

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

5893

HOUSE LABOR & COMMERCE

8672

APPENDIX A

BOARD OF VETERINARY EXAMINERS
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES

For Fiscal Year 1988

(Unaudited)

(Note 1)

Average Revenue (Note 2)		\$ 9,070
Expenditures (Note 3)		
Personal Services	\$24,291	
Travel	2,674	
Contractual Services	2,820	
Supplies	494	
Equipment	<u>266</u>	
		<u>30,545</u>
Excess of Expenditures Over Revenues (Note 5)		<u><\$21,475></u>

Schedule 1
Types of Revenues
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
License Application Fee	\$ 30	With application
National Examination Fee	\$ 90	With application
Clinical Competency Test Fee	\$ 40	With application
State Examination Fee	\$ 50	With application
License Fee	\$100	At initial biennial license period
License Renewal Fee	\$100	Every two years
Temporary License Fee	\$ 20	With application
Temporary Permit Fee	\$ 50	With application

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

Revenues are primarily composed of license renewal fees. Due to a change in law, licenses will be renewed on a biennial basis starting December 1988. Because of the two year renewal cycle, revenues will increase substantially every second year. To obtain an average of annual revenues collected, we combined actual receipts collected in FY88 with the division's estimate of revenues to be collected in FY89. The FY89 estimated revenues are based upon the change in licensing fees as of October 1988.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e. travel and per diem) and an allocation of direct and indirect costs of DOL. Expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

Note 4

The schedule reflects the changes in licensing fees as of October 1988. Fees were raised in response to legislative intent to make the Boards more self supporting.

Note 5

The amount of revenue generated by a board's activity depends upon the number of licensee's that are regulated by the board. A small number of licensed professionals, generally lead to an excess of expenditures over revenues. Conversely, a large number of licensees generally results in an excess of revenues over expenditures.

The comparison of revenues and expenditures for all licensing boards indicates, that collectively, the licensing boards are substantially self supporting. The following schedule represents revenues and expenditures for all boards combined:

Average Revenue	\$2,130,834
Expenditures	<u>2,242,216</u>
Excess Expenditures	< <u>\$ 111,382</u> >

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

December 20, 1988

DEC 22 1988

Mr. Randy S. Welker
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811-3300

Dear Mr. Welker:

This is written in response to the Audit Division's (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Veterinary Examiners (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

Audit recommends that the Board consider adopting regulations [under its authority in AS 08.98.050(b)(1)] to provide for the examination and registration of veterinary technicians.

This is to advise that the Department has no objection to such a recommendation and, indeed, would support such a recommendation to the Board. While we are cognizant that this matter is of some controversy within this state's veterinary community, we concur with Audit's finding that the current "vet tech" licensing standards are perhaps not fully conducive to protection of the public welfare or the health of its animals.

Regulation 12 AAC 68.310(a)(2) provides that a veterinary technician can qualify to practice veterinary technology under the supervision of a licensed veterinarian if the technician documents "an established relationship" with an active, Alaska-licensed veterinarian; 12 AAC 68.310(b) gives the Board the discretion to require documentation of a technician's qualifications. However, if one of only two criteria (the second is graduation from a college-level AVMA vet tech program) for authority to practice as a vet tech is simply having an established relationship with a licensed veterinarian -- without any actual schooling or even minimal experience requirements -- we believe the public might well be

Mr. Randy S. Welker

- 2 -

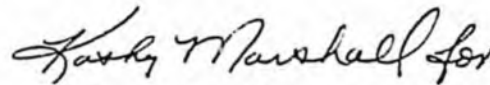
December 20, 1988

more comfortable with the establishment in administrative regulation of some higher standard of technician practice.

It is our understanding the Board does not oppose such a recommendation and will undertake the process of developing a set of regulations for public review and comment in 1989.

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Larry Mercurieff for".

Larry Mercurieff
Commissioner

LM/RPB/pa1/0.061
122088b

Vet. Bd. ⑥

NOTE

Regs
"Telephone
Practice" (1987)

NOT ADOPTED

DUE TO NEGATIVE
RESPONSES.

BD CONTINUES TO
PURSUE.

MAR. 16, 1987



REGULATIONS
NOTICE OF PROPOSED CHANGES TO THE REGULATIONS OF THE
BOARD OF VETERINARY EXAMINERS

Notice is hereby given that the Board of Veterinary Examiners, Department of Commerce and Economic Development, under authority vested by AS 08.98.050, proposes to amend, repeal, and adopt regulations in Title 12 of the Alaska Administrative Code which address fees, correct gender references, correct the name of the department, address veterinary consultation without a personal examination, and other housekeeping changes which serve to implement and clarify AS 08.98.050 as follows:

1. 12 AAC 68.010(a) is rewritten to refer to new fee regulations;
2. 12 AAC 68.020 is rewritten to remove reference to exam space;
3. 12 AAC 68.030(a) and (b) are amended to make housekeeping changes and to delete a 60-day notice deadline;
4. 12 AAC 68.070, .090, .100, .150 and .160 are amended or rewritten to correct gender references;
5. 12 AAC 68.205 is added to establish standards of practice for consultation without a personal examination, including consultation by telephone; and
6. 12 AAC 68.990 is added to establish a definition section, including definitions of "department," "client," and "patient."

←
telephone
practice

Notice is also given that any person interested may present written statements or arguments relevant to the proposed action by mailing them to Kevin Henderson, Regulations Specialist, Division of Occupational Licensing, P.O. Box D-LIC, Juneau, Alaska 99811, so that they are received no later than Friday, April 24, 1987.

Copies of the proposed regulations may be obtained by writing to the above address or by telephoning (907) 465-2535.

This action is not expected to require an increased appropriation.

The Department of Commerce and Economic Development, upon its own motion or at the request of any interested person, may, after the deadline stated above, adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

Kathy Marshall
Kathy Marshall, Director
Division of Occupational Licensing

DATE: 3/3/87

Proposed Regulation changes

March '87

*not adopted
due to negative responses*

veterinary medicine. (Eff. 4/22/83, Re. 86; am / / , received
Reg.)

Authority: AS 08.98.050(a)(4)
and (b)(2)

12 AAC 68 is amended by adding a new section to read:

X →

*"Telephone
practice"*

12.AAC 68.205. CONSULTATION WITHOUT A PERSONAL
EXAMINATION. (a) In those cases where a veterinarian provides
consultation or prescribes treatment without a personal
examination of the animal, including services provided by
telephone or any other communication device the veterinarian
shall maintain a written record which includes

(1) the client's name, mailing address and
telephone number;

(2) the animal's complete history and physical
symptoms;

(3) the tentative diagnosis; and

(4) the prescribed treatment.

(b) The veterinarian shall advise the client to arrange
for a personal follow-up examination. Only conditions that have
a reasonable probability of accurate diagnosis, improvement or
cure should be prescribed for without a personal examination by
a veterinarian.

*mail
order
or
mailed drugs*

(c) A veterinarian shall not prescribe or dispense a
treatment or medication that, when administered by the client,
could place the client in jeopardy of being harmed. A
controlled substance or general anesthetic agent must not be
sent to the client.

(d) A veterinarian shall advise the client to monitor the animal's progress, and if the animal does not make the anticipated progress to consult with the prescribing veterinarian or an alternative veterinarian.

(e) A veterinarian is entitled to collect a fee for services provided and should advise the client of the anticipated fee, if any, during the initial consultation.
(Eff. / / , Reg. .)

Authority: AS 08.98.050

12 AAC 68 is amended by adding a new section to read:

12 AAC 68.990. DEFINITIONS. In this chapter

(1) "department" means the Department of Commerce and Economic Development;

(2) "client" means the person who owns or is responsible for the care of an animal.

(3) "patient" means the animal or animals under the care of a veterinarian. (Eff. / / , Reg. .)

Authority: AS 08.98.050

vet can charge for "consultation" without telling client they will be charged

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act extending the termination BRU: Occupational Licensing
date of the Board of Veterinary Examiners;...
 Sponsor: Rules Committee Components: Licensing Boards
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for the Board of Veterinary Examiners is included in the department's FY 90 operating budget request.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: January 27, 1989

Approved by Commissioner: Larry Mercurieff, Commissioner Date: 1/30/89
 Agency: Commerce & Economic Development

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act Extending the termination BRU: Occupational Licensing
date of the Board of Veterinary Examiners...
 Sponsor: Rules Committee Components: Licensing Boards
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for the Board of Veterinary Examiners is included in the department's FY 90 operating budget request.

Prepared by: Jennifer Strickler, Admin. Officer *JS* Phone: 465-2144
 Division: Occupational Licensing Date: 11-2-88

Approved by Commissioner: Larry Mercurieff *LM* Date: 11/3/88
 Agency: Commerce and Economic Development

Distribution (by preparer):

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

HB 96: An Act extending the termination date of the Board of Veterinary Examiners and providing for an effective date.

The bill proposes to extend the termination date of the Board of Veterinary Examiners to June 30, 1993. To date, the board has issued licenses to 151 practitioners and continues to operate in the best interest of the public by granting licensure only to competent, qualified individuals.

The performance report prepared by the Division of Legislative Audit recommended that the board consider registering veterinary technicians in Alaska. It is our understanding that the board will be developing regulations regarding this matter.

In summary, the department agrees with the performance report that the Board of Veterinary Examiners is necessary to support the health, safety and welfare of the public and that the board should be reestablished. The department, therefore, supports HB 96.



