

HB

57

HB 57

An act relating to immunity for certain claims against the state or a municipality arising out of or in connection with the year 2000 date change

The year 2000 date change creates an unparalleled challenge to government operations.

Even with the very best efforts, utilizing all budget and personnel resources available with the utmost due diligence, the magnitude and the depth of systems affected by Y2K date changes throughout state and local government operations may make it impossible to prevent all Y2K failures. Exhaustive preventive efforts are presently underway to identify, test and contingency plan mission critical systems to provide uninterrupted public services. But even the best diligent efforts may not be enough to discover and prevent all potential Y2K failures.

This bill is patterned after similar legislation already enacted into law in at least 5 states to amend their respective tort claims acts to protect both the state and local governments from Y2K liability claims.

- ◆ Georgia
- ◆ Hawaii
- ◆ Virginia
- ◆ Nevada
- ◆ Florida

Similar measures are currently being actively considered in many other states (see attachment) designed to shield both state and local governments and their employees from any derivative or consequential liability claims arising from Y2K date change failures.

Beyond Y2K specific immunity protection, at least 32 states are shielded with statutory liability caps, ranging from \$50,000 per claimant to \$1,000,000 per occurrence. Alaska has no such limitations. This bill is limited to address only Y2K liability claims and includes a provision to limit its effective period to claims accruing prior to January 1, 2006.

State and local municipalities are currently provided limited immunity protection under state law for discretionary acts. Executive decisions allocating limited resources (personnel, operating budgets etc.) are shielded but other agency operations are not so clearly protected. Should there be Y2K failures, state and local municipalities are not necessarily liable.

Extensive civil (tort) actions based on Y2K failures are anticipated in many areas of general commerce and industry. In the public sector, extensive arguments over discretionary immunity and operational responsibility and whether any duty is actually owed will be generated. At the very least, these cases will be very expensive to defend even if the public entity ultimately prevails. While civil rule 82 recovery for fees and costs are intended to compensate the prevailing party - the actual sums awarded are nominal and often extremely difficult to collect.

This legislation is designed to preclude and prevent consequential and derivative claims, but it does not interfere with an individual's right to receive statutorily mandated services or entitlements. Individuals continue to have recourse through existing administrative procedures.

Federal legislation:

The Year 2000 Information and Readiness Disclosure Act (S. 2392) Signed by President, 10/19/98

To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

Senate Bill 96

To Limit Liability in Y2K Cases and Permit Good Faith Defense

Sen. John McCain (R-Ariz.) Jan. 19 introduced a bill that would limit liability in lawsuits filed as a result of Year 2000 computer failures to actual damages incurred by plaintiffs. The bill (S. 96) would require that all lawsuits that stem from Y2K failures, except for personal injury actions in which physical harm is among the claims, be treated as breach of contract actions, no matter under what form they are brought.

Additional Day to Deal with Y2K Glitches

Rep. John Linder (R-Ga.) introduced a measure Jan. 6 that would change the federal New Year's Day holiday from Dec. 31, 1999, to Jan. 3, 2000, in order to give technology professionals and the public an additional day to respond to Year 2000 computer problems that may arise.

According to Linder, Jan. 1, 2000, falls on Saturday, however, in accordance with 5 U.S.C. §6103(a), New Year's Day must be observed on the previous Friday, Dec. 31, 1999. "We are not certain what extent of the Y2K problem will be at the beginning of the Year 2000. Fortunately, in 2000 we have a few extra days to recover after the Y2K problem hits because Jan. 1 falls on Saturday," said Linder.

**House Y2K Bill Would Set Foreseeability Test
For Liability, Require Unreasonable Behavior**

Rep. Don A. Manzullo (R-Ill.) Jan. 6 introduced a bill that would require that plaintiffs in Year 2000 cases, in order to prevail, prove by a preponderance of the evidence that the defendants acted unreasonably and caused a loss that was foreseeable. The bill also would limit damages in these cases and the length of time under which they may be brought.

