

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3283 HJUD HB 92 - HB 97

159

EARLY CHILDHOOD PLANNING PROGRAM

(SEALASKA CONTINUED)

(Department of Health & Social Services CONTINUED)

2. Day Care Licensing (Feb 84)

<u>Community</u>	<u>#Homes</u>	<u>Capacity</u>	<u># Centers</u>	<u>Capacity</u>
a. Craig	0	0	1	35
b. Haines	0	0	3	55
c. Hydaburg	2	10	0	0
d. Juneau	59	289	11	514
e. Ketchikan	32	165	4	140
f. Petersburg	9	49	1	60
g. Sitka	21	99	3	162
h. Wrangell	2	8	2	86
TOTAL	125	620	25	1,052

E. Legislative Grants

<u>Year</u>	<u>Community</u>	<u>Amount</u>	<u>Purpose</u>
1. FY 83	Sitka	\$200,000	Day Care Center construction (construction)
2. FY 83	Sitka	300,000	Completion of Day Care Center
3. FY 84	Juneau	6,000	Mainstreaming special needs kids (HB 691)
4. FY 85	Klawock	200,000	Head Start Bldg Construction (HB 635)
5. FY 85	Klawock	40,000	Head Start Equipment Purchase
TOTAL		\$746,000	

XIII METLAKATLA

A. Department of Commerce & Economic Development

1. Child Care Revolving Loan Program - FY 84

None

B. Department of Community & Regional Affairs

1. Child Care Grant Program - FY 84

<u>Municipality</u>	<u># Homes</u>	<u>Cost</u>	<u># Centers</u>	<u>Cost</u>
a. Metlakatla	0	0	1	\$2,061*
TOTAL	0	0	1	\$2,061*

(\*Expenditures as of March 1984)

2. Day Care Assistance Program

<u>Municipality</u>	<u>Contract</u>
a. Metlakatla	\$38,707
TOTAL	\$38,707

3. Education & Training Grant FY 84

<u>Grantee</u>	<u>Amount</u>	<u>Purpose</u>
a. Metlakatla Indian Community	\$690	Management Training
TOTAL	\$690	

EARLY CHILDHOOD PLANNING PROGRAM

(XIII METLAKATLA CONTINUED)

(Department of Community & Regional Affairs CONTINUED)

4. Head Start - FY 84

<u>Community</u>	<u>Grantee</u>	<u># slots</u>	<u>Amount</u>
a. Metlakatla	Metlakatla	40	\$24,252
TOTAL			\$24,252

5. Rural Development Assistance Program - FY 84

None

C. Department of Health & Social Services - (Dec. 83)

1. Infant Learning Program

None

2. Day Care Licensing (Feb 84)

<u>Community</u>	<u># Homes</u>	<u>Capacity</u>	<u># Centers</u>	<u>Capacity</u>
a. Metlakatla	0	0	1	35
TOTAL		0	1	35

E. Legislative Grants

None

EARLY CHILDHOOD PLANNING PROJECT  
Rural Alaska Community Action Program, Inc.  
STATEWIDE GOVERNMENT FUNDING FOR EARLY CHILDHOOD PROGRAMS

REGION	DC&ED <sup>1</sup>	D...A <sup>3</sup>				RDAP <sup>8</sup>	DHSS <sup>9</sup>		JCL <sup>11</sup>		LEGISLATIVE+	TOTAL
	CCRLP <sup>2</sup>	CCGP <sup>4</sup>	DCAP <sup>5</sup>	E&TG <sup>6</sup>	H.S./PCP <sup>7</sup>		ILP <sup>10</sup>			GRANTS		
	03-84	03-84 EXP	FY 84	FY 84	FY 84		12-83	02 84				
					\$ #		\$ #	Homes/Capacity	Ctrs/Capacity			
AHTNA	0	\$ 1,386	\$ 8,886	0	* 4	0	0	0	0	1 29	0	\$ 10,272
ALEUT	0	0	0	0	0 0	0	0	0	0	0 0	0	0
ARCTIC SLOPE	0	0	0	0	0 0	0	64,915 17	0	0	0 0	\$ 300,000	364,915
BERING STRAITS	0	\$ 4,221	33,076	\$ 1,324	78,542* 140	\$ 77,086	177,000 27	3 15	1 40	440,000	811,249	
BRISTOL BAY	0	0	0	0	0 0	0	173,600 11	0	0	0 0	0	173,000
CALISTA	0	\$ 21,238	108,899	\$ 7,075	125,884* 459	79,850	153,000 43	0	0	4 166	645,000	1,140,946
CHUGACH	0	\$ 18,177	149,286	\$12,100	* 20	0	0	15 64	5 124	0	0	179,563
COOK INLET	\$ 88,827	\$410,680	3,172,964	\$35,547	103,543* 224	0	537,550 300	260 1,258	64 4,188	4,180,000	8,529,111	
DOYON	\$250,000	\$197,872	1,463,732	\$12,910	280,579* 265	0	316,245 101	185 881	38 1,443	1,140,500	3,661,838	
KONIAG	0	\$ 29,077	203,790	\$ 2,430	* 16	0	31,025 10	12 53	6 187	250,000	55,322	
NANA	0	\$ 11,588	99,338	\$ 4,940	0 0	25,610	40,400 6	0 0	2 112	647,000	828,76	
SEALASKA	\$ 52,747	\$216,427	976,684	\$19,784	99,050 198	0	188,130 74	125 620	25 1,052	746,000	2,298,822	
METLAKATLA	0	\$ 2,061	38,707	690	24,252 40	0	0	0 0	1 35	0	65,710	
<b>TOTAL</b>	<b>\$391,574</b>	<b>\$572,727</b>	<b>\$6,255,362</b>	<b>\$96,800</b>	<b>\$2,480,263 1,226</b>	<b>\$182,546</b>	<b>\$1,681,265 589</b>	<b>600 2,891</b>	<b>147 7,376</b>	<b>8,348,500</b>	<b>\$20,349,037</b>	