Larry Mercurieff, Commissioner

Date: 2-6-89

LW/dgl3198D-2
020689b



Representative Dave Donley, Chair House Labor & Commerce Committee

SUBJECT OF MEETING:

HB 96 HB 168
 HB 284 HB 13 AB 166
 SCR 21
 SB 82 SCR 41

DATE: 4-18-89

PLACE: C#17

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
✓ ED CRANG	CFAB	5260 LUPIN PL. ANC	99507	562-7556	276-2007	(Y) N	SB 82
✓ Bob Bartholomew	DOTHPF	P.O. Box 2 Juneau		463-3237	465-3911	(Y) N	HB 284
✓ Tom Lawson	DCED	PO Box D Juneau	99811		465-2012	Y (N)	SCR 21 Available for Q
✓ Paul Roller	D.O.F.	Pouch D " "	99811		465-2515	(Y) N	SCR 41
✓ MARTHA FISCHBACH	SELF	Box 34496, JNH	99803	364-2675	465-8828	(Y) N	HB 96 - Vet
✓ ROFAUNK HORSCHER	Assoc Fence A.S.A	1036c Nigh Rd	99515	522-1155	522-5289	(Y) N	HB 284
✓ Karl Ohls	Sen. Zharoff	P.O. Box V, Juneau	99811		465-3473	(Y) N	SB 82
✓ Resa Terrell	A.G.C. of Alaska	134 No. Franklin	99801	584-1741		(Y) N	HB 284
✓ Randall Burns	Dept. of Commerce	P.O. Box D-216 Juneau, AK 99811			465-2535	(Y) N	HB 96
✓ Dean Paddock	Self	Box 20312 Juneau 99802		788-4231	463-4970	(Y) N	SB 82
✓ Scott Burgess	AML	217 2nd St Suite 200 Juneau 99801			6-1325	(Y) N	HB 284

HB

104

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to power cost equalization."
Sponsor: Cato
Requestor: House Labor & Commerce Cmte.

Agency Affected: Commerce & Econ. Deve
BRU: APUC

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Adoption of this legislation will add a limited number of new participants to the PCE program. Current participation numbers 104 utilities. Therefore, the incremental increase in workload is not likely to require additional resources.

Prepared by: T.S. Moninski II, Executive Director

Phone: 276-6222

Division: Alaska Public Utilities Commission

Date: _____

Approved by Commissioner: S. Merrill

Date: 2-1-89

Agency: Commerce & Economic Development

Distribution (by preparer):

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON HB 104

January 30, 1989

Section 1:

Under the present law, only electric utilities which have a certain level of total residential consumption and which have used diesel generation for more than 75 percent of electrical consumption since 1984 are eligible for participation in the Power Cost Equalization (PCE) Program. An eligible utility is then entitled to receive PCE if its power costs exceed 8.5 cents per kilowatt-hour (kWh).

It is the Commission's understanding that HB 104 changes the criteria for eligibility by allowing all utilities whose "average cost" exceeds 14 cents per kWh to participate regardless of their level of residential consumption or use of diesel generation. It is not clear whether the criteria for eligibility of subsidiaries have also been changed.

The Commission believes that the decision of what electric utilities are eligible to participate in the PCE Program is strictly a matter of legislative policy. However, the Commission would request clarification of the term "average cost" used in proposed (B) in order to assure proper implementation of the bill. The Commission does not know what utilities will become eligible

for PCE assistance as a result of HB 104¹, but, by expanding eligibility, the bill can only increase the cost of the PCE Program or decrease the benefits available to current recipients of PCE assistance. The Commission does not anticipate any budgetary impact on its current administration of the PCE Program.

Section 2:

This section of the bill creates a separate definition for eligible subsidiary electric utility using the existing language in the statute. This is a desirable clarification. However, it appears as if the last clause of the original language was intended to apply to all electric utilities and has been rewritten in HB 104 to apply only to subsidiaries. The Commission respectfully suggests that this change be reviewed to be sure it does not adversely affect eligibility under Section 1.

Original Language: "if an electric utility did not receive power cost assistance in 1983 but is otherwise eligible for power cost equalization under this section, the utility is an 'eligible electric utility'."

Proposed Language: "an electric utility may qualify as an eligible subsidiary electric utility even if the utility did not receive power cost assistance in 1983 if the utility is otherwise eligible for power cost equalization under this section."

¹Copper Valley Electric Association, Inc. and Kodiak Electric Association, Inc. appear to be the major regulated utilities which may become eligible for PCE assistance under HB 104. No financial information is available for unregulated electric utilities that are not now receiving PCE assistance, such as, Ketchikan, Petersburg, and Wrangell.

HB

108

HOUSE COMMITTEE REPORT

2/15

(9)

Date Referred: January 23, 1989

FURTHER REFERRALS: LABOR & COMMERCE
FINANCE

Date of Committee Action: 2-14-89

The RESOURCES Committee recommends that:

HB 108

HOUSE BILL NO. 108

"An Act relating to loans and lending practices of the Alaska Commercial Fishing and Agriculture Bank; providing an exemption for the bank's membership stock and certain other securities issued by the bank from registration under the Alaska Securities Act; and providing for an effective date."

[] be replaced with _____ [] the same title
[] a new title

[] have attached amendment(s)

- do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

- [] fiscal impact
- zero fiscal note C + E D
- [] zero with analysis

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Clay Davidson DAVIDSON
George Jacko JACKO
Mike Navarre NAVARRE
W. Furnace FURNACE
Leah Sharp SHARP
Bill Hudson HUDSON
Mike Davis M. DAVIS
Tom Menard MENARD

Clay Davidson
CO-Chairman's signature

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 108
PUBLISH DATE: HOUSE 2/15/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Commercial Fishing and Agri-
culture Bank
Sponsor: Jacko, Grussendorf, et al
Requestor: House Resources

Agency Affected: Commerce & Econ. Dev.
BBU: Banking and Securities
Components: Securities

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Prepared by: L.P. Carroll, Senior Securities Examiner
Division: Banking and Securities

Phone: 465-2521
Date: 02/13/89

Approved by Commissioner: Larry Merculieff
Agency: Dept. of Commerce and Economic Development

Date: 2/13/89

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

H B

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HOUSE COMMITTEE REPORT

(7)

Date Referred: January 23, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 1/3/89

The LABOR & COMMERCE Committee recommends that:

HOUSE BILL NO. 111

"An Act reducing the operating appropriation to the Alaska Power Authority for fiscal year 1989; and providing for an effective date."

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

David Donley

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Mark Boyer no rec
Brew D. Kinney no rec
John M. Glass no rec
Cliff Spahr no rec
W. J. ... no rec
... no rec

David Donley
Chairman's signature

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



January 23, 1989

Robert E. LeResche, Executive Director
Alaska Power Authority
P.O. Box AM
Juenau, Alska 99801

Dear Mr. LeResche:

Thanks for your January 3 letter regarding APA payroll in response to my questions during last year's budget process.

While I appreciate your answers, I am unsatisfied with your suggested remedy for the unreasonably high APA salaries. I'd hoped for a more immediate response than to fill the positions at a lower salary range as they become vacant. If anything, I'd like to see that we don't fill the positions at all.

Please don't take this personally, but I firmly believe that the state has no business creating and funding an agency like the APA and that we should phase it out as soon as possible. The high salaries are only a small part of the problem but it would have been more palatable had the agency shown more restraint in their staffing policies in the past.

I look forward to working with you again during the budget process and during House Labor and Commerce Committee hearings.

Sincerely,

Representative Dave Doniey, Chair
House Labor and Commerce Committee

cc: Governors Office
Commissioner, DCED
Members files

dd/gb

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

January 11, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed Committee legislation - AFA Budget Cut

The attached bill draft (Work Order # 6-0189A/Utermohle) deletes \$120,000 from the Alaska Power Authority Budget.

Last year, the House Finance Subcommittee on DCED cut \$247,000 from the APA's personal services line in the FY89 Operating budget.

The APA then inserted Section 143 in HB 543 (Reappropriations) repealing funds from the Rural Electrification Revolving Loan Fund and reappropriating \$120,000 to the DCED/APA for additional administrative costs for the fiscal year ending June 30, 1989.

The attached draft bill will take those funds out of APA's FY 90 budget and perhaps serve to demonstrate to the APA that doing an "end run" around the legislative budget process in the future is not without consequences.

(b) The sum of \$2,450,000 is appropriated from the general fund to the University of Alaska, as an endowment for the Alaska Center for International Business, contingent on the deposit in the general fund of the funds appropriated in (a) of this section.

(c) If the amount deposited in the general fund under (a) of this section is less than \$2,450,000, then the appropriation made in (b) of this section shall be reduced by the amount of the shortfall.

* Sec. 142. The unexpended and unobligated balance of the appropriation made in sec. 24, ch. 95, SLA 1987, page 8, line 21 (Executive Operations - \$7,569,500) lapses into the general fund June 30, 1989.

* Sec. 143. (a) The sum of \$1,614,900 is appropriated from the rural electrification revolving loan fund (AS 44.83.361) to the general fund.