The Year 2000 Consumer Protection Plan Act of 1999 (H.R. 192) would apply to most civil litigation arising under either state or federal law.

If federal legislation is enacted addressing Y2K liability, any protections it might provide may not apply to claims filed under Alaska statutes addressing tort claims against the state and municipal governments.

Pension & Benefits**CalPERS Urges Firms to Comply With Y2K Disclosure Requirements**

SACRAMENTO, Calif.—The California Public Employees Retirement System sent letters Jan. 26 to more than 1,600 companies in its equity portfolio, urging them to comply with Year 2000 computer problem disclosure requirements of the Securities and Exchange Commission.

"CalPERS calls on you to ensure that a timely, transparent, and accurate Year 2000 disclosure is filed with the SEC," CalPERS Chief Executive Officer James E. Burton said in the letter. "While you may find these disclosure rules burdensome, I assure you that we and our fellow shareowners believe they are extremely important in gauging the impact, if any, the Year 2000 issue will have on our investments."

The \$145 billion pension system is not asking the companies to respond directly or file disclosures with CalPERS but to cooperate fully with SEC so investors and the market know what companies are Y2K compli-

ant. CalPERS spokesman Brad Pacheco told BNA. More than 50 percent of the fund's portfolio is invested in publicly traded companies.

Under SEC rules, companies must disclose their state of readiness, costs to address Y2K issues, risks associated with the problem, and their contingency plans.

CalPERS has not decided what actions it may take based on the disclosures, for example whether it would pull its investments out of companies that fail to file, or file an unfavorable report.

"No one knows what the impact will be until the companies disclose, or until that day comes," Pacheco said. "But as a long-term investor, we would probably remain invested."

The pension system also plans to send similar letters to 800 international companies in its portfolio, and will ask those companies to respond directly to CalPERS, Pacheco said. The responses of those companies will be posted on a new CalPERS Internet site that will deal with corporate governance issues. The Internet site is not yet complete.

BY LAURA MAHONEY

STATE LEGISLATION ELIMINATING OR LIMITING LIABILITY FOR COMPUTER DATE ERRORS

BILL	DESCRIPTION	STATUS
ALASKA S.B. 37	Provides immunity to state and state officials for all actions arising out of Year 2000 computer date change.	Introduced 1/21/99.
ARIZONA S.B. 1057	Protects from default, foreclosure, or other enforcement action persons and entities that fail to process information, data, payment, or transfer because of a computer system failure or malfunction arising out of the Year 2000 date change. Also, credit reporting agencies shall be proscribed from entering negative credit information if it was due to disruptions caused by Y2K-related malfunction.	Introduced 1/12/99.
CONNECTICUT H.B. 5296	Provides that failure of a public service company to become Year 2000 compliant shall be deemed an unfair or deceptive trade practice.	Introduced, to House Energy and Technology Committee 1/14/99.
CONNECTICUT H.B. 5360	Includes within the statutory definition of "product" a definition of computer software for the purposes of product liability.	Introduced, to the Judiciary Committee 1/14/99.
CONNECTICUT H.B. 5104	Requires hospitals to submit a status report of their Y2K compliance plan by April 1, 1999, and a contingency plan by May 1, 1999, and biweekly thereafter, to the state Public Health Department.	Introduced, to Public Health Committee 1/8/99.
CONNECTICUT S.B. 401	Requires that managed care organizations provide at least a three-month supply of prescription drugs in December 1999, or at the monthly prescription renewal date, for patients receiving long-term, chronic, or continuous medication.	Introduced, to Public Health Committee 1/20/99.
INDIANA H.B. 1599	Provides immunity, retroactive as of December 31, 1998, to the state and its agencies, and its employees from tort or contract liability caused by an error resulting from or caused by a failure to recognize 1999, 2000, or any subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date that is produced, calculated, or generated by a computer, information system, or equipment using microchips.	Introduced 1/19/99.