1. DC&ED-Department of Commerce & Economic Development

2. CCRLP-Child Care Revolving Loan Program

3. DCRA-Department of Community and Regional Affairs

4. CCGP-Child Care Grant Program

5. DCAP-Day Care Assistance Program

6. E&TG-Education and Training Grants

7. HS/PCP-Head Start/Parent Child Programs

8. RDAP-Rural Development Assistance Program-FY 84

9. DHSS-Department of Health and Social Services

10. ILP-Infant Learning Program-Children served as of Dec. 1983

11. DCL-Day Care Licenses

+ up to and including FY 78 - 85

\* These regions receive a portion of Rural-CA's Total \$1,768,413

## Work Session Participants

### Community Representatives

Esta Finley, Wainwright  
Arctic Slope Region

Anita Erickson, Unalaska  
Aleut Region

Karen Kallen, Nondalton  
Bristol Bay Region

Agnes David, Kongiganak  
Calista Region

Linda Watson, Ninilchik  
Cook Inlet Region

Sue Adams, Kotzebue  
Nana Region

Sue Liebner, Port Lions  
Koniag Region

Susan Brown, Hoonah  
Sealaska Region

Deborah Meganak, Port Graham  
Chugach Region

Virginia Washington, St. Michael's  
Bering Strait Region

Cheryl Denhart, Manley Hot Springs  
Doyon Region

### Non Profit Association Representatives

Diedre Bailey  
Kodiak Area Native Assn.

Rusty Taylor  
Maniilaq Native Assn.

Arnold Melsheimer  
North Pacific Rim

Mary Dalton  
Cook Inlet Native Assn.

Gail Evanoff  
North Pacific Rim

Jo Putnam  
Kawerak, Inc.

Joanie Cleary  
North Pacific Rim

Kathleen Stout  
Bristol Bay Native Assn.

Linda Weld  
Copper River Native Assn.

Edna Charley  
Copper River Native Assn.

Sharon Eluska  
Al tian/Pribilof Island Assn.

Margaret Ericsson  
Central Council of Tlingit and Haida Indian Tribes of Alaska

Sara Turner  
Tanana Chiefs Conference

State of Alaska

Ms. Lare, Child Care Coordinator  
Community and Regional Affairs

Annie Calkins, Early Childhood Coordinator  
Department of Education

Pat O'Brien, Community Care Licensing Coordinator  
Department of Health and Social Services

Guests

Mary Asper, President  
Alaska State Association for the Education of  
Young Children

Barbara Smith  
Early Childhood Coordination Project

AND

Debra Ward, Project Coordinator

Joann Contini, Director  
Child Development, RURAL-CAP

## Discussion Topics

### THINK EARLY CHILDHOOD!

Quality early childhood programs are beneficial to children, parents, communities and society as a whole.

Children have increased language development.

Children have more self-esteem and feel better about themselves.

Fewer children are held back in school.

Early intervention means fewer children are classified as special needs and fewer need special services.

Children do better in school and are more likely to graduate.

Children have better socialization skills and have less chance of anti-social behavior, such as crime.

Children with positive early experiences are more likely to stay in school and go on to college.

More children are immunized.

More children participate in the child nutrition program and have better nutrition habits.

Parents become involved earlier in their child's development.

Children seem more interested in learning new things.

Parents understand more about how young children learn and develop.

SUPPORT FOR EARLY CHILDHOOD!

Community Level Resources for Early Childhood

Parents	Village Council
IRA Council	Village Corporation
City Offices	Village Chief
Mayor	Local Businesses
Schools	School Board
Churches	Local newspapers
Community Health Aide	
Women's Shelters and Resource Centers	
Fraternal Organizations (Lions, Elks, etc.)	
Other Early Childhood Programs (Head Start, Pre-School, etc.)	

Regional Level Resources for Early Childhood

School Districts	Community Colleges
Library	State Senator
State Representative	Native Profit Corporation
Cooperative Extension Service	
Radio and Television Stations	
Native Non-Profit Corporation	
Regional Health Associations	
Regional Associations for the Education of Young Children (Alaska AEYC, Kenai AEYC, Arctic AEYC, Delta AEYC, Southeast AEYC, Anchorage AEYC and Fairbanks AEYC)	

State Level Resources for Early Childhood

Universities	State Board of Education
Family Service Providers	Private Foundations
Johnson O'Malley Program	Bureau of Indian Affairs
Alaska Native Education Association	
Alaska Federation of Natives	
Alaska Head Start Director's Association	
Alaska Native Health Services Association	
Rural Alaska Community Action Program	
State Department of Education	
State Department of Health and Social Services	
State Department of Community and Regional Affairs	
Governor's Mini-Cabinet on Women's Issues	
Governor's Mini-Cabinet on Rural Issues	
Public Health Service and Indian Health Service	
State Association for the Education of Young Children	

## ACT FOR EARLY CHILDHOOD!

### What Communities Can Do

- Know what the early childhood needs are.
- Be vocal about needs on local, regional and state levels.
- Establish early childhood needs as a priority.
- Network with others who support early childhood services.
- Organize parents.
- In a bicultural setting, make sure both sides have input.
- Build or refurbish a building for an early childhood program.
- Let your legislator know what your needs are.
- Adopt a philosophy statement on early childhood.
- Support child development and parenting courses in local junior and senior high schools.
- Hold community meetings and discuss early childhood.
- Attend parent education sessions.
- Enlist support of the local government.
- Volunteer time working in an early childhood program.