(b) The sum of \$1,494,900 is appropriated from the general fund to the Department of Commerce and Economic Development, Alaska Power Authority, contingent on the deposit in the general fund of the funds appropriated in (a) of this section and is allocated for the purposes expressed and in the amounts listed:

PURPOSE	ALLOCATION
(1) Waste heat program	700,000
(2) Rural technical assistance/ circuit riders	325,000
(3) Rural systems efficiency improvements pilot programs	300,000
(4) Metering installation survey	100,000
(5) Brevig Mission electrical system upgrade	144,900
(6) Snettisham project transfer	50,000
(7) Unalaska generator upgrade	50,000
(8) Grant under AS 37.05.316	

to the Alaska Native

Foundation for a Kotzebue/Nome

coal feasibility study 150,000

(9) White Mountain power system upgrade 75,000

(10) Ouzinkie hydroelectric project 100,000

(c) The sum of \$120,000 is appropriated from the general fund to the Department of Commerce and Economic Development, Alaska Power Authority for additional administrative costs for the fiscal year ending June 30, 1989.

(d) If the amount deposited in the general fund under (a) of this section is less than \$1,614,900, then the appropriations made in (b) - (c) of this section shall be reduced by the amount of the shortfall and each allocation set out in (b) of this section shall be reduced in proportion to the amount of the shortfall.

* Sec. 144. Section 1, ch. 42, SLA 1986 as amended by sec. 150, ch. 3, FSSLA 1987 is amended to read:

Section 1. The sum of ~~2,500,000~~^{2,150,000} (\$2,500,000) is appropriated from the Railbelt energy fund in the general fund to the Alaska Power Authority for preparing studies required under AS 44.83.177 - 44.83.185 for electric interties between the Kenai Peninsula and Fairbanks.

* Sec. 145. The appropriation made in sec. 3, ch. 96, SLA 1985, page 18, line 7 (Nulqsut-Prudhoe Road preliminary engineering and construction - \$13,000,000) is repealed.

* Sec. 146. The sum of \$1,005,000 is appropriated from National Petroleum Reserve Fund receipts to the Department of Administration for payment as a grant under AS 37.05.315 to the North Slope Borough and is allocated for the purposes expressed and in the amounts listed:

PURPOSES	ALLOCATIONS
Atkasuk-water delivery vehicle purchase	150,000

08-08-24-00-00 (00-00-0-00-00-00)

STATE OF ALASKA -- COMPONENT BUDGET ANALYSIS

SALSFRMA 14:58 5/18/88

AGENCY: DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
CATEGORY: DEVELOPMENTPROGRAM: ALASKA POWER AUTHORITY
SUB-PROGRAM: ADMINISTRATION

LEG FIN.

***** C. C. ANALYSIS *****

OBJECT GROUP	VARIATION		DESCRIPTION: C. C. (\$781.1) VERSUS GOV AMD (\$1,053.2)
01 PERS. SERV.	-247.1	-29.2%	REDUCE PERSONAL SERVICES COSTS <\$247.1>.
02 TRAVEL	-10.0	-25.0%	REDUCE TRAVEL <\$10.0>.
03 CONTRACTUAL	-15.0	-10.0%	REDUCE CONTRACTUAL <\$15.0>.
** TOTALS	-272.1	-25.8%	

LEGISLATIVE INTENT:

IT IS THE INTENT OF THE LEGISLATURE THAT THE ALASKA POWER AUTHORITY COMPLETE ITS PRELIMINARY STUDY OF THE RAILBELT GASLINE AS PART OF THE RAILBELT INTERTIE STUDY.

***** HOUSE ANALYSIS *****

OBJECT GROUP	VARIATION		DESCRIPTION: HOUSE (\$781.1) VERSUS GOV AMD (\$1,053.2)
01 PERS. SERV.	-247.1	-29.2%	REDUCE PERSONAL SERVICES COSTS <\$247.1>.
02 TRAVEL	-10.0	-25.0%	REDUCE TRAVEL <\$10.0>.
03 CONTRACTUAL	-15.0	-10.0%	REDUCE CONTRACTUAL <\$15.0>.
** TOTALS	-272.1	-25.8%	

FUND SOURCE CHANGE DELETE PDRL <\$967.8>, ADD GF \$720.7.

***** SENATE ANALYSIS *****

OBJECT GROUP	VARIATION		DESCRIPTION: SENATE (\$1,028.2) VERSUS GOV AMD (\$1,053.2)
02 TRAVEL	-15.0	-37.5%	REDUCE TRAVEL <\$15.0>.
03 CONTRACTUAL	-10.0	-6.6%	REDUCE CONTRACTUAL <\$10.0>.
** TOTALS	-25.0	-2.4%	

FUND SOURCE CHANGE DELETE PDRLF <\$967.8>, ADD GF \$967.8.

LEGISLATIVE INTENT:

IT IS THE INTENT OF THE LEGISLATURE THAT THE ALASKA POWER AUTHORITY COMPLETE ITS PRELIMINARY STUDY OF THE RAILBELT GASLINE AS PART OF THE RAILBELT INTERTIE STUDY.

08-08-24-00-00 (00-00-0-00-00-00)

STATE OF ALASKA -- COMPONENT BUDGET SUMMARY

SALSFRMA 14:58 5/18/88

AGENCY: DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
CATEGORY: DEVELOPMENTPROGRAM: ALASKA POWER AUTHORITY
SUB-PROGRAM: ADMINISTRATION

LEG. FIN.

EXPENDITURES & FUNDING	FISCAL YEAR 1989												
	(01) FY87 ACT	(19) FY88 CC	(03) FY88 RP	(04) FY88 SUP	(02) FY88 A/H	(20) FY89 AGY	(21) FY89 GOV	(08) GOV AMD	(09) HOUSE	(10) SENATE	(11) C. C.	(12) BILLS	(13) LEG REC
01 PERS. SERV.	1154.1	592.6		674.2	903.8	903.8	847.1	600.0	847.1	600.0			
02 TRAVEL	47.9	40.0		40.0	40.0	40.0	40.0	30.0	25.0	30.0			
03 CONTRACTUAL	141.5	130.0		130.0	150.5	150.5	150.5	135.5	140.5	135.5			
04 COMMODITIES	14.4	20.0		20.0	15.6	15.6	15.6	15.6	15.6	15.6			
05 EQUIPMENT	7.4												
06 LANDS/BLDG													
07 GRANTS, CLHS													
08 MISC.												120.0	
** TOTAL EXPEND	1365.3	782.6		864.2	1109.9	1109.9	1053.2	781.1	1028.2	781.1		120.0	
09 I-A TRANSFER	17.6	21.0		21.0	21.0	21.0	21.0	21.0	21.0	21.0			
1002 FED RCPTS	50.0	45.2		50.0	50.0	50.0	50.0	50.0	50.0	50.0			
1003 G/F MATCH	20.1	20.1		20.1									
1004 GEN FUND	1295.2	717.3		794.1				695.7	942.8	695.7		120.0	
1005 GF/PRGM					35.4	35.4	35.4	35.4	35.4	35.4			
1007 I/A RCPTS					28.4	28.4							
1073 PDRL FUND					996.1	996.1	967.8						
15 FULL TIME	17.0	12.0		11.0	13.0	13.0	12.0	12.0	12.0	12.0			
16 PART TIME													
17 TEMPORARY													
18 STAFF MONTHS	204.0	120.0		132.0	156.0	156.0	144.0	144.0	144.0	144.0			

REVISED PROGRAMS, GOVERNOR AMENDMENTS, SUPPLEMENTAL & SPECIAL APPROPRIATIONS AND FISCAL NOTES...

SPECIAL APPROPRIATIONS: HB 543 \$120.0

NEW LEGISLATION...

HB 543

SPECIAL APPROPRIATION: SEC 143(C) FY1989 OPERATING COSTS \$120.0.

***** GOV AMD ANALYSIS *****

*** FY89 GOVERNOR (OMB NOTES) ***

DETAIL DESCRIPTION OF VETOS, TRANSFERS, INCREMENTS, & DECREMENTS
CHANGES FROM FY88 CONFERENCE COMMITTEE TO FY88 AUTHORIZED

REF#	DESCRIPTION	AGENCY / GOVERNOR				LINE ITEM IMPACT							
WHO:	PFT	PFT	TOTAL	GEN FUND	OTHER	100	200	300	400	500	600	700	800
1013	ADD BACK TEN PERCENT PERSONAL SERVICES REDUCTION												
AGY:	0.0	0.0	81.6	76.8	4.8	81.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	81.6	76.8	4.8	81.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3019	APA-POSITION COUNT ADJUSTMENT												
AGY:	1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CHANGES FROM FY88 AUTHORIZED TO FY89 GOVERNOR

REF#	DESCRIPTION	AGENCY / GOVERNOR				LINE ITEM IMPACT							
WHO:	PFT	PFT	TOTAL	GEN FUND	OTHER	100	200	300	400	500	600	700	800
2213	HEALTH & VARIABLE BENEFIT ADJUSTMENT												
AGY:	0.0	0.0	15.0	11.4	3.6	15.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	15.0	11.4	3.6	15.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2328	LINE ITEM TRANSFER WITH APA ADMINISTRATION												
AGY:	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.2	-5.2	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.2	-5.2	0.0	0.0	0.0	0.0
2329	TRANSFER 2 PFT FROM APA CIP TO APA ADMINISTRATION COMPONENT												
AGY:	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3015	APA-SELF FINANCING FROM POWER DEV REVOLVING LOAN FUND												
AGY:	0.0	0.0	0.0	-825.6	825.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	0.0	-825.6	825.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3017	APA-REDUCE FEDERAL FUNDS / INCREASE I/A RECEIPTS												
AGY:	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