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STATE LEGISLATION ELIMINATING OR LIMITING LIABILITY FOR COMPUTER DATE ERRORS - Continued

BILL	DESCRIPTION	STATUS
MASSACHUSETTS S.B. 504	Provides civil and criminal immunity to health care providers arising from activities related to the snaring of Year 2000 readiness information.	Introduced 1/6/99.
MINNESOTA H.B. 73	Provides civil immunity to state agencies and industry associations for activities related to the collection or publication of Year 2000 solution information, except in cases in which it can be shown by clear and convincing evidence that party knew information provided was materially false.	Introduced 1/11/99.
MINNESOTA S.G. 2	Includes technological hazard, defined as actual or potential failure of public infrastructure due to Year 2000 computer bug, among those occurrences for which governor may declare peacetime state of emergency; provides civil immunity to state agencies and industry associations for activities related to the collection or publication of Year 2000 solution information, except in cases in which it can be shown by clear and convincing evidence that party knew information provided was materially false; alters state contracting law; authorizes local government borrowing to cover Year 2000-related expenses.	Introduced 1/25/99.
MISSISSIPPI S.B. 2091	Provides immunity from liability for state government entities and employees acting within the scope of their employment to claims arising out of failures of any computer or information system, whether operated by or on behalf of the government, caused by the Year 2000 date change; directs state agencies to cooperate with other agencies and the private sector as necessary; prescribes the duties of agency heads with regard to Y2K conversion; directs the state Department of Information Technology Services to develop agency computer conversion status reports.	Introduced, to Judiciary Committee 1/5/99.
NEBRASKA L.B. 160	Provides immunity to government entities and employees from liability for indirect or consequential damages caused in whole or in part by computational or interpretative errors generated by computers owned, controlled, or operated by the entities and arising out of or in connection with the Year 2000 date change; provides immunity from liability to government entities and employees in any other action whether based on tort, contract, or otherwise for damages arising out of Y2K conversion problems.	Introduced, to Judiciary Committee 1/8/99.
NEW YORK A.B. 354	Provides a tax credit for corrective conversion of computer hardware and software from recognition of years in two-digit formats to recognition of years in four-digit formats.	Introduced, to Ways and Means Committee 1/6/99.
NEW YORK A.B. 1949	Requires banks and trust companies to convey certain information to clients regarding accounting errors as a result of Year 2000 computing errors.	Introduced, to Banks Committee 1/20/99.
NEW YORK S.B. 1216	Provides a tax credit for corrective conversion of computer hardware and software.	Introduced, to Investigations, Taxation, and Government Operations Committee 1/19/99.
NEW YORK S.B. 1218	Provides immunity to the state, its agencies, officers, employees, and independent contractors from liability in actions brought as a result of the calculation of an incorrect date by a state owned, controlled, or operated computer system; provides that any contract entered into by the state, its agencies, or on behalf of the state or its agencies include an immunity provision from breach by the parties as a result of a Y2K conversion failure.	Introduced, to Judiciary Committee 1/19/99.
NEW YORK S.B. 1249	Requires banks and trust companies to convey certain information to clients regarding accounting errors as a result of Year 2000 computing errors.	Introduced, to Banks Committee 1/20/99.
NORTH DAKOTA H.B. 1038	Declares an emergency and provides that the state Public Service Commission may request from any North Dakota electric, gas, telephone, or pipeline public or municipal utility status reports, contingency plans, and information on steps that utility or cooperative have taken to ensure the state's utilities are addressing the Y2K problem in a timely manner.	Introduced, to Electric Utilities Commission 1/19/99.