### What Regions Can Do

- Establish early childhood as a priority.
- Assess needs of early childhood in the region.
- Hire an early childhood trainer for the region.
- Develop employer-related options for child care.
- Coordinate regional efforts with state and local early childhood efforts.
- Find out about available funding.
- Develop relevant materials for early childhood programs.
- Network with family health and social service organizations.

Hold an early childhood conference.

Develop a regional early childhood association.

Talk to legislators about the early childhood needs of the regions.

Talk to businesses about the early childhood needs of the regions.

Offer to coordinate planning for regional early childhood services.

#### What State Government Can Do

Listen to communities.

Come and stay a few days in the community.

Technical assistance in grant writing.

Be more specific in providing information.

Disseminate current and relevant information.

More personnel in health and social services.

Research and collect hard data on young children.

Provide more early childhood training.

Certify early childhood teachers.

Learn more about life in rural Alaska.

Write information, regulations, etc. so they can be easily read and understood.

Provide local or regional resource centers.

Work together with all departments which deal with young children.

Provide training in early childhood for staff and parents.

Ask for local involvement when developing regulations.

Allow more time to send, receive and act on information.

Put early childhood professionals on boards and commissions.

What the Legislature Can Do

Increase funding for licensing activities.

Put preschools in all school buildings.

Establish early childhood foundation funds.

Increase funding for Head Start.

Increase funding for Day Care Assistance Programs, Child Care Training Grants and Education and Training Grants.

Develop parent education programs in child development.

Tie funding to quality of care.

Appropriate funds for building early childhood facilities.

Develop better preschool regulations.

Develop statewide philosophy on early childhood.

Establish regional information and resource centers.

Require all departments dealing with young children to work together.

Establish a statewide central early childhood office.

PLANNING THE FUTURE FOR ALASKA'S CHILDREN  
EARLY CHILDHOOD PLANNING PROJECT MANUAL

Some participants in the April 1984 work session requested a how-to manual for conducting this type of assessment and planning on a regional level. Thus, a manual was written and will be distributed to regional non-profit native corporations. All others wishing to obtain a copy may contact:

RurAL-CAP  
Box 3-3908  
Anchorage, Alaska 99501

STATE OF ALASKA  
THE LEGISLATURE

FOUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 22, 1985

SUBJECT: The effect of CSHB 92(Jud) on Civil Rule 77

TO: Representative M. Mike Miller  
Chairman, House Judiciary Committee

FROM: George W. Edwards *GWE*  
Legislative Counsel

This is in response to your request for an analysis of the effect of section 1 of CSHB 92(Jud) on Civil Rule 77.

The portion of section 1 in question is the 15-day time period allowed for a response to notice of an application for an income withholding order set out in AS 09.65.132(d). Civil Rule 77 provides that a response is required within 10 days of the notice.

The time conflict is not significant to your bill since the bill language in question is unchanged from that adopted in 1981 and found in section 1 of Chapter 96, SLA 1981. The necessary Rule 77 change was passed at that time in section 12 of Chapter 96. The change is incorporated into Civil Rule 77 by an editor's note to the rule.

GWE:csh  
c3/058



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith  
Signature of Camera Operator

7/25/89  
Date

H

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STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

May, 1986

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

Jeanie Henry

*House Judiciary 2/7/85*

*1:30 pm*

**COMMITTEE REPORT**  
**HOUSE**

( 7 )

FURTHER: FINANCE

1/23/85

Date: 2-7-85

The Committee on JUDICIARY has had HB 94

"An Act relating to participation by magistrates in the judicial retirement system; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

[Signature]  
[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
**CHAIRMAN**

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

25

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

Page 1 of 2

**REQUEST**

Bill/Resolution No.: HB 94  
 Title: "...Participation of Magistrates in the Judicial Retirement..."  
 Sponsor: Taylor  
 Requestor: Rodev  
 Date of Request: 1/30/85

**FISCAL DETAIL**

Agency Affected: Alaska Court System  
 Program Category Affected: PERS, JRS  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

Operating	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 Personal Svcs						
100 Ptmnt & Bnfts	-0-	536.6	579.5	625.9	676.0	730.0
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
<b>TOTAL OPERATING</b>	-0-	536.6	579.5	625.9	676.0	730.0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	536.6	579.5	625.9	676.0	730.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		536.6	579.5	625.9	676.0	730.0

**POSITIONS:**

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

**ANALYSIS:** (Attach a separate page if necessary)

Prepared By: J.K. Humphreys, Director *J.K. Humphreys* Phone: 465-4470  
 Division: Retirement & Benefits Date: 2/1/85

Approved by Commissioner: Lisa Rudd *LRR* Date: 2/6/85  
 Agency: Department of Administration

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

House Bill 94  
Fiscal Note Analysis  
Prepared by Division of Retirement & Benefits  
Department of Administration

February 1, 1985

IV Analysis: This bill would transfer the magistrates from the Public Employees' Retirement System (PERS) to the Judicial Retirement System (JRS) effective July 1, 1985. It would give them the opportunity to withdraw all contributions and service from the PERS or leave their contributions and retain their service in PERS to July 1, 1985. Those who withdraw their service and contributions could purchase the equivalent retroactive credit in the JRS.