3021 APA-REALLOCATE COSTS CHARGED TO CIP PROJECTS IN FY88													
AGY:	0.0	0.0	96.6	0.0	96.6	96.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	96.6	0.0	96.6	96.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3023 APA-PERSONAL SERVICES COSTS ADJUSTMENT													
AGY:	0.0	0.0	6.6	0.0	6.6	6.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	6.6	0.0	6.6	6.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3025 APA-ALASKA POWER STATIS ICS													
AGY:	0.0	0.0	70.8	35.4	35.4	54.7	0.0	15.3	0.8	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	70.8	35.4	35.4	54.7	0.0	15.3	0.8	0.0	0.0	0.0	0.0
3027 APA-LOANS/POWER COST EQUALIZATION PRGM MANAGER													
AGY:	0.0	0.0	56.7	0.0	56.7	56.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	56.7	0.0	56.7	56.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CHANGES FROM FY89 GOVERNOR TO FY89 GOVERNOR AMENDED

REFR DESCRIPTION													
WHO:	PFT	PPT	AGENCY / GOVERNOR			LINE ITEM IMPACT							
			TOTAL	GEN FUND	OTHER	100	200	300	400	500	600	700	800
4016 TRANSFER 1 PFT POSITION FROM APA ADMINISTRATION TO POWER COST EQUALIZATION ADMINISTRATION													
AGY:	-1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	-1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4018 DELETE FUNDING ASSOCIATED WITH POSITION TRANSFERRED TO PCE ADMINISTRATION													
AGY:	0.0	0.0	-56.7	0.0	-56.7	-56.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOV:	0.0	0.0	-56.7	0.0	-56.7	-56.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0

(b) The sum of \$2,450,000 is appropriated from the general fund to the University of Alaska, as an endowment for the Alaska Center for International Business, contingent on the deposit in the general fund of the funds appropriated in (a) of this section.

(c) If the amount deposited in the general fund under (a) of this section is less than \$2,450,000, then the appropriation made in (b) of this section shall be reduced by the amount of the shortfall.

* Sec. 142. The unexpended and unobligated balance of the appropriation made in sec. 24, ch. 95, SLA 1987, page 0, line 21 (Executive Operations - \$7,569,590) lapses into the general fund June 30, 1989.

* Sec. 143. (a) The sum of \$1,614,900 is appropriated from the rural electrification revolving loan fund (AS 44.83.361) to the general fund.

(b) The sum of \$1,494,900 is appropriated from the general fund to the Department of Commerce and Economic Development, Alaska Power Authority, contingent on the deposit in the general fund of the funds appropriated in (a) of this section and is allocated for the purposes expressed and in the amounts listed:

PURPOSE	ALLOCATION
(1) Waste heat program	200,000
(2) Rural technical assistance/ circuit riders	325,000
(3) Rural systems efficiency improvements pilot programs	300,000
(4) Metering installation survey	100,000
(5) Brevig Mission electrical system upgrade	144,900
(6) Snettisham project transfer	51,000
(7) Unalaska generator upgrade	50,000
(8) Grant under AS 37.05.316	

to the Alaska Native

Foundation for a Kotzebue/Home

coal feasibility study 150,000

(9) White Mountain power system upgrade 75,000

(10) Ouzinkie hydroelectric project 100,000

(c) The sum of \$120,000 is appropriated from the general fund to the Department of Commerce and Economic Development, Alaska Power Authority for additional administrative costs for the fiscal year ending June 30, 1989.

(d) If the amount deposited in the general fund under (a) of this section is less than \$1,614,900, then the appropriations made in (b) - (c) of this section shall be reduced by the amount of the shortfall and each allocation set out in (b) of this section shall be reduced in proportion to the amount of the shortfall.

* Sec. 144. Section 1, ch. 42, SLA 1986 as amended by sec. 150, ch. 3, FSSLA 1987 is amended to read:

Section 1. The sum of ^{2,150,000}~~32,000,000~~ (\$2,500,000) is appropriated from the Railbelt energy fund in the general fund to the Alaska Power Authority for preparing studies required under AS 44.83.177 - 44.83.185 for electric interties between the Kenai Peninsula and Fairbanks.

* Sec. 145. The appropriation made in sec. 3, ch. 96, SLA '85, page 18, line 7 (Nuiqsut-Prudhoe Road preliminary engineering and construction - \$13,000,000) is repealed.

* Sec. 146. The sum of \$1,005,000 is appropriated from National Petroleum Reserve Fund receipts to the Department of Administration for payment as a grant under AS 37.05.315 to the North Slope Borough and is allocated for the purposes expressed and in the amounts listed:

PURPOSES	ALLOCATIONS
Atkasuk-water delivery vehicle purchase	150,000

H B

1 1 5


Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325

217 SECOND ST., SUITE 200
JUNEAU, ALASKA 99801

MEMORANDUM

TO: Representative Dave Donley, Chair
Members of the House Labor & Commerce Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 10, 1989

SUBJECT: HB 115 - Civil Liability for Volunteers

Attached is a copy of Alaska Municipal League Resolution No. 89-56 in support of the concepts contained in HB 115.

Attachment

cc: Representative Ulmer ✓

Resolution of the Alaska Municipal League

Resolution No. 89-56

**A RESOLUTION RECOMMENDING ADOPTION OF AN ACT
RELATING TO CIVIL LIABILITY OF CERTAIN VOLUNTEERS**

WHEREAS, the Alaska Municipal League urges the State to exercise its responsibility to provide a broad spectrum of recreational opportunities for all Alaskans, and

WHEREAS, volunteerism is a deeply rooted American tradition, and

WHEREAS, co-sponsoring recreational activities with volunteer organizations enables states and municipalities to provide recreational services which they would not ordinarily be able to provide in view of shrinking tax dollars, and

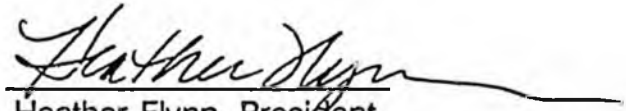
WHEREAS, volunteers lacking protections under the law for acts or omissions while acting in good faith within that voluntary function and duty put personal assets at risk due to that lack of protection, and

WHEREAS, certain recreational activities have an inherent risk, putting volunteers in a position of being liable for injuries that occur as a result of the nature of the risk, and

WHEREAS, the report of the President's Commission on Americans Outdoors recommends that "local officials, mayors, governors, and private sector managers support volunteering, develop incentives and remove barriers to encourage Americans to volunteer in outdoor recreation";

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska State Legislature to adopt an act relating to the civil liability of certain volunteers for the purposes of protecting volunteers from undue liability.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director



ALASKA OUTDOOR COUNCIL, INC.

3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

POSITION STATEMENT VOLUNTEER CIVIL LIABILITIES HB 115

April 12, 1989

The Alaska Outdoor Council has adopted a firm position on HB 115 dealing with civil liability of certain volunteers.

Many nonprofit organizations are having to seriously reevaluate the scope and extent of their public service programs--mainly because of the skyrocketing insurance costs. Some of the outdoor and sportsmen organizations have had to severely curtail or drop programs which entail any degree of risks such as maintenance and management of rifle ranges, community service programs, outdoor youth training programs, hunter safety programs and other similar volunteer activities.

As most of our affiliated clubs rely almost totally on volunteers, the loss of volunteer help results in a major decrease in public service programs. Unfortunately, in most cases, these services are not picked up by local governments.

HB 115 would help to some degree in providing civil liability protection for nonprofit volunteers who are acting in good faith to provide public services. We are afraid that without this type of general but limited protection, we can only expect the volunteer labor pool to rapidly disappear.

We certainly concur that the civil liability protection should not cover acts of gross negligence, recklessness or intentional misconduct.

The Alaska Outdoor Council would like to see similar protection provided to the nonprofit organization involved in these types of public services but at least this is a step in the right direction.

The Alaska Outdoor Council is an Alaskan sportsmen and outdoor organization consisting of 54 clubs with a membership of over 11,000 statewide.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 115
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to civil liability for certain volunteers BRU: Insurance
Sponsor: Ulmer Components: Operations
Requester: House Labor and Commerce

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2507
Division: Insurance Date: 3-7-89

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/7/89

Distribution (by preparer):

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

page ____ of ____

3490D/030789a

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to civil liability for certain volunteers
 Sponsor: Ulmer
 Requestor: House Labor and Commerce
 Agency Affected: Commerce & Econ. Dev.
 BRU: Insurance
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact in FY 90.

No impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 2/5/90
 Approved by Commissioner: Larry Merculieff Date: 5/8
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to civil liability of certain volunteers BRU: Division of Risk Management
 Sponsor: Ulmer Components: Risk Management
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

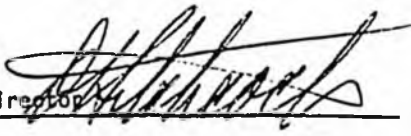
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

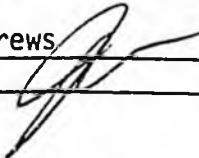
POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

While this bill will provide protection for the individual volunteer, it does not affect the liability of the State with respect to injuries caused to persons or property. We therefore do not anticipate any fiscal impact if enacted.

