you directed to my attention. Hopefully the solutions proposed below will be of use to you.

As I understand them, the two problems are as follows:

1. Immunity for the Organization. Some attorneys testifying before the L & C Committee yesterday raised the specter of a candy striper in a hospital pulling the plug on a respirator, and asking if this legislation would exempt the hospital from liability in such a case. I'm not sure that this example has a basis in reality: The candy stripper would not be considered a "member" of the hospital (while the candy striper organization would appropriately be protected), and the candy striper would not be "providing first aid, search, rescue, or other emergency services." If this is the only example of the problem, I would prefer to meet it head on rather than diddle with the language of the bill to meet a highly improbable scenario.

The bigger problem, it seems to me, is whether non-profit organizations that provide medical assistance on a "fee-for-services-rendered" basis would be protected for acts of their "members." Such organizations would include the Lutheran hospital in Fairbanks and the Sisters of Providence hospital in Anchorage. We have no interest in providing immunity to those who charge for their services. One way to solve the problem would be to add a third proviso to the bill, which would read: "(3) the organization does not receive compensation for the services it provides to the public." or "(3) the organization does not receive compensation from the persons for whom it provides the services." This would distinguish ski patrols and the civil air

patrol from "non-profit" organizations that charge for services. Try it out and see what you think.

2. Use of the Word "Regardless". You indicated that someone had a problem with the use of the word "regardless". The same meaning could be had by deleting the word "regardless" and putting "or not" after "whether". That section of the bill would then read: ". . . other emergency services, whether or not the organization or its members are under a preexisting duty to render assistance . . ." The meaning is precisely the same, and the word "regardless" has been eliminated.

We also discussed the effects of H.R. 911 and the state legislation that has been introduced to comply with H.R. 911 if it is adopted. I am enclosing a copy of the letter I sent to Tom Moyer and Katherine Reardon, along with the printout from the BillCast database. While the proposed legislation certainly wouldn't hurt us, I agree with you that the combination could be fatal to our bills.

Well, use this stuff as you see best. If you think direct contact between staff and me would be helpful, that's OK. I prefer to minimize the voices with which we speak, and I know that you and Bob will do a great job. If you need anything else, let me know.

Very truly yours,

Marc

Marc Bond

Enc.

cc: Bob Janes

TITLE 26

INTERNAL REVENUE CODE

SUBTITLE A—INCOME TAXES—Continued

CHAPTER 1—NORMAL TAXES AND SURTAXES—Continued

SUBCHAPTER F—EXEMPT ORGANIZATIONS

1976 Amendment. Pub.L. 94–455, Title XXI, § 2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

1975 Amendment. Pub.L. 93–625, § 10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.

1969 Amendment. Pub.L. 91–172, Title I, § 101(j)(58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.

PART I—GENERAL RULE

1984 Amendment. Pub.L. 98–369, Title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505, applicable to years beginning after Dec. 31, 1984.

1976 Amendment. Pub.L. 94–455, Title XIII, § 1307(d)(3)(B), Oct. 4, 1976, 90 Stat. 1728, added item 504.

1969 Amendment. Pub.L. 91–172, Title I, § 101(j)(61), Dec. 30, 1969, 83 Stat. 532, struck out item relating to section 504.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations.—The following organizations are referred to in subsection (a):

(1) any[1] corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists

Act as amended and supplemented before July 18,

tle without regard to any provision of law which is is title and which is not contained in a revenue Act,

ubsection (*l*).

ed for the exclusive purpose of holding title to therefrom, and turning over the entire amount an organization which itself is exempt under this

community chest, fund, or foundation, organized r religious, charitable, scientific, testing for public nal purposes, or to foster national or international (but only if no part of its activities involve the s or equipment), or for the prevention of cruelty to of the net earnings of which inures to the benefit of individual, no substantial part of the activities of anda, or otherwise attempting, to influence legisla- provided in subsection (h)), and which does not n (including the publishing or distributing of state- ign on behalf of any candidate for public office. anizations not organized for profit but operated n of social welfare, or local associations of employ- is limited to the employees of a designated person municipality, and the net earnings of which are able, educational, or recreational purposes.

horticultural organizations.

mbers of commerce, real-estate boards, boards of ll leagues (whether or not administering a pension not organized for profit and no part of the net he benefit of any private shareholder or individual.

leasure, recreation, and other nonprofitable pur- e activities of which are for such purposes and no hich inures to the benefit of any private shareholder

ocieties, orders, or associations—

ge lodge system or for the exclusive benefit of the y itself operating under the lodge system, and payment of life, sick, accident, or other benefits to ociety, order, or association or their dependents.

eneficiary associations providing for the payment r benefits to the members of such association or d beneficiaries, if no part of the net earnings of than through such payments) to the benefit of any ual.

ieties, orders, or associations, operating under the

which are devoted exclusively to religious, chari- educational, and fraternal purposes, and le for the payment of life, sick, accident, or other

und associations of a purely local character, if— earnings inures (other than through payment of benefit of any private shareholder or individual,

solely of amounts received from public taxation, sessments on the teaching salaries of members, nvestments.