- o This bill would effect PERS by reducing PERS cost to the court systems by 14.16% of magistrates estimated FY 86 covered payroll of \$1,044,200. (22,700 average X 46 magistrates) for FY 86.
- o This bill would effect JRS by increasing JRS cost to the court systems by 65.55% of the magistrates estimated FY 86 covered payroll of \$1,044,200.
- o The net effect of this bill would be an increase in cost to the state of 51.39% (65.55% - 14.16%) of the magistrates covered payroll or \$536,600 (1,044,200 X 51.39%) for FY 86.

This bill would increase the JRS net unfunded liability by \$3,146,400.00.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

**REQUEST**

Bill/Resolution No.: HB 94  
 Title: An Act Relating to  
Magistrate Retirement  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Alaska Court System  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Trial Courts

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		536.6	579.5	625.9	676.0	730.1
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>536.6</b>	<b>579.5</b>	<b>625.9</b>	<b>676.0</b>	<b>730.1</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		536.6	579.5	625.9	676.0	730.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>536.6</b>	<b>579.5</b>	<b>625.9</b>	<b>676.0</b>	<b>730.1</b>

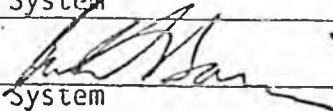
**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561  
 Division: Alaska Court System Date: 2/4/85

Approved by Commissioner:  Date: 2/4/85  
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

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

12/1/83

ALASKA COURT SYSTEM

HB 94 - MAGISTRATE RETIREMENT  
FISCAL IMPACT

The estimated fiscal impact of this bill was developed by the Division of Retirement & Benefits. While the Court System does not have the actuarial expertise to closely estimate the cost of this bill, the estimated costs appear reasonable based upon our experience with similar retirement programs.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

January 15, 1985

SUBJECT: Participation by magistrates in the  
judicial retirement system  
(Work Order No. 14-0325)

TO: Representative Robin Taylor

FROM: Teresa B. Cramer *Jerry Cramer*  
Legislative Counsel

You have asked for a sectional analysis of Work Order  
14-0325.

Section 1 amends the subsection in AS 22.25.010 that defines  
which judges are covered by the judicial retirement system  
to include magistrates within the definition.

Section 2 amends the definition of "'member' or 'employee'"  
in the Public Employees' Retirement Act to exclude  
magistrates of the district courts.

Section 3 enacts temporary law to permit magistrates  
employed on July 1, 1985, to withdraw from the public  
employees' retirement system. They may then receive credit  
in the judicial retirement system for up to 10 years of  
employment if they make retroactive contributions to the  
system.

Section 4 permits a magistrate to remain a member of the  
public employees' retirement system for employment before  
July 1, 1985, if the magistrate has not chosen to withdraw  
under section 3.

Section 5 limits the application of the bill to magistrates  
who retire after June 30, 1985.

Section 6 contains an immediate effective date.

If I can be of further assistance, please let me know.

TC:ojb  
J11/001



# Telegram

04016

'85 FEB 4 PM 5 15

NL ANCHORAGE ALASKA 51 02-04 1642 AST  
PMS 465-4990  
REPRESENTATIVE MIKE MILLER, CHAIRMAN  
HOUSE JUDICIARY COMMITTEE, POUCH V, MS 3100  
JUNEAU AK 99811

0073

ATTN ALL HOUSE JUDICIARY COMMITTEE MEMBERS  
RE: HEARING, 2-7-85  
YOUR SUPPORT OF HB94 WOULD BE GREATLY APPRECIATED BY OUR  
STATEWIDE MAGISTRATES SYSTEM, MAGISTRATES DUTIES ARE MUCH  
LIKE THOSE OF OUR HIGHER ECHELON JUDGES IN OUR STATE,  
AND OUR RETIREMENT SHOULD PARALLEL THOSE OF OUR ESTEEMED  
SUPERIORS. PLEASE SUPPORT THIS BILL, THANKS  
LOWELL ANAGICK, MAGISTRATE

FEB 5 1985



# Telegram

R  
02132

NL TDA CRAIG ALASKA 50 02-04 305P AST 35 FEB 4 PM 19 35  
PMS

REP MIKE MILLER (JUN) 465-4990

POUCH V (MS3100) C-07

JUNEAU AK 99811

RE: HB94, PARTICIPATION BY MAGISTRATES IN JUDICIAL RETIREMENT SYSTEM.

I WOULD DEEPLY APPRECIATE YOUR SERIOUS CONSIDERATION AND SUPPORT.  
PASSAGE IS NEEDED TO CORRECT INJUSTICE AND DISCRIMINATION AGAINST  
ALASKA MAGISTRATES AND PROVIDE FAIR RETIREMENT PENSION.

THANKS FOR YOUR HELP.

ELIZABETH DENNIS

FEB 5 1985

7 1985  
February 1, 1985

TO: House Judiciary Committee Members  
Representative Miller, Chairman  
Representative Sund, Vice-Chairman  
Representative Gruenberg  
Representative Taylor  
Representative Clocksin  
Representative Pettyjohn  
Representative Phillips

FROM: James Jackson  
District Court Magistrate  
P.O. Box 158  
Galena, AK. 99741

RE: HB 94--Dealing with  
Magistrate Retirement

I am writing to support House Bill 94 since I will be unable to attend the committee's public meeting on February 7th. I strongly support the bill's intention to allow Magistrates to participate in the Judicial Retirement Plan.

I would just like to take a few moments to list the major reasons that I support this legislation, beyond the obvious self-interests.

