

HB

277

**Municipality
of
Anchorage**



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4545

TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 1, 1994

Received

FEB 07 1994

Representative Brian Porter
Chair House Judiciary Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99801

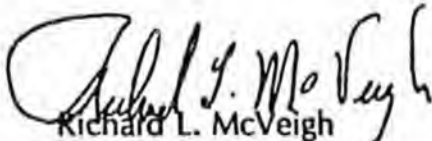
Re: House Bill 277 Relating To Defense And Indemnification Of Public Employees With Respect To Claims Arising Out Of Conduct That Is Within The Scope Of Employment

Dear Representative Porter:

After reviewing House Bill 277 the Municipality of Anchorage supports the proposed bill. From discussions with the Municipal Risk Management Department, Police Department and the Legal Department concerning this issue the proposed bill would provide the Municipality certain benefits.

As with a prior incarnation of this legislation, CSHP 395 which was before the House Judiciary Committee in April of 1992, this bill would allow the Municipality of Anchorage flexibility to defend and indemnify its employees in appropriate circumstances, including punitive damage situations. Additionally, the legislation allows an employee a defined time period in which to assert and protect the employees' rights to defense or indemnity. The bill appropriately limits the defense of those rights to declaratory actions, for enforcing the rights to defense; cross-claims, for enforcing rights to indemnity where the employer is named as a party; and an action brought within one year, for enforcing indemnification where the employer is not named as a party. With these elements the Municipality of Anchorage supports the bill.

Sincerely,


Richard L. McVeigh
Municipal Attorney

cc: Duane Udland, Deputy Chief Police
Harry Sjoberg, Risk Manager
Mary Vollendorf, Municipal Manager's Office

matter/hb395porter



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-548

January 24, 1994

TO: Representative Al Vezey, Chair
and
Members, House Committee on State Affairs

FROM: Kent E. Swisher, Executive Director

RE: HB 277 - Indemnification of public employees

It has been brought to my attention that your committee is considering HB 277- Indemnification of public employees, which would amend AS 39.90 to require public employers, including municipalities, to provide defense and indemnification of employees for actions or omissions that occurred during the course and within the scope of the employee's employment, except in cases of gross negligence or intentional or wilful misconduct. The bill allows for collective bargaining agreements to supersede state law with regard to defense and indemnification.

It is the understanding of the Alaska Municipal League that it is already common practice for municipalities to indemnify employees for actions/omissions taken during the course and scope of their employment and that such indemnification is included within most, if not all, collective bargaining agreements.

The League has no objection to the current draft of HB 277, or to the proposed Committee Substitute dated 1/20/94. It appears to codify existing common practice, to provide reasonable protection for employers by requiring the employee to keep the employer informed and to cooperate in the defense, and to provide equal treatment of all types of employees.

cc: Representative Brian Porter



Anchorage Telephone Utility

Executive Offices

January 20, 1994

Representative Brian Porter
Room 122
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Porter:

I want to express my appreciation to you for introducing H.B. 277. This legislation would allow public entities to indemnify employees from personnel liability resulting from honest and efficient accomplishment of their job responsibilities. ATU fully supports this bill and urges its speedy approval.

Our society is seeing increasing numbers of former employees arguing wrongful discharge cases in front of juries. Without regard to the merits of such cases, our system of justice places public employees in a precarious position. Plaintiffs in such actions can not gain punitive damages from a public entity; punitive damages may only be applied to a private entity. Given this, plaintiffs' attorneys will often name an individual as defendant in order to establish a party with punitive liability or, as may be the case, simply to provide leverage.

While individuals so named, more often than not, eventually are relieved of liability, their lives in the meantime can be dramatically impacted. An individual so named will have all credit suspended pending outcome of the case. Simply put, the individual is unable to buy a house, a car or even a large appliance through normal credit channels until the case is settled. In many instances, such cases take years to resolve.

Received

JAN 24 1994

ANCHORAGE

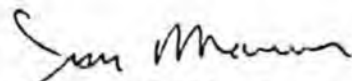
Representative Brian Porter
January 20, 1994
Page 2 of 2

Our concern in rectifying this unfair situation stems from our desire to have effective employees carrying out their responsibilities in a competent and efficient manner. Clearly, an employee who must consider his/her personal fortunes and those of his family each time he makes a decision will find his thinking swayed by this potential threat. We ask for this legislation to be passed so that our employees may work in an atmosphere free from the threat of personal reprisal.

Again, thank you for your efforts. If you need anything further from ATU regarding this legislation, please let me know.

Sincerely,

ANCHORAGE TELEPHONE UTILITY


James G. Morrison
General Manager

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0616



January 18, 1994

Representative Brian Porter
State Capitol
Juneau, AK 99801

Dear Representative Porter,

The Alaska Peace Officers Association supports House Bill 277. We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith and without malice.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the state's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets. I encourage you and your colleagues to support House Bill 277.