rance associations of a purely local character, panies, mutual or cooperative telephone compa- only if 85 percent or more of the income consists

of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop

operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

or other producers, and operated in conjunction
nption shall not be denied any such corporation
f the dividend rate of such stock is fixed at not to
est in the State of incorporation or 8 percent per
, on the value of the consideration for which the
bstantially all such stock (other than nonvoting
which are not entitled or permitted to participate,
rofits of the corporation, on dissolution or other-
ends) is owned by such association, or members
be denied any such corporation because there is
by it a reserve required by State law or a reason-
y purpose.

rming part of a plan providing for the payment of
compensation benefits, if—

impossible, at any time prior to the satisfaction of
to employees under the plan, for any part of the
within the taxable year or thereafter) used for, or
other than the providing of supplemental unem-
nefits,

yable to employees under a classification which is
d which is found by the Secretary not to be
employees who are highly compensated employ-
f section 414(q), and

ot discriminate in favor of employees who are
oyees (within the meaning of section 414(q)). A
d discriminatory within the meaning of this clause
s received under the plan bear a uniform relation-
tion, or the basic or regular rate of compensation,
by the plan.

a plan meets the requirements of subparagraph
r any other plan shall not be taken into considera-
ot be considered discriminatory—

enefits under the plan which are first determined
ner within the meaning of subparagraph (A) are
ccident, or unemployment compensation benefits
Federal law (or reduced by a portion of such
nondiscriminatory manner), or

plan provides only for employees who are not
cident, or unemployment compensation benefits
the same benefits (or a portion of such benefits
iminatory manner) which such employees would
such employees were eligible for such benefits,

plan provides only for employees who are not
(which meets the requirements of subparagraph
oloyment compensation benefits provided wholly
ne benefits (or a portion of such benefits if
minatory manner) which such employees would
lan if such employees were eligible under such
mployees eligible under both plans would make a
be nondiscriminatory within the meaning of

d to meet the requirements of subparagraph (A)
the plan if on one day in each quarter it satisfies

unemployment compensation benefits" means

id to an employee because of his involuntary
yment of the employer (whether or not such
sulting directly from a reduction in force, the
or operation, or other similar conditions, and
efits subordinate to the benefits described in

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions, and

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof).

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connec-

tion with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) any[1] association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

he trust and the processing of claims against
ung Acts; and
he trust may be used for, or diverted to, any

ed in subparagraph (A), or
y to the extent that the trustee determines
ts is not currently needed for the purposes
(A)) in—
rities of the United States,
State or local government which are not in
or interest, or
d deposits in a bank (as defined in section
redit union (within the meaning of section
redit Union Act, 12 U.S.C. 1752(6)) located in

lack Lung Disability Trust Fund established
to the general fund of the United States
isfaction of any tax or other civil or criminal
o established or contributed to the trust).
e term "Black Lung Acts" means part C of
and Health Act of 1977, and any State law
y or death due to pneumoconiosis.
ed in the United States and established in
ltiemployer plans if—
t is exclusively—
described in section 4223(c) or (h) of the
me Security Act of 1974, and
d necessary administrative expenses in con-
ment and operation of the trust and the
st the trust,
he trust may be used for, or diverted to, any

d in subparagraph (A), or
ecurities, obligations, or time or demand
e (ii) of paragraph (21)(B),
uirements of paragraphs (2), (3), and (4) of
applicable, section 4223(c) of the Employee
t of 1974, and
rides that, on dissolution of the trust, assets
ner than to plans which have participated in
st established under section 4223(h) of such
ich employers have participated in the fund.
before 1880 more than 75 percent of the
past members of the Armed Forces and a
ide insurance and other benefits to veterans

4049 of the Employee Retirement Income
t on the date of the enactment of the
dments Act of 1986).
which—
eholders or beneficiaries,
or beneficial interest, and
usive purposes of—
y and holding title to, and collecting income

amount of income from such property (less
ganizations described in subparagraph (C)
such corporation or beneficiaries of such

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing,

(iv) any organization described in paragraph (3), or

(v) any organization described in this paragraph.

(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(d) **Religious and apostolic organizations.**—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) **Cooperative hospital service organizations.**—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate
Community and Regional Affairs Committee

February 25, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff

RE: SB 447 - "An Act relating to liability for damages or injury resulting from hazardous recreational activities."

RE: SB 448 - "An Act relating to civil liability of certain volunteers."

This pair of bills by Senator Duncan are designed to address existing liability problems. SB 447 bars legal action against the state, municipalities, and nonprofits for property damage or personal injury that results from the person's participation in a hazardous recreational activity.

SB 448 provides protection from civil liability for volunteer members of rescue organizations (Civil Air Patrol, Ski Patrol, Sea Dogs, etc.) and volunteers for the state division of parks, municipalities, and nonprofits.

A sectional analysis for each bill has been provided by Senator Duncan along with additional backup material. Copies of articles, the New Jersey statute, proposed federal legislation, and correspondence relating to the two bills are in the packet.

Representatives of the Department of Natural Resources, Department of Law, and Division of Risk Management will be at the meeting to testify or answer questions. DNR will have a fiscal note and position paper on the two bills available at the meeting.

The Association of Trail Lawyers is aware of the meeting but a representative for that organization has indicated they will probably not testify today.