1. The duties of magistrates equate exactly to those of District Court Judges in all criminal matters and all civil matters except the civil monetary amounts
2. In addition many magistrates have Superior court duties as Standing or Special Masters. Something District Court Judges do not do.
3. Magistrates also do coroner work, vital statistic work and other public services not done by either District or Superior Court Judges.

4. The Alaska Supreme Court in STATE vs HOLLOWAY said that magistrates are not merely assistants to a district court judge but preside with full authority over a court of limited jurisdiction, exercising judicial power vested by the Constitution.
5. Magistrates make up the majority of judges in the state and are the primary contact the public will have with the system.
6. Based on the above there seems to be an inequity in salary and benefits. While the salaries are anywhere from 1/2 to 1/5 of other judges, I realize with the current budget restraints that this can not be changed. However, the retirement could be without such a large financial impact and would go a long way to correct this inequity.

Besides correcting a discrepancy between the various judges in the state system I feel it would have other benefits directly realized by the court system and the general public.

1. By upgrading the retirement plan to be consistent with other judges, you will be providing a needed incentive to retain magistrates. As it is now a magistrate could transfer over to another state job without jeopardizing his/her retirement.
2. Because of the investment in the new retirement plan a magistrate would be more inclined to get continuing education and do a better job for the public, especially considering that he sits at the pleasure of the Presiding Judge, and is not protected by any inherent job security.
3. The decrease in turn-over, the improved skills, and the higher moral will lead directly to better service to the public.

In asking you to support this legislation, I am asking you to recognize the importance of magistrates to the effectiveness of the judicial system, notice the broad jurisdictional

responsibilities they bear; to be aware of the current inequities of benefits that exist; and while not being able to correct them all atleast support a cost-effective measure that will close the gap.

The legislature in the past created a retirement system for judges in an effort to retain them. This is what a retirement system is meant to do. You need to create the same incentives if you want to keep good magistrates. This bill would go a very long way in doing this.

Magistrates are apolitical for obvious reasons, and consequently are poor lobbyists. Most are rural and distant from peer groups and seats of government. Being the Vice-President of the Statewide Magistrates Association, I feel I can speak for the vast majority of magistrates when I say that we do not depend on our political power or voting block to get this legislation passed, but rather simply on your sense of fairness. Thank-you for your consideration.

cc: Senator Sackett

# Memorandum

TO:  All members of the Finance, Judiciary,  
and State Affairs Committees.

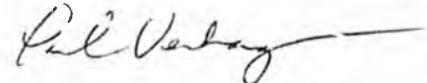
DATE : 01 February 1985

FROM: Magistrate Paul Verhagen

SUBJECT: SR-58 and HB-94 .KS

Please consider the copy of the letter I sent to the Chairmen  
of the above mentioned committees and help us to change the current  
inequity which excludes Magistrates from the Judicial Retirement  
System.

Thank You.



Paul Verhagen - Magistrate  
Tanana, Alaska 99777



## District Court

State of Alaska

at TANANA, ALASKA

Honorable Chairmen:  
Mitchell Abood  
Patrick m. Rodey  
John C. Sackett  
Jan Faiks  
Katie Hurley  
M. Mike Miller  
Albert P. Adams,

01 February 1985

I am writing at this time in regards to a bill that is presently before the House and Senate (SB-58 and HB-94). This bill seeks the inclusion of Magistrates in the Judicial Retirement System.

The current exclusion of Magistrates from the Judicial Retirement System is unfortunate for many reasons - the most important being that Magistrates render to the state essentially the same services that are rendered by District Court Judges, who are included under the Judicial Retirement System and yet Magistrates are excluded therefrom. Indeed there are differences in the positions of Magistrate and District Court Judge - but where the one may be limited in jurisdiction as compared to the other, he is often called upon to assume responsibilities which the first is not. For example: although their criminal jurisdiction is the same, a Magistrate is limited in civil jurisdiction to \$1000.00 whereas a District Court Judge hears cases up to \$10,000.00. However, although neither jurisdiction includes hearing Superior court matters, Magistrates are often appointed as Special Masters and do hear certain Superior court matters, Whereas District Court Judges seldom ( if ever ) do.



**District Court**  
**State of Alaska**

at TANANA, ALASKA

Magistrates are also called upon to serve as coronors and hold inquests in their communities and to perform the function of keeping Vital Statistics. Neither of these duties devolves upon the District Court Judge. In addition it is often the duty of the Magistrate to perform all clerical functions as many posts do not have clerks.

It is for these reasons, as well as others not included, that I feel that Magistrates do perform a service equal with District Court Judges to the State.

I realize that not all inequities can be rectified at once, but please keep in mind that Magistrates already receive lesser pay than District Court Judges, must they also receive lesser benefits in spite of rendering equal service?

Please help us correct this inequity by passing this bill. It will be invaluable in that Magistrates will have a greater incentive to continue with the court system when they receive those inevitable calls in the middle of the night ( be it Holiday or not ) for unlike District Court Judges they are allways on call.

Sincerely,

A handwritten signature in cursive script that reads "Paul Verhagen".

Paul Verhagen - Magistrate  
P.O. Box 231 Tanana, Alaska  
99777

HB 94

2-7-85

Dear <sup>Mike</sup>~~Representative Miller~~:

Enclosed is the copy of "CS for HB 279 (finance)  
which you requested. Also enclosed is the related  
fiscal note from last session. We will  
work up current figures.

Ken A.

PERS  
IRS

Offered: 4/18/84  
Referred: Rules

Original sponsors: Bussell, Barnes,  
Clocksin, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 279 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing participation by magistrates in  
7 the judicial retirement system; and providing for an  
8 effective date."