Prepared By: Don Hitchcock, Director  Phone: 465- 2180
 Division: Risk Management Date: _____

Approved by Commissioner: John M. Andrews  Date: 3/16/89
 Agency: Department of Administration

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

Alaska State Legislature

Representative Fran Ulmer

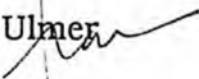


P. O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer 

DATE: January 25, 1989

RE: Scheduling HB 115, relating to civil liability of certain
volunteers

I would ask that you schedule HB115, relating to civil liabilities, for a hearing in your committee as soon as possible. As you know, a similar bill was passed out of the Labor and Commerce committee last year.

Thank you for your consideration of my request.

Alaska State Legislature

Representative Fran Ulmer



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Rep. Dave Donley, Chairman
Members, House Labor and Commerce Committee

FROM: Rep. Fran Ulmer

DATE: March 8, 1989

RE: HB 115

HB 115, an act relating to civil liability of certain volunteers, would protect volunteers working for the State, local governments, or nonprofits from civil liability except in cases of gross negligence, recklessness, or intentional misconduct.

Volunteers play an important role in Alaska by donating their time to support many organizations and services. From Little League to Pioneer Homes, from ski rescues to park volunteers and museum guides..., Alaskan volunteers make a difference in the quality of life that we enjoy. For these reasons I have introduced HB 115.

This bill is modeled after federal legislation, cited as the Volunteer Protection Act, which is making its way through Congress. The bill is supported by state agencies, municipalities, recreation groups and the American Association of Retired Persons.

option 1

"in this paragraph "organization" means a non-governmental entity incorporated under AS 10.20.005 or exempt from taxation under US 26.501.(c) (3) and (4), excluding hospitals.

An Analysis of Volunteer Protection Legislation

Prepared
for
The American Association of Retired Persons
Office of Volunteer Coordination
and
Public Policy Institute

by
Stephen H. McCurley
VM Systems
September 1987

An Analysis of Volunteer Protection Legislation

Introduction

This paper was produced in September 1987 to provide an overview and analysis of state and federal efforts to protect volunteers from suit through the enactment of protective legislation. The paper examines the efforts of 36 states that passed legislation in 1986 and 1987 and examines proposed legislation at the federal level. Of necessity, this work must be regarded as a preliminary effort, since activity in this area is still on-going, and some of the factual material in this paper will become swiftly out-dated as new legislation is drafted and as existing legislation is interpreted.

The content of the paper is divided into three basic parts:

1. Background regarding the movement to enact legislation
2. Analysis of enacted legislation
3. Implications of the legislation

In addition, a series of Appendices provide related factual materials and references to other sources of information on this topic.

Background/Overview

Volunteering in America

Volunteering has long been a pervasive part of American life. Studies conducted by the Gallup Poll organization for the Independent Sector during the 1980's indicate that approximately 50% of the American population regularly involves itself in volunteer activity during the year. During 1985 an estimated 90 million people volunteered almost 16.1 billion hours to non-profit groups and to governmental entities.

A significant proportion of these volunteers are seniors. Studies indicate that in 1985 43% of those between ages 65 and 74 engaged in volunteer work, and 25% of those over age 75. Seniors are increasingly becoming a prime target for volunteer recruitment efforts directed at both service and board volunteers. Seniors are sought for direct service work because of their ability as retirees to provide time during the usual working hours of the day, and are sought as board members due to their previous work experiences and contacts which are valuable to the agency.

In addition, seniors are one of the primary recipients for services delivered by voluntary agencies through volunteers. Examples of such programs include delivery of meals, congregate centers, home visitation programs, medical emergency call-in programs, etc.

The Liability Crisis

Lawsuits involving volunteers have always been extremely rare. The suits that have been filed tend to fall into 4 categories:

1. Suit against a direct service volunteer for negligence leading to injury of another (usually involving an automobile accident).

states with some form of protection had risen to 36, and proposed national legislation had been introduced. (See Appendix 6 for an analysis of the federal legislation.)

Analysis of Protective Legislation

The scope of the legislative attempts to protect volunteers has varied widely from state to state. (See Appendix 3 for a state-by-state breakdown of enacted legislation.) There are three major areas of consideration which must be examined in determining the extent of protection provided:

Extent of Organizational Coverage

Not all volunteers of all organizations receive coverage. One must volunteer for a 'qualified' organization under each state's definitions. Originally this meant a charitable organization, but as more bills were enacted this grew to include other types of agencies. The primary options now being considered include:

1. *Non-profit organizations*, with choices as to whether the group must be have some other tax-exempt status; and whether certain organizations such as hospitals or education institutions) ought to be excluded from coverage. (To see how complex this may be, see Appendix 2 for a listing of the possible variations in selection possible just among the tax-exempt groups.)
2. *Government entities*, with choices as to the extension of coverage among state and local levels of government, and to quasi-governmental entities.
3. *Individuals*, including both the volunteer who acts totally alone as the 'Good Samaritan' or with others in an unincorporated association.
4. *For-profit corporations*, such as those companies who engage in group projects involving volunteer employees.

The movement in legislation is clearly toward providing protection for governmental volunteers and for at least some types of volunteers for non-profit agencies.

Types of Volunteers Covered

There are three basic types of volunteers who are being covered under current legislation. These are:

1. Non-profit board volunteers;
2. Volunteers on advisory boards and committees; and
3. Direct service volunteers.

Only two states who have enacted legislation have failed to cover non-profit board volunteers, and both of these states have introduced legislation to attempt to do so. Sixteen states have covered direct service volunteers. Advisory board volunteers have primarily been covered into those states which provide protection to volunteers in governmental entities.

A more complicated question regarding volunteer coverage has arisen regarding the definition of what a "volunteer" is and is not. Most states define 'volunteer' as one who does not receive compensation, or one who serves of their own free will. This definition leaves in limbo some of the current types of "quasi-volunteers", including:

1. Individuals performing work as part of a community service restitution program or alternative sentencing program.

Under these provisions, the exempted plaintiffs would presumably only have to show simple negligence as a burden of proof.

C. Variations/Exceptions

A wide range of variations have been enacted as well. Among some of the common variations that have arisen are:

1. Either requiring insurance as a prerequisite of protection or else only
2. Eliminating protection in cases involving a vehicle.
3. Excluding volunteers who are rendering professional services.
4. Excluding coverage of suits involving contractual obligations.
5. Excluding incidents which involve alcohol or drugs.

Some of the variations could have unusual consequences. A number of states, for example, in determining the extent of organizational coverage have defined a 'qualified' organization by referring to those organizations either receiving a charter under some section of the state corporation code or receiving a tax-exempt status under some section of the state taxation code. This would presumably exclude from coverage any organization incorporated in another state but operating across state boundaries or else with sub-units that were operating within the umbrella group's tax exempt status in another state. (See Appendix 4 for a listing of state variations.)

Summary of Coverage

What began as a simple attempt to protect volunteers has emerged as an increasingly complicated task. It is likely that the original initiators of the legislation had no idea how complex the volunteer community has become. Those states which quickly enacted 'simple' versions of legislation are already beginning the amendment process, either to correct drafting errors or to widen coverage. Minnesota, for example, quickly enacted a '25-words-or-less' version of protection for non-profit board members in 1986 and in 1987 enacted a replacement bill which gave somewhat better guidance of legislative intent after no one was able to decipher the original legislation.

Implications and Impact

The implications of this legislation must be evaluated in six major areas:

I. Impact on Lawsuits

Quantitative information on lawsuits involving volunteers has always been sparse. Kahn, in a 1984 survey of volunteer programs determined that 45 out of 343 respondents reported some previous involvement in a legal action or lawsuit,⁴ but how many of these involved suits against a volunteer is unknown. Qualitative data on the causes of action involved is equally rare, so it is impossible to accurately predict the impact of this protection legislation in any sort of numerical fashion.

In the short run, there will be an extensive period of testing and defining the new legislation in the courts. Many of the elements and situations covered by the new legislation have little or no previous legal history, and will only be established as individual cases are decided. How, for example, will the wording in Pennsylvania's legislation that volunteers operate according to "generally practiced standards" be interpreted? What determinations will be made about the coverage extended to the "quasi-volunteers" discussed above?

sight risk of suit. Particularly among more affluent board volunteers, this additional safeguard could make a substantial difference.

4. Impact on Volunteer Management

A final area in which the new legislation should have an immediate impact is on organizational practices regarding volunteer management. These should be significantly influenced by two requirements within the legislation.

One primary area of legal concern in the new legislation lies in the determination of when the protection given by the statutes will vest. The question to be decided here is how one determines what lies within the "scope of employment" and "duties" of each volunteer.

The second area of concern will be the establishment of indicators that in the performance of those duties a volunteer demonstrated sufficient care to avoid a labeling of "wanton" or "willful."

The combination of these two factors will make it extremely important that the organization establish a system of volunteer management and administration that ensures that these two concerns are met. Key elements of this system would include:

1. *A clear volunteer tracking system that establishes when volunteering starts and stops.* This will be especially important in those instances where collaborative programs are being undertaken (such as a joint project between a government program and a non-profit agency) in which one of the participating agencies is not covered by the protective legislation. In this instance, to whom does the volunteer "belong"? If an agency loans or refers its membership to other groups for short-time volunteer jobs, for whom is the volunteering taking place? This will be of particular significance to the new corporate volunteer programs that have been established in the 1980s. Memos of agreement and record-keeping systems will prove essential in quickly establishing organizational connection.
2. *Clear and up-to-date volunteer job descriptions.* One method for helping in the above situation and in clearly defining a volunteer's "scope of employment" will lie in maintaining job descriptions that accurately match and describe the functions that the volunteer is undertaking for the agency.
3. *Better training for volunteers and staff.* Efforts to demonstrate that the behavior of the volunteers was not too extreme to warrant protection will be enhanced by a training program that establishes 'proper procedures' and prepares volunteers for anticipated tasks.
4. *Rewards to Agencies that Practice Risk Management.* Equally important to agencies will be upgrading of risk management practices designed to identify those areas of potential danger in the provision of volunteer services and to create management and training systems to prepare volunteers for anticipated dangers.