STATE LEGISLATION ELIMINATING OR LIMITING LIABILITY FOR COMPUTER DATE ERRORS - Continued

BILL	DESCRIPTION	STATUS
NORTH DAKOTA S.B. 2303	Limits liability of a federally insured financial institution or credit union that experiences a Year 2000 disruption to actual economic damages; bars such actions initiated after Jan. 1, 2001.	Introduced 1/19/99.
OREGON S.B. 268	Creates an affirmative defense in action under the Oregon Tort Claims Act based on Year 2000 failure of automated systems; provides it as a complete defense if the public body made good faith efforts to avoid Y2K failures; defines good-faith efforts; requires public bodies to indemnify state for federal funds that the state is required to reimburse to the federal government by reason of a Year 2000 failure; declares emergency from date of passage.	Introduced 1/21/99.
SOUTH CAROLINA S.B. 261	Creates exception to immunity from liability under the state Tort Claims Act if the government entity negligently constructed or programmed the computer or automation device itself; provides immunity for the governmental entity if the computer hardware or software is supplied by a nongovernmental vendor.	Introduced 1/12/99.
SOUTH DAKOTA S.B. 62	Provides immunity to state and local government agencies and their employees from actions arising out of any malfunction occurring on or before Dec. 31, 2002, caused by any failure of computer software or any device with a computer processor to properly recognize, calculate, display, sort, or otherwise process dates or times.	Introduced, Judiciary Committee 1/12/99.
TENNESSEE H.B. 23	Extends immunity under the state governmental tort liability act to actions arising out of or in connection with any failure or malfunction occurring before Dec. 31, 2005, caused directly or indirectly by failure of computer software or any device containing a computer processor to properly process dates if the malfunction causing the loss was unforeseeable but the plan or design for preventing the failure was prepared in substantial compliance with generally accepted computer and information design standards.	Introduced 1/14/99.
TENNESSEE S.B. 19	Same as Tennessee H.B. 23.	Introduced 1/14/99.
VIRGINIA H.B. 1662	Creates as an exception to usual procurement requirement of competitive bidding for public contracts any goods or services to remediate computers, software programs, databases, networks, information systems, firmware, or any other devices that are not compliant with the Year 2000 date change; provides that such items shall be deemed emergency procurements.	Introduced, to General Laws Committee 1/13/99.
VIRGINIA H.B. 1669	Provides immunity to counties, cities, towns, their agencies and employees, from liability in any tort action or claim arising from or in any way connected to the failure of any computer system, program, database, network, or other device operated by or on behalf of the government entities, that fails to process a date which is compatible with the Year 2000 date change; provides no immunity for acts or omissions constituting gross negligence or willful misconduct.	Introduced, to Science and Technology Committee 1/13/99.
VIRGINIA H.B. 1669	Provides immunity to local governments and their employees for all actions arising out of Year 2000 computer date change, except in cases involving acts or omissions constituting gross negligence or willful misconduct.	Introduced 1/13/99.
VIRGINIA H.B. 2158	Provides immunity to state and state government officials for all actions arising out of failure of state computer systems to accurately generate or process dates compatible with Year 2000 computer date change.	Introduced 1/18/99.
VIRGINIA S.B. 1013	Creates "Year 2000 assessment privilege," which renders inadmissible in any judicial or administrative proceeding information relating to the capability of computer system to accurately generate or process dates compatible with 2000 computer date change.	Introduced 1/19/99.

STATE LEGISLATION ELIMINATING OR LIMITING LIABILITY FOR COMPUTER DATE ERRORS - Continued

BILL	DESCRIPTION	STATUS
WASHINGTON H.B. 1262	Directs state financial institution and insurance regulators to provide Year 2000 technical assistance to these sectors; authorizes state regulators to take necessary action to preserve safety and soundness of financial institutions, and to preserve solvency of insurance carriers.	Introduced 1/19/99.
WISCONSIN A.B. 51	Provides state and local government immunity from suits arising from Year 2000 computer date errors; authorizes state regulatory agencies to engage in information gathering functions; adds Year 2000-related threats to public safety to those acts for which an emergency management contingency plan must be developed; provides immunity for actions arising from Year 2000 information sharing.	Introduced 1/21/99.