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

10 \* Section 1. AS 22.25.010 is amended by adding a new subsection to  
11 read:

12 (h) A magistrate may voluntarily retire at any time and has a  
13 vested right to accrued retirement pay if the magistrate has served  
14 five or more years as a magistrate. Retirement pay may not begin  
15 until the magistrate has reached the age of 55, except that an  
16 actuarially equivalent retirement pay may begin after the magistrate  
17 has reached the age of 50. In order to retire under this subsection a  
18 magistrate shall file an application for retirement with the  
19 commissioner of administration. If a magistrate is eligible to  
20 receive retirement pay at the time of retirement, the retirement pay  
21 begins on the first day of the month following the date the  
22 application for retirement is received by the commissioner of  
23 administration.

24 \* Sec. 2. AS 22.25.011 is amended to read:

25 Sec. 22.25.011. CONTRIBUTIONS. Each justice and judge appointed  
26 after July 1, 1978, shall contribute seven percent of the base annual  
27 salary received by the justice or judge to the judicial retirement  
28 system. Contributions shall be made for all creditable service under  
29 this chapter up to a maximum of 15 years, except that a magistrate

1 shall make contributions for all creditable service under this chapter  
2 up to a maximum of 25 years. This contribution is made in the form of  
3 a deduction from compensation, and is made even if the compensation  
4 paid in cash to the justice or judge is reduced below the minimum  
5 prescribed by law. Each justice and judge is considered to consent to  
6 the deduction from compensation. Payment of compensation less the  
7 deduction constitutes a full discharge of all claims and demands for  
8 the services rendered by the justice or judge during the period  
9 covered by the payment, except as to the benefits provided for under  
10 this chapter. The contributions shall be credited to the judicial  
11 retirement fund established in accordance with AS 22.25.048.

12 \* Sec. 3. AS 22.25.020 is amended by adding a new subsection to read:

13 (b) A retired magistrate eligible for retirement pay shall  
14 receive from the date of appointment to retirement, a benefit equal to  
15 three percent of the average monthly compensation for each year of  
16 credited service, to a maximum of 75 percent of the average monthly  
17 compensation.

18 \* Sec. 4. AS 22.25 is amended by adding a new section to read:

19 Sec. 22.25.021. POST RETIREMENT PENSION ADJUSTMENT. When a post  
20 retirement pension adjustment is granted under AS 39.35.475, a post  
21 retirement pension adjustment in the same amount is payable under this  
22 chapter to retired magistrates in accordance with AS 39.35.475 and  
23 Public Employees' Retirement System regulations.

24 \* Sec. 5. AS 22.25.030(a) is amended to read:

25 (a) Upon the death of a justice or judge who has served for at  
26 least two years, the surviving spouse is entitled to receive monthly  
27 compensation equal to one-half of the monthly retirement pay the  
28 justice or judge would thereafter have been entitled to receive if  
29 retired at the time of death. If at death the justice or judge was

1 not yet entitled to retirement pay, or was or would have been entitled  
2 to less than 60 percent of the monthly salary authorized for the  
3 office, or, in the case of a magistrate, was or would have been en-  
4 titled to less than 60 percent of the magistrate's average monthly  
5 compensation, the surviving spouse is entitled to monthly compensation  
6 equal to 30 percent of the salary authorized for justices or judges,  
7 respectively, at the time each monthly payment is made, or, in the  
8 case of a magistrate, monthly compensation equal to 30 percent of the  
9 magistrate's average monthly compensation. The surviving spouse of a  
10 magistrate is entitled to benefits under AS 22.25.021.

11 \* Sec. 6. AS 22.25 is amended by adding a new section to read:

12 Sec. 22.25.100. DEFINITIONS. In this chapter, unless the con-  
13 text otherwise requires,

14 (1) "average monthly compensation" means the result ob-  
15 tained by dividing the compensation earned by a magistrate during a  
16 considered period by the number of months, including fractional  
17 months, for which compensation was earned; the considered period  
18 consists of the three consecutive calendar years during the period of  
19 credited service that yield the highest average compensation or, if  
20 the magistrate does not have three consecutive calendar years, the  
21 period of credited service; a magistrate must have at least 115 days  
22 of credited service in the last calendar year in order to have that  
23 year be used as one of the three consecutive years;

24 (2) "judge" means a judge of the court of appeals, a  
25 superior court judge, a district court judge or a magistrate;

26 (3) "justice" means a supreme court justice.

27 \* Sec. 7. AS 39.35.680(21) is amended to read:

28 (21) "member" or "employee"

29 (A) means a person eligible to participate in the

1 system and who is covered by the system;

2 (B) includes

3 (i) active member;

4 (ii) inactive member;

5 (iii) vested member;

6 (iv) deferred vested member;

7 (v) non-vested member;

8 (vi) disabled member;

9 (vii) retired member;

10 (C) does not include

11 (i) former members;

12 (ii) persons compensated on a contractual or fee  
13 basis;

14 (iii) casual or emergency workers or nonpermanent  
15 employees as defined in AS 39.25.200;

16 (iv) persons covered by the Alaska Teachers'  
17 Retirement System;

18 (v) employees of the division of marine trans-  
19 portation engaged in operating the state ferry system who  
20 are covered by a union or group retirement system to which  
21 the state makes contributions;

22 (vi) justices of the supreme court or judges of  
23 the court of appeals or of the superior or district courts  
24 or magistrates of the district courts of Alaska;

25 (vii) the administrative director of courts ap-  
26 pointed under art. IV, sec. 16 of the state constitution  
27 unless the director [HE] becomes a member under AS 39.35.-  
28 158; and

29 (viii) members of the elected public officers'

1 retirement system (former AS 39.37);

2 \* Sec. 8. Notwithstanding AS 39.35.240, a person serving as a magis-  
3 trate on July 1, 1984, may withdraw from the public employees' retirement  
4 system (AS 39.35) and receive a refund of the balance of the employee  
5 contribution account and employee savings account.