The most long-standing impact of the new legislation may well lie in the fact that in an indirect manner it will significantly reward those groups with the best management practices. Those groups who operate volunteer programs without an organized system are the most likely to meet difficulties in defending against suit under the new legislation. Some states have attempted to encourage volunteer-utilizing agencies in a more direct fashion. Early drafts of the Arkansas liability protection legislation

What is equally clear, however, is that in the next five years the overall situation created by the new legislation will be extremely confusing as each state faces a period of legislative amendment and interpretation of the legislation within the courts, and as each organization faces a re-consideration of its volunteer management techniques. In a very real way, despite the fact that 36 states have already acted, the true effort for gaining protection from suit for volunteers is just beginning.

Appendix 1 Case Citations

Direct Service Volunteers

1. Scottsdale Jaycees v. Superior Court 17 Ariz. App. 571, 499 P.2d 185 (1972)
(volunteer involved in automobile accident en route to convention)
2. Sokolow v. City of Hope 41 Cal. 2d 668, 262 P. 2d 841 (1953)
(hospital auxilian in accident at fundraiser)
3. Malloy v. Fong 37 Cal. 2d 356, 231 P. 2d 241 (1951)
(volunteer divinity student causes automobile accident)
4. Leno v. YMCA 17 Cal. App. 3d 651, 95 Cal. Rptr 96 (1971)
(volunteer scuba instrutor involved in drowning of student)
5. Trinity Lutheran Church v. Miller 451 NE 2d 1099 (1983)
(volunteer driver injures motorcyclist while delivering holiday gifts)
6. Garcia v. Herald Tribune Fresh Air Fund 51 A.D. 2d 897, 380 N.Y.S. 2d 676 (1976)
(volunteer host family involved in drowning of child)
7. Davjs v. Shelton 33 A.D. 2d 707, 304 N.Y.S. 2d 722 (1969), appeal dismissed 26 N.Y. 2d 829,
257 N.E. 2d 902 (1970)
(Boy Scout volunteer involved in accident where scout falls out of tree)
8. Ricker v. Boy Scouts of America 8 A.D. 2d 565, 183 N.Y.S. 2d 484 (1959)
(injury caused by volunteer scout master at scouting event)
9. Baxter v. Morningside 10 Wash. App. 893, 521 P. 2d 946 (1974)
(volunteer driver involved in accident while delivering package)
10. Manor v. Hanson 120 Wis. 2d 582, 356 N.W. 2d 925, (Ct. App. 1984)
(volunteer driver for senior transportation program involved in accident)

Board Volunteers

1. Mountain Top Youth Camp Inc v. Lyon 20 N.C. App. 694, 202 S.E. 2d 498 (1974)
(corporate director sued for self-dealing and waste)
2. Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries,
381 F. Supp. 1003 (1974)
(hospital board sued for breach of fiduciary duty - "Sibley" hospital case)
3. Jackson v. Staller Foundation 496 F. 2d 62? (1974), cert. denied, 420 U.S. 927 (1975)
(foundation board charged with discrimination in granting of funding)
4. Golding v. Salter 107 So. 2d 348 (1958)
(hospital board sued for failure to protect property by not having adequate insurance and
not collecting debts to organization)
5. Warren v. Reid 331 S.W. 2d 847 (1960)
(board sued regarding conflict of interest in granting of laundry services contract)
6. Franzblau v. Monardo 166 Cal. Rptr. 610 (1980)
(board member sued for conflict of interest through service on multiple hospital boards)

Appendix 2
IRC Classification of Tax Exempt Organizations

IRC Section	Type of Organization
401(a)	Qualified pension and/or profit sharing plans
501(c)(1)	Corporations organized under Act of Congress
501(c)(2)	Title holding corporation for exempt organizations
501(c)(3)	Religious, educational, charitable, scientific, literary, testing for public safety, or prevention of cruelty to children or animals organization
501(c)(4)	Civic leagues, social welfare organizations, local associations of employees
501(c)(5)	Labor, agricultural and horticultural organizations
501(c)(6)	Business leagues, Chambers of Commerce, real estate boards
501(c)(7)	Social and recreation clubs
501(c)(8)	Fraternal beneficiary societies and associations
501(c)(9)	Voluntary Employee's Beneficiary Associations
501(c)(10)	Domestic fraternal societies and associations
501(c)(11)	Teachers' retirement fund associations
501(c)(12)	Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies
501(c)(13)	Cemetery companies
501(c)(14)	State chartered credit unions, mutual reserve funds
501(c)(15)	Mutual insurance companies or associations
501(c)(16)	Cooperative organizations to finance crop operations
501(c)(17)	Supplemental employment benefit trusts
501(c)(18)	Employee funded pension trust
501(c)(19)	Post or organization of war veterans
501(c)(20)	Group legal services plan organization
501(c)(21)	Black lung benefits trust
501(c)(22)	Withdrawal liability payment fund
501(c)(23)	Veterans Organization
501(d)	Religious and apostolic associations
501(e)	Cooperative hospital service organizations
501(f)	Cooperative service organizations of educational organizations
521(a)	Farmer's cooperative associations

Appendix 4
State Legislation: Variations in Coverage

1. **Must carry insurance to qualify**
Kansas, Maryland
2. **Liable only to extent of insurance**
Arkansas, Indiana, Kansas, South Dakota, North Dakota, Texas
3. **Liable if incident involves motor vehicle**
Arkansas, Nebraska, North Carolina, North Dakota, South Dakota, Texas, Wisconsin
4. **Liable if professional services**
Arkansas, Maryland, North Carolina, Wisconsin
5. **Liable if healthcare or hospital related**
Kansas, Maryland, Michigan, Ohio, Texas
6. **Liable if based on contractual obligations**
Minnesota
7. **Liable if alcohol related**
Nebraska
8. **Liable if based on federal cause of action**
Minnesota
9. **Limit placed on amount permissible for reimbursement of expenses**
North Dakota
10. **Recovery limited to amount of compensation**
Virginia
11. **Liability remains to 3rd parties**
Arkansas, Louisiana
12. **Liable in action brought by governmental entity**
Minnesota
13. **Liable if trustee in action brought by beneficiary of trust**
New York
14. **Immunity granted for some criminal violations**
Wisconsin
15. **Liable if below generally practiced standards**
Pennsylvania
16. **Must participate in training program**
North Dakota, New Jersey
17. **Coverage if "Nonprofit Corporation"**
Arizona, California, Colorado, Florida, Hawaii, Indiana, Louisiana, Minnesota, Nevada, Ohio, Washington, Wyoming
18. **Coverage if 501(c)**
Connecticut, Delaware, Illinois, Kansas, South Dakota, Tennessee, Virginia
19. **Coverage if 501(c)(3)**
Alaska, Arizona, Arkansas, Maryland, New York, North Carolina, Pennsylvania, Texas, Vermont
20. **Coverage if 501(c)(4)**
Alaska, Texas
21. **Coverage if 501(c)(6)**
Indiana, Tennessee
22. **Coverage if 501(c)(assorted other categories)**
Missouri, North Dakota, Oklahoma
23. **Coverage if "Member"**
Louisiana, Minnesota

Appendix 6
Federal Legislation: Analysis of HR911

Background:

HR911, the Volunteer Protection Act of 1987, was introduced on Feb. 2, 1987 by Rep. John Porter (R - IL). Identical legislation has been introduced in the Senate (S.929, Melcher, D - MT). An earlier version of the legislation had been introduced by Rep Porter during the 99th Congress.

In the House the legislation has been referred to the Judiciary Committee, and has approximately 145 co-sponsors.

Coverage:

The essential elements of the Porter bill are as follows:

1. *Organizational Coverage:* Protection is extended to non-profit organizations and governmental entities. A non-profit is described as a 501(c) tax exempt organization.
2. *Volunteer Coverage:* Board and direct service volunteers, with a \$300 limit on compensation received.
3. *Limits on Protection:* The volunteer must act in good faith and within the scope of duty, and must not have demonstrated wilful or wanton misconduct. The volunteer is still liable to the volunteer organization and to any governmental entity. Protection is extended as immunity in civil liability for "damage or injury".

Overall, the Porter bill is a quite standard version of much of the current state legislation.

Legislative Prospects:

The Porter bill is intended to provide a 'model' for state legislation and to encourage states to enact some type of legislation. To encourage states, the bill has an 'incentive' clause through which states which fail to enact legislation would lose 1% of their Title XX Social Services Block Grant allotment during each year in which they lacked legislation. To meet the requirements of the bill, a state must certify to the Secretary of Health and Human Services that it has enacted legislation which "substantially complies" with the types of protection in the Porter bill. The bill is being supported by a variety of national voluntary organizations and coalitions.