FISCAL NOTE

No. 1

Bill Version: HB 57

(H) Publish Date: 1/22/99

STATE OF ALASKA

1999 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to immunity for certain claims against the state or a municipality arising out of or in connection with the year 2000 (Y2K) date change
 Sponsor: Rules
 Requestor: Governor

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management

COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 99) 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.)

State agency civil liability exposure for consequential loss arising from the Y2K date change and what Risk Management might pay in future liability claims and defense costs will be reduced by this legislation.

Due to the uncertainty that future Y2K claims will even occur, the extent of such savings is not possible to forecast. The immunity provisions should preclude legal actions - thereby reducing future defense costs at the very least.

The state funds its liability coverage provided through Risk Management on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency. Future year liability premium assessments will reflect the cost reductions actually realized by this legislation as premiums are developed from actual claims expenses incurred.

No immediate negative fiscal impact can be shown due to outstanding unfunded liabilities.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 10/28/98

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HB 57

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 1999

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

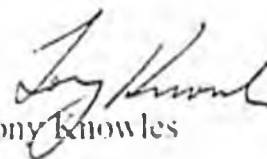
Dear Speaker ^{Brian} Porter:

As part of the state's thorough efforts to prepare for the transition into a new millennium, I am transmitting this bill to protect the state and municipalities from liability claims for damages in connection with year 2000 (Y2K) computer software and processor failures.

This bill is not meant to interfere with an individual's right to receive statutorily mandated services or entitlements. In the event of an error associated with the Y2K date change, that individual will continue to have recourse through administrative procedures to rectify the error. However, as explained in the findings, the magnitude of preparations for Y2K is unprecedented in the relatively young world of computer technology. Although the state and local governments are working diligently to smoothly transition their computer systems into the year 2000, it may be expected that, despite these best efforts, some failures might occur. Under this bill, the state, municipalities, and their agents would be immune from liability for certain damages arising before the year 2006.

Meanwhile, I can assure the Legislature and the public the state of Alaska is taking extensive efforts to attempt to make our move into the twenty-first century one without interruptions in public services.

Sincerely,



Tony Knowles
Governor



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5410

February 1, 1999

Representative Andrew Halcro, Chair
Representative John Harris, Chair
Community & Regional Affairs
State Capitol
Juneau, AK 99811

RE: HB57 - Immunity for claims against the state or municipality arising out of connection with the Year 2000 date change

Dear Chairs Halcro and Harris:

On behalf of the Alaska Municipal League and Alaska Conference of Mayors, we are writing in support of HB 57. Our position is outlined in the 1999 Municipal Policy Statement as follows:

Utilities and Environment, Section E. 2. Year 2000 (Y2K) Computer Failures: The League urges the state to support and coordinate efforts to fix potential Y2K computer failures in the state and its political subdivisions through technical assistance, coordination of planning and resources, and direct assistance and funding. The League also supports the adoption of legislation to hold the state and its political subdivisions harmless from any liability for service interruptions or problems arising from Y2K problems.

The Alaska Municipal League has been working hard to alert municipalities to the potential problems associated with the Year 2000 computer changes. Last year, we urged municipalities to establish a Y2K Task Force to coordinate actions that would avoid negative impacts on communities. We have published numerous articles on the issue in our newsletter, held training sessions at the annual conference in Fairbanks, and established links on the AML homepage to provide additional information. The National League of Cities, which is a nationwide organization of cities, set up a program for municipalities called "Y2K & You," which includes a video on the issues and an outline of a plan to walk cities through the necessary steps to avoid problems. This package was made available to all Alaskan municipalities.

However, the threat of liability on unforeseen problems looms large over the state and municipalities. We believe the people of the state would prefer that limited resources be used to continue efforts to fix the problems rather than use local tax dollars for litigation.

Obviously, passage of this bill this session is critical to all of us, and we appreciate your favorable consideration of HB 57.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Ritchie".

Kevin C. Ritchie
Executive Director

cc: House Community and Regional Affairs Committee
AML Legislative Subcommittee - Public Safety, Health & Welfare