6 \* Sec. 9. A person who is serving as a magistrate on July 1, 1984, may  
7 receive prior service credit under AS 22.25 for service rendered as a  
8 magistrate of the Alaska court system before the effective date of this Act  
9 if the magistrate (1) withdraws from the public employees' retirement  
10 system (AS 39.35); (2) receives a refund of all contributions made under  
11 AS 39.35; (3) elects to receive service credit under AS 22.25 for prior  
12 service as a magistrate; and (4) makes retroactive contributions for ser-  
13 vice as a magistrate after January 3, 1959, including service before  
14 July 1, 1978. Retroactive contributions under this section shall be at the  
15 rate of seven percent of the salary the magistrate received during the  
16 period for which the contributions are made. To be effective, an election  
17 under (3) of this section must be made on or before June 30, 1985.

18 \* Sec. 10. Notwithstanding the amendment to AS 39.35.680(21) made in  
19 sec. 7 of this Act, a person serving as a magistrate on July 1, 1984, may  
20 receive retirement benefits from the public employees' retirement system  
21 for covered service before July 1, 1984, if a refund of public employees'  
22 retirement system contributions is not made to the magistrate.

23 \* Sec. 11. The amendments to AS 22.25 and AS 39.35.680(21) made in this  
24 Act apply only to a magistrate who retires from state service after  
25 June 30, 1984.

26 \* Sec. 12. AS 22.25.010(g) is repealed.

27 \* Sec. 13. This Act takes effect July 1, 1984.

28

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_  
(Page 1 of 2)

<p>REQUEST</p> <p>Bill/Resolution No.: <u>CSHB 279</u></p> <p>Title: <u>"An Act amending JRS &amp; PERS"</u></p> <p>Sponsor: <u>Busell</u></p> <p>Requestor: _____</p> <p>Date of Request: _____</p>	<p>FISCAL DETAIL</p> <p>Agency Affected: <u>Alaska Court System</u></p> <p>Program Category Affected: <u>JRS &amp; PERS</u></p> <p>BRU, Program or Subprogram(s) Affected: _____</p>
--	--

EXPENDITURES/REVENUES: (Thousands of Dollars)

Operating	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 Personal Svcs	-0-	62.4	67.4	72.8	78.6	84.9
100 Rtmnt & Bnfts						
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>62.4</b>	<b>67.4</b>	<b>72.8</b>	<b>78.6</b>	<b>84.9</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Fund	-0-	62.4	67.4	72.8	78.6	84.9
Federal Funds						
Other						
Total						

POSITIONS:

Full-Time						
Part-Time						
Temporary						

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys, Director Phone: 465-4460  
 Division: Retirement & Benefits Date: 4-10-84

Approved by Commissioner: Lisa Rudd Date: 4-11-84  
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

(Page 20 of 2)

CSHB 279  
Fiscal Note Analysis  
Prepared by the Division of Retirement & Benefits  
Department of Administration

April 10, 1984

RECEIVED

APR 11 1984

DIV. OF RETIREMENT

IV Analysis: This is a fiscal note for CSHB 279

- o This bill would effect PERS by reducing PERS cost to the court systems by 14.15% of magistrates covered payroll of \$966,690 (\$21,015 average x 46 magistrates) for FY 85.
- o This bill would effect JRS by increasing JRS cost to the court system by 20.60% of the magistrates covered payroll of \$966,690 for FY 85.
- o The net effect of this bill would be an increase in cost to the state of 6.45% (20.60% - 14.15%) of the magistrates covered payroll or \$62,351 (\$966,690 x 6.45%) for FY 85.



Telegram

A  
08002

T  
TDA SAVOONGA ALASKA 36 02-07 1102A AST

PMS

HOUSE JUDICIARY COMMITTEE ATTN MIKE MILLER AND COMMITTEE MEMBERS

0294

JUNEAU AK

WE ARE URGING AND IN SUPPORT THE COMMITTEE ON THIS HOUSE BILL  
NBR. 95 STATE WIDE MAJISTRATE AND THE JUDICIAL RETIREMENT SYSTEM  
TO SUPPORT AND IN PASSING THIS BILL TO BECOME REALITY.

ABNER GOLDBERGEN

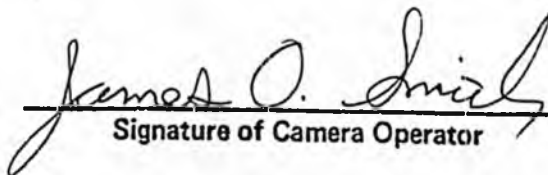
BOX 111 SAVOONGA ALASKA 99769

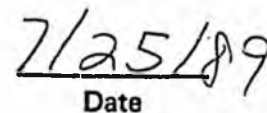


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

HB

B

9

7

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

May, 1986

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

Jeanie Henry

House Judiciary

2-15-85

1:30 pm

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

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

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

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

Distribution (by Agency preparing fiscal note):

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

7/1/84

FISCAL NOTE

HB 97

Page 2

ANALYSIS (Cont'd.)