Resistance to the bill comes on two grounds:

1. *Deference to state legislative prerogative.* Few Congressmen are enthusiastic about pressuring their State legislatures to enact legislation. They are particularly not enthusiastic regarding legislation which would force their state legislatures to re-draft bills which they have already passed. On balance, although 34 states have passed some type of volunteer legislation, the vast majority probably could not demonstrate "substantial compliance" with the Porter bill. The major areas of obvious differences would lie in extension of protection to direct service volunteers (which only 15 states currently do) and extension of protection to governmental entities (done in only 7 states).
2. *Resistance to the enforcement mechanism.* Those states not complying with the Porter bill are penalized by loss of Social Service Block Grant funding. There is opposition both among the Congress and among many social service voluntary organizations to this approach. The opposition finds it quite inappropriate to encourage protection by threatening funding to the very programs for which the volunteers are serving.

It is in fact likely that the Porter bill could pass much more quickly if it were simply introduced as an optional model for protective legislation that was receiving the endorsement and support of the U.S. Congress. Such an alteration in approach would still be of assistance to state efforts to draft sensible legislation and would avoid both areas of opposition cited above.

30. Doug Johnston and C. Miller Sigmon, Can You Really Be Sued? A Liability Audit for Nonprofit Boards (Division of Archives & History, North Carolina Department of Cultural Resources) 1986.
31. Robert Cowden, "Directors and Officers of Charitable Corporations: Duties, Personal Liability, Indemnity and Insurance," Memorandum (Boston: Casner, Edwards, and Roseman) May 1985.
32. Vance Opperman, New Developments in Legal Responsibilities of the Board of Directors (Minneapolis: Opperman & Paquin) 1984.
33. Tamar Lewin, "Board Liability in Delaware," New York Times, D2 (January 13, 1987).
34. Craig Stoltz, "The Search for Liability Insurance," 38 Association Management 65 (February 1986).
35. Judy Haberek, "The Volunteer Protection Act of 1987: Getting HR911 Passed," Voluntary Action Leadership 15 (Spring/Summer 1987).
36. Steve McCurley, "Protecting Volunteers from Suit: A Look at State Legislation," Voluntary Action Leadership 17 (Spring/Summer 1987).
37. "Serving on a Charity: It's Getting Safer," Business Week p. 120 (July 13, 1987).
38. Douglas Besharov, "Child Welfare Liability: The Need for Immunity Legislation," Children Today p.17 (Sept/Oct 1986).
39. James Kozlowski, "No Ordinary Negligence Liability Under Recreational Immunity Statutes," 21 Parks & Recreation 20 (January 1986).
40. Don Dyke, "New Law Protecting Corporate Directors and Officers and Nonprofit Corporation Volunteers," Information Memorandum 87-2 (Madison: Wisconsin Legislative Council Staff) June 24, 1987.
41. Jeffrey Kahn, "Legal Issues in Volunteerism: Preliminary Survey Results," 3 Journal of Volunteer Administration 31 (Winter 1984-85).
42. Public Risk and Insurance Management Association, Risk Management: A Guide for Nonprofits. (Alexandria: United Way of America) 1987.
43. Brenda Tolin, "Legislatures Awaken to Nonprofits Hit by Liability Insurance Crisis," 6 Preventive Law Reporter 12 (June 1987)
44. James Fishman, "Standards of Conduct for Directors of Nonprofit Corporations," 7 Pace Law Review 389 (Winter 1987)
45. F. Anne Ross, "Tort Reform and the Liability of Officers and Directors of Non-profit Corporations," 28 New Hampshire Bar Journal 137 (Winter 1987).
46. Kristin Linsley, "Statutory Limitations on Directors' Liability in Delaware: A New Look at Conflicts of Interest and the Business Judgment Rule," 24 Harvard Journal of Legislation 527 (Summer 1987).

STATE VOLUNTEER LIABILITY LEGISLATION

Stephen McCurley

Draft #20 11/21/87

DRAFT

STATE	REFERENCE Bold = Enacted	ORG COVERAGE	VOL COVERAGE	PROTECTION X = Exception
AK	§09.17.050 86	NP corp; public or NP hospital; school Bd; municipal Bds (NP corp = 501c3 or c4)	Board, commission	Xgross negligence Xto corporation
AZ	ARS 10-005 86	Profit & NP Corp	Board	None, can indemnify, self-insure
	§36-919 86	Ch & NP Corp involved in food distribution	Officer; Volunteer; Organization	Xgross, reckless, intent
	Ch129 §10-1017 87	NP Corp	Board	Xwillful, gross; Org must amend Articles of Incorporation to qualify; Xto corporation and members
AR	Act 390 of 87	St/local govt; com vol org, or 501(c)(3)	"any person who provides goods or services w/o finan- cial compensation"	Not vicariously liable; Not liable acts/omission Xto extent of insurance for ordinary neg; Xbad faith, gross negligence; Xoperation of motor vehicle, boat, etc; Xprof licensed services; Protection limited to beneficiary of vol's services
	HB1077 87	Govt entity; NP corp w/IRS ta. exemption	Board, commission	Xordinary, gross negligence; intent
CA	Ch 720, §5231.5 86	NP public benefit corp	Board	Act in good faith, best interests, prudent care
CO	CRS13-21-116 86	NP corp	Board	Xwanton or willful act
	CRS13-21-116 (2)(a) 86	Ind; corp; assoc; partnership	All acting for benefit of another or to pro- tect health or safety	Act in good faith
CT	PL86-338(10) 86	501(c)	Board	Act in good faith, within scope; Xwillful, wanton
DE	Ch81, title 10 §8133 86	501(c)	"trustee, director, officer, agent, worker"	No civil damages for any negligence Xmotor vehicle to extent of insurance

	HF141 87	NP org exempt under MS249.05	"Director, officer, trustee, member or agent"	Good faith, within scope, Xwillfull, reckless, Xto govt entity, Xto org, Xcause based on federal law, Xbased on contractual obligation (amends §317.201)
	87bill HF278/SF230	NP org	Sports vols; corp	?
	HF467/SF404 87 (in HF141)	NP corp	Vol fire chief	Not liable to firefighters or others for performance of firefighting or related activities
MO	RSMo537.037 86	Any person	Emergency care	If trained in first aid, Xgross negligence, willful, wanton acts
NB	LB 67 of 87	501 (c)(2,3,4,5,7,8,11 or 19)	Board	Act within scope; Xwillful, wanton; Xto corporation; Xvehicle or alcohol related
	87bill LB123	NP sports program	Sports vol	Xreckless
NC	HB152 87 Art43-B §1-539.10	501(c)(3)	Direct service vol	good faith & reasonable; Xgross, wanton, intent; Xmotor vehicle; Xprof services above extent of insurance
	87 bill, HB713	?	Clean-up vols	?
ND	§10-24-05 subsection 87	501(c) (3,4,5,6,7,10,19)	Board	Act in good faith, scope; Xwillful, gross; Xreimbursement of expenses above \$2000; Xreceipt of compensation
	HB1080 87	NP orgs NP orgs	Volunteer Sports vols	Act in scope; Xwillful, gross; Xvehicle Act within scope; participated in training and safety program; Xwillful, gross; Xvehicle; Xexercising supervision; Xpart of educational institution
NH	RSA216-A: 3-h 86	Govt	Parks volunteers under supervision	Covered by state tort claims protection
	RSA 508.16 86	Ch orgs & societies	Board	Good faith, Xwillful, wanton

	8/bill 5150	NP corp; town Corporation	Board; commission Officers, agents, employees	if "occasioned by membership or participation" Not liable to those in sponsored sports event; if minor, must have parental waiver
SD	§23A-28-11 86	Any recipient of community service defendants	Organizations	Xgross negligence, willful, wanton; and only to extent of insurance
	§47-22-65 86	NP corp	Board	None, can indemnify
	Ch 47-23 87	501(c); hosp	Board	Xwillful, wanton
	HB1317 87	501(a), 501(c), hospital, govt entity	Board, service vol, Commission	Act in good faith & within scope, Xwillful, wanton, Xmotor vehicle, Xto extent of insurance (Xfor Board)
TN	28-3-301 86	501(c)(3), (c)(6), electric cooperatives	Board	Xwillful, wanton, gross
	29-20-201 86	Govt boards, commissions	Board	Xwillful, wanton, gross
TX	87bill HB24	NP corp	Board	Xgross negligence; Xcorporation, shareholders
	87bill HB104	NP corp	Volunteer	Must be under supervision of director or paid employee
	87bill HB201	Any person	Court-apptd volunteer	Xwillful, gross
	87bill HB202	501(a),(c)(3) Nonhosp NP	Bd; volunteer Organization	Must act in good faith and within scope of duties; Xwillful, wanton intentional; Xto corp Limit placed on monetary damages
	87bill SB201	State govt; Bd of higher education institution	Bd; volunteer; court-ordrd service	Not personally liable if within scope of duties
	87bill SB287/ HB564	NP Corps	Board	Xintent; Xto Corp.
	Title 4 Ch 84 §84.001 87	501(c)(3,4), except health-care provider	Board; volunteer	Act in good faith & within scope of duties; Xmotor vehicle (to extent of insurance)

				Xintent, willful, wanton XBd member liability to organization and its members
UT	SB2:4 86 (Gov veto)	NP corp	Board	
VA	§13.2-870.1 87	Corp	Board	Liabe only to amount of compensation; Xwill- ful, knowing violation
VT	S37 87	501(c)(3)	Board	Good faith, Xwillful, wanton
WA	RCW4.24 sec 86	NP corp	Board	Xgross negligence, Xto corporation
	RCW7.70 86	Public or private hospital	Board	Not responsible for care by health care provider Xgross negligence in granting privilege
WI	Act 13 of 87	NP corp; credit union; fraternal benefit insurance	Board; vols	Bd: Xconflict of interest; criminal viola- tion Xreason to believe conduct unlawful; Wilful misconduct. Vol: criminal violation Xreason to believe conduct unlawful; Xvehicle related; Xprofessional services
	87bill SB65	NP org	Organization	Limits liability of org assigned children under sup'vised wo:k program to \$25,000
WV	87bill #?	State +local govt; NP corp; other similar corps; business trade assoc	Board	Xto extent of insurance; if no insurance, then immune
WY	WS1-23-107 86	NP corp; government	Board, commission	Xintentional tort or illegal acts

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Position Paper, HB 116, pg. 2

Raising the standard of liability to gross negligence or reckless or intentional misconduct would strike an appropriate balance between the need to reduce the potential

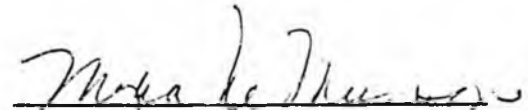
liability exposure of those involved in the protective custody process and the rights of intoxicated individuals to recover for injuries incurred because they are or are not taken into protective custody.