Sincerely,

Michael A. Grimes, Statewide President
Alaska Peace Officers Association

EXECUTIVE DIRECTOR

Edward T. Harter
Anchorage

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Sitka
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Tom Fink, Mayor

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500



Service since 1921

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JAN 19 1994

P.L.P. BRIAN PORTER

January 18, 1994

Representative Brian Porter
House of Representatives
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Representative Porter,

I am writing this letter in support of House Bill 277, which would require public employers to indemnify public employees with respect to law suits and legal claims made against employees who are working within the scope and authority of their position. I can safely represent that the subject of indemnification is very important to all public employees.

Law enforcement over the years has identified indemnification as a top legislative priority. Our premise is simple. We believe that when a public employee is working at the behest of their employer, and they operate in good faith and within their proper authority, employees should be indemnified.

This is not an argument for protection of bad employees. It is a request that, as a matter of law, employers protect employees who are doing the work of the government. Threatened or actual legal action has a very chilling effect on any employee. If personal assets or wealth are unfairly at risk, employees are discouraged from making decisions or taking action.

We are happy to work with you and the Legislature in the passage of this bill. If you have any questions, please contact me at 786-8552.

Sincerely,

Duane S. Udland, Deputy Chief
Anchorage Police Department
4501 South Bragaw
Anchorage, Alaska 99507

Alaska Association Chiefs of Police



January 17, 1994

Received

JAN 19 1994

REP BRIAN PORTER

Representative Brian Porter
House of Representatives
State Capital
Juneau, Alaska, 99811

Dear Representative Porter:

Two years ago the Alaska Association of Chiefs of Police, the Alaska Peace Officers Association, and the FBI National Academy Associates identified the indemnification of public employees as their number one legislative priority. This issue is even more timely and critical now. The following is the combined statement and position of the three professional law enforcement associations concerning indemnification.

"We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, individual employees are listed as parties to the action also. In the past, employees have not been held personally liable for actions taken at the behest of their employer unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of public employees in jeopardy.

The trend to hold public employees personally liable places employees in a position where their own personal assets are at risk. This means that all government employees are in danger, from the highest level policy maker to the level of worker where the policy is implemented. Even elected officials are vulnerable today.

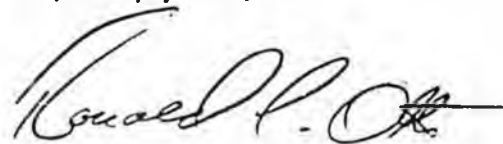
We in law enforcement believe this is an undue burden upon the public employees of this State. It carries the potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority, and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that their good faith judgments can result in the loss of their homes, their cars, or their savings."

If we can be of any assistance in the passage of your bill please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ronald L. Otte".

Ronald L. Otte
President

RLO/lp

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 277

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF PUBLIC SAFETY
COURTS



DISTRICT 20

SESSION:
STATE CAPITOL, ROOM 110
JUNEAU, ALASKA 99801-1100
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVZ., SUITE 64J
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

SPONSOR STATEMENT

HB 277 requires the state and municipalities to indemnify public employees who are sued for acts or omissions occurring during the performance and within the scope of the employee's job. The statute would **NOT** require employers to indemnify an employee for acts of intentional or willful misconduct or to pay an award of punitive damages.

The bill is based on the current state policy for defense and indemnification of state employees. A copy of this policy is attached, along with a memorandum from the Attorney General's Office explaining the policy reasons why indemnification of public employees is a good idea. In addition to enumerating the benefits to the employer of indemnification, the Department of Law explanation points out the "widely felt" belief "that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee." This bill will codify this policy, extend it to borough, municipal and city employees, and provide them with the same protections in statute as currently extended to our university employees and our teachers.

HB 277 is currently supported by the Alaska Peace Officers Association, The Association of Chiefs of Police and the Municipality of Anchorage.

Sec. 14.12.090. Oath. School board members, before taking office, shall take and sign the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska and that I will honestly, faithfully, and impartially discharge my duties as a school board member to the best of my ability." (§ 1 ch 98 SLA 1966)

NOTES TO DECISIONS

Stated in *Tunley v. Municipality of Anchorage Sch. Dist.*, 617 P.2d 490 (Alaska 1980).

Sec. 14.12.100. Application. AS 14.12.010 — 14.12.100 apply to home rule and general law municipalities. (§ 1 ch 98 SLA 1966)

Revisor's notes. — In 1968 the word "may" was deleted before the word "apply" to correct a manifest error in the original publication of this section.

Sec. 14.12.110. Single body as assembly and school board. Notwithstanding the provisions of this chapter or other law, a single body may serve as both the assembly and school board in the manner provided for third class boroughs under AS 29.20.300(b), if

- (1) an ordinance for that purpose is approved by the assembly and ratified by a referendum of a majority of the qualified borough voters voting on the question at a regular or special election; and
- (2) the public school population within the borough is 500 pupils or less. (§ 1 ch 214 SLA 1970; am § 28 ch 74 SLA 1985)

Sec. 14.12.115. Indemnification. A school board shall insure or indemnify and protect the board, any member of the board, or any agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit or judgment by reason of alleged negligence, alleged violation of civil rights or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the school premises, if the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff, at the time of the occurrence, was acting under the direction of the school board within the course or scope of the duties of the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff. (§ 2 ch 148 SLA 1978)

TEACHERS

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§ 14.40.175

EDUCATION

§ 14.40.175

Cross references. — For definition of university receipts, see AS 14.40.491; for provisions related to the transfer of land from the commissioner of natural resources to the board of regents, see §§ 1-3 and 7-9, ch. 22, SLA 1983, in the Temporary and Special Acts; for duties of board

related to sex-based discrimination, see AS 14.18.080.