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

*Alaska Recreation and Park Association*

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



December 21, 1984

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

Dear Representative Duncan:

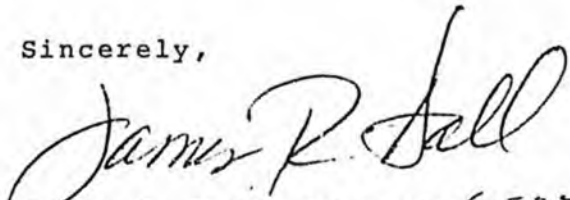
Several months ago, we spoke concerning a possibility of seeking legislation for "public liability". Alaska is currently one of seven state's in the United States that does not have such legislation on the books. As a recreation professional in Alaska, I believe it would be very worthwhile to seek approval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

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

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

Continued Best Wishes.

Sincerely,

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

cc: Alaska Recreation and Park Association Board

JRH/drb

## Recreational Use Immunity Protection for Public Entities

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

---

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Participants, Assistants and Spectators

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

AB 555 sets up several exceptions to public entity immunity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*5. Exception: Negligent Construction or Maintenance.*

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

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

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

### Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

II-256  
10  
Drafting  
12-31-84

CHAPTER 863

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

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

LEGISLATIVE COUNSEL'S DIGEST

AB 555, Campbell. Public liability.

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

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

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

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

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

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

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

"Hazardous recreational activity" also means:

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

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

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

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

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

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

injury arose.

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

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

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

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

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

O

ALASKA  
STATE LEGISLATURE  
**MEMORANDUM**

FEB 11 1985

February 8, 1985

TO: Representative Mike Miller, Chairman  
House Judiciary Committee

FROM: Representative Jim Duncan

RE: HB 97 ks

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

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

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

CITY/BOROUGH OF JUNEAU  
★ ALASKA'S CAPITAL CITY

LAW DEPARTMENT (907) 586-5242

February 15, 1985

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

Dear Chairman and Members of the Committee:

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

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

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

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

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

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

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

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

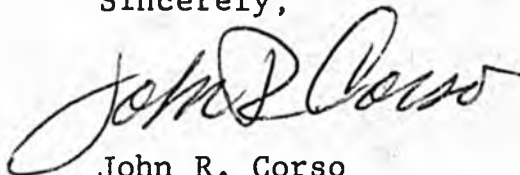
(5) The bill, at page 6, line 22 leaves liable any municipality which "promotes" a hazardous recreational activity. If the purpose of this provision is to discourage hazardous recreational activities, the present wording should be retained. If, however, the purpose is to discourage municipalities from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

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

The Honorable Mike Miller  
February 15, 1985  
Page 3

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

Sincerely,

A handwritten signature in cursive script, reading "John R. Corso".

John R. Corso  
Assistant City-Borough Attorney

JRC/mjm

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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

February 19, 1985

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

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

Dear Mr. Luce:

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

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

Sincerely,

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

M. Mike Miller, Chairman  
House Judiciary Committee

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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

February 19, 1985

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

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

Dear Mr. Kelly:

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

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

Sincerely,

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

M. Mike Miller, Chairman  
House Judiciary Committee

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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

February 19, 1985

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

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

Dear Mr. Smith:

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

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

Sincerely,

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

M. Mike Miller, Chairman  
House Judiciary Committee

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF PARKS AND OUTDOOR RECREATION

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

MAILING ADDRESS:  
POUCH 7001  
ANCHORAGE, ALASKA 99510

February 28, 1985

Re: HB 97

MAR 4 1985

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

Dear Representative Miller:

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

Thank you for the opportunity to comment.

Sincerely,

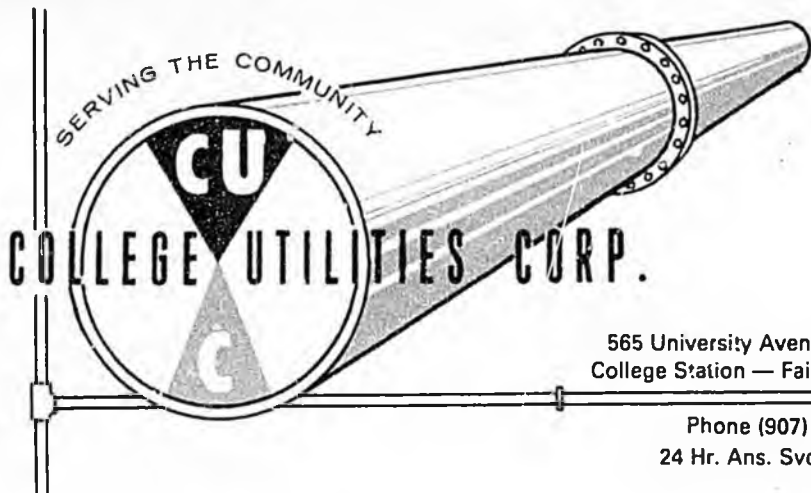
Neil C. Johannsen  
Director



By: Pete J. Panarese  
Chief of Operations Services

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

PJP:clk



MAR 4 1985

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

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

February 26, 1985

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

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

Sir:

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

Sincerely,

GEORGE E. GORDON  
President/Manager

COLLEGE UTILITIES CORPORATION

GEG:pw



WILLING WATER  
AT YOUR SERVICE



SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

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

DURING SESSION:

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

DISTRICT N

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

March 28, 1985

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

Dear Jurate;

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

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

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

Sincerely,

Fred F. Zharoff  
Senator

cc: Representative Duncan  
House Judiciary Committee

# CITY OF UNALASKA

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

"Capital of the Aleutians"



March 11, 1985

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

Dear Senator Zharoff,

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

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

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

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

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

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

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

HB 97

## CITY OF UNALASKA

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads 'Jurate Mazeika'.

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