Legislative history reports. — For letter of intent on ch. 46, SLA 1977 (HCSSB 261), see 1977 House Journal, p. 1019.

NOTES TO DECISIONS

Applied in *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975); *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991).

Stated in *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

Cited in *Wolfe v. O'Neill*, 336 F. Supp. 1255 (D. Alaska 1972); *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Collateral references. — Regulation as to fraternities and similar associations connected with educational institution. 10 ALR3d 389.

Student organization registration statement, filed with public school or state university or college, as open to inspection by public. 37 ALR3d 1311.

Liability of college or university to student enrolled in course of instruction terminated prior to completion. 51 ALR3d 1003.

Validity of regulation of college or university denying or restricting right of student to receive visitors in dormitory. 78 ALR3d 1109.

Sec. 14.40.175. Indemnification. The Board of Regents shall insure or indemnify and protect the Board of Regents, any member of the Board of Regents, or any agent or employee of the University of Alaska or of the Board of Regents against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the university premises, if the Board of Regents member, agent or employee, at the time of the occurrence, was acting under the direction of the Board of Regents within the course or scope of the duties of the member, agent, or employee. (§ 3 ch 148 SLA 1978)

Collateral references. — Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 ALR3d 703.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events. 35 ALR3d 725.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 ALR3d 330.

Tort liability of public schools and insti-

tutions of higher learning for accidents occurring in physical education classes. 36 ALR3d 361.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 ALR3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 ALR3d 738.

Immunity of private schools and insti-

DIVISION OF LEGAL SERVICE
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 9, 1997

SUBJECT: Sectional Summary of CSHB 277(JUD) (Public employee legal defense and indemnification)

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 adds a new chapter to the title that applies to public officers and employees.

Sec. 39.55.010 provides that a public employer shall provide legal defense and pay settlements and judgments for a public employee when the acts or omissions that form the basis for the claim or judgment occurred during the course of and within the scope of the public employee's employment.

Subsection (b) relieves the employer of the obligation to defend and indemnify if the employee acted with gross negligence or if the acts or omissions were the result of intentional or wilful misconduct. The employer is also excused from defending or indemnifying when the case involves a disciplinary, administrative or criminal matter brought against the employee or when the employee has been convicted of a criminal offense or terminated from employment because of the conduct. If the employee settles or compromises the claim or action before asking the public employer to provide a defense and indemnify the employee, the employer is also relieved of its obligations.

Under subsection (c), the requirement to provide a legal defense and indemnification applies unless a collective bargaining agreement that covers the public employee includes a provision for defense and indemnification.

Subsection (d) excuses the employer from paying punitive damages awarded against an employee.

Subsection (e) permits public employers to adopt policies requiring the employer to provide defense or indemnification or to pay punitive damages when the statute would not otherwise require the employer to do so.

Subsection (h) makes clear that former employees are entitled to the same treatment as current employees.

Sec. 39.55.020 requires the employee to notify the employer of the claim against the employee and make a good faith effort to cooperate in the defense and resolution of the claim or action. If the employer is providing or has been asked to provide a legal defense, subsection (b) prohibits the employee from settling the claim unless the employer approves. Subsection (c) permits the public employer to settle claims or actions without the employee's consent so long as the settlement resolves all the outstanding claims against the employee.

Sec. 39.55.030 sets out the employee's rights when the employer refuses to provide a legal defense. Under subsection (b), the employee may file an action for declaratory relief to secure legal defense from the employer. Subsection (c) addresses what happens if the employee settles the claim. Subsection (d) gives the employee one year after prevailing in a declaratory relief action against the employer or the entry of final judgment or dismissal in the underlying action to secure indemnification.

Sec. 39.55.040 addresses how the employer may provide a legal defense for an employee without promising to indemnify the employee if a judgment is entered against the employee.

Sec. 39.55.100 defines terms used in the chapter, including "employee," "employer," and "settlement."

TC:lmb
94-041.lmb

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 277 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: *Public employers defending and indemnifying BRU: Personnel/OEEO
public employees...within scope of employment... Component: Personnel/OEEO
 Sponsor: Porter
 Requestor: (H) Jud COMPONENT SERIAL NO. 56

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Kevin Ritchie, Director Phone: 465-4430
 Division: Personnel/OEEO Date: _____
 Approved by Commissioner: Nancy Bear Usara Date: 2/10/94
 Agency: Administration

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(Rev. 10/92) H 51876

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 277 (JUD)

Revision Date: _____
Title: "Public employees defending and indemnifying public employees . . . within scope of employment. . ."
Sponsor: Porter
Requestor: JUD

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.

Prepared by: Brad Thompson, Director
Division: Risk Management

Phone: 465-2180
Date: _____

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration

Date: 2/10/94

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