The Department suggests that the following changes be made to HB 116.

* Section 1. AS 47.37.170(g) is repealed and reenacted to read:

(g) A person may not bring a civil action for damages regarding the decision whether or not to take an intoxicated or incapacitated person into, or to release a person from, protective custody under this section, or for injuries incurred in protective custody. However, this subsection does not preclude liability for civil damages caused by gross negligence or reckless or intentional misconduct.

Approved by:

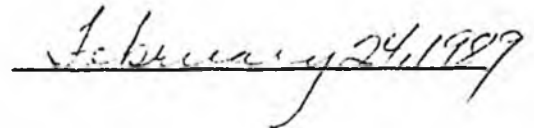


Myra M. Munson

Commissioner

Department of Health and
Social Services

Date:



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217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Representative Eileen Maclean, Chair
Members of House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: January 24, 1989

SUBJECT: HB 116 - Immunity for Treatment of Intoxicated Persons

The Alaska Municipal League supports HB 116. For the second year, relief from the implied liability created by the Supreme Court ruling in Busby v Municipality of Anchorage is a priority of the AML and the 123 municipalities the AML represents directly. The AML believes the Court misinterpreted the intent of the Legislature in AS 47.37.170(g) and the resulting implications of liability have created an unnecessary and unintentional burden on our law enforcement officials and our correctional facilities. HB 116, as introduced, provides legislative clarification for the courts and removes the threat of liability which is a deterrent to the protection of all our citizens.

I have attached a copy of the AML position on Busby which was contained in the AML's Municipal Platform which outlines the AML's legislative priorities for 1989 and which was provided to all legislators. HB 116 accomplishes the desired intent of the AML position on the Court's misinterpretation of AS 47.37. I have also attached copies of relevant AML resolutions passed by the AML membership at their annual conference in November.

Governor Cowper introduced HB 406 last year which would have provided immunity under AS 47.37 but unfortunately the bill did not get out of the House. Some believe that the immunity granted under AS 47.37.170(g) should be "qualified" by adding a legal test of "maliciousness". This is inappropriate and unnecessary. No problem or complaint existed before Busby. Our law enforcement officials are professionals and understand and carry out their duties under AS 47.37. Creating a civil liability for carrying out this duty may have the opposite effect of deterring the effective enforcement of AS 47.37.

The AML supports HB 116, appreciates the efforts of the sponsor to correct the problem it is causing in our communities, and urges the Committee to pass the bill out as introduced.

Attachments

Removal of Municipal Liability Imposed by Busby Decision

The Alaska Municipal League urges the Legislature to pass legislation reversing the implied liability of municipalities caused by the Busby decision regarding taking incapacitated persons into protective custody.

Background

The decision of the Alaska Supreme Court in Busby v. Municipality of Anchorage, which interpreted the intent of the Alaska Legislature in enacting AS 47.37.170(b), judicially created a duty to take incapacitated persons into custody that the Legislature did not intend to impose upon local communities.

The purpose of AS 47.37.170(b) is to provide for a compassionate local response to one aspect of the alcohol/drug crisis in local communities. However, to change that ability of local communities to help those in need into an affirmative duty to do so imposes on local communities obligations they are neither equipped nor fairly required to meet. The League supports a wide variety of measures to deal with the complicated issues of alcohol/drug abuse in Alaska. Nonetheless, the creation by the courts of a governmental obligation to take incapacitated persons into custody that took place without the discussion and study of the impacts of that obligation that would occur during the normal legislative process was not a good or fair way to address the problem.

The effect of this court decision has been that municipalities with police powers are now forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facility. The result has been great expense to the municipality or the State and an increased workload for peace officers, which comes at the expense of other duties, including investigation of violations of alcohol control laws.

Therefore, the League supports amending AS 47.37.170(b) by adding to it the following declaration: "This section shall not impose any affirmative duty upon municipalities or their agents to take persons incapacitated by alcohol into protective custody."

Resolution of the Alaska Municipal League

Resolution No. 89-7

**A RESOLUTION URGING THE REVERSAL OF THE IMPLIED
LIABILITY OF MUNICIPALITIES REGARDING
TAKING INCAPACITATED PERSONS INTO PROTECTIVE CUSTODY**

WHEREAS, the purpose of AS 47.37.170(b) is to provide for a compassionate local response to one aspect of the alcohol/drug crisis in Alaska communities to help those in need, and

WHEREAS, the Alaska Supreme Court decision in Busby v. Municipality of Anchorage incorrectly interpreted the legislative intent behind AS 47.37.170(b) and judicially created an affirmative duty to take incapacitated persons into custody that was never intended to be imposed upon local communities, and

WHEREAS, the effect of this decision has been that municipalities with police powers are now forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facilities, and

WHEREAS, this obligation has resulted in a great deal of expense to municipalities or the State and an increased workload for peace officers, leaving them with inadequate time for other police duties, including investigation of violations of alcohol control laws, and

WHEREAS, this decision to burden local governments with an obligation that they are neither equipped nor fairly required to meet was arrived at judicially, without any communication with or consideration for the communities involved and the impact such an obligation would have;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 16th Alaska Legislature to enact legislation which clarifies the municipalities' Good Samaritan role in assisting incapacitated individuals by adding to AS 47.37.170(b) the simple declaration:

Resolution of the Alaska Municipal League

Resolution No. 89-8

**A RESOLUTION SEEKING ALTERATIONS OF STATE STATUTES
TO ALLOW MORE LOCAL AUTONOMY IN DEALING WITH
THE PUBLIC INEBRIATE PROBLEM**

WHEREAS, Alaska Statute 47.37.170(b) requires that a person appearing to be incapacitated by alcohol in a public place be taken into protective custody by a peace officer, and

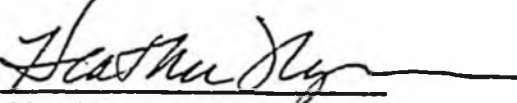
WHEREAS, little latitude is available to local governments under this statute to deal with the problem, and

WHEREAS, AS 47 places local jurisdictions in undue risk of litigation, and

WHEREAS, compliance with AS 47 jeopardizes municipal financial ability to provide health and related social services to persons experiencing alcohol related problems;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Legislature to alter AS 47.37.170 to permit greater local autonomy in dealing with public inebriates.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director



City and Borough of Sitka

304 LAKE STREET. SITKA, ALASKA. 99835

RECEIVED

FEB 07 1989

February 2, 1989

PUBLIC OPINION MESSAGE

The City and Borough of Sitka wishes to express its support for Senate Bill 66. This bill wisely returns the duty to aid intoxicated persons to the status of a "public duty" removing the ability of individuals to sue for an alleged failure to perform that duty. It allows public officials, normally police officers, to reasonably weigh an individual's right to freedom from restraint against that same individual's personal safety without the added distraction of concern for liability resulting from a decision which someone else might later decide was wrong.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

Dave
TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Representative Eileen P. MacLean, Chairman
House Community and Regional Affairs *Eileen P. MacLean*

DATE: February 2, 1989

RE: Scheduling Request - HB 116

House Bill 116, "An Act relating to immunity for treatment of intoxicated persons; and providing for an effective date," has passed from the House Community and Regional Affairs Committee to the House Labor and Commerce Committee. The bill received a do pass recommendation with no dissenting recommendations.

I would like to respectfully request that you schedule House Bill 116 for committee hearing at your earliest convenience. House Bill 116 is of great importance to all municipalities in the state. This legislation would prevent legal actions against the state, a municipality, a peace officer, or member of an emergency service patrol for the failure to take into protective custody a person who is intoxicated or otherwise incapacitated.

This legislation is the result of the Alaska Supreme Court's ruling in *Busby vs Municipality of Anchorage*. The case involved Mr. Busby who was intoxicated and walking in an Anchorage street. An officer stopped him and after conversation determined that while he had been drinking he was not incapacitated. Mr. Busby was later returned to the street and was hit by a car. Mr. Busby sued the municipality of Anchorage on the grounds that the officer had a duty to take him into protective custody. The supreme court ruled in favor of Mr. Busby.

This ruling has taken away the use of discretion in placing intoxicated persons in protective custody. As a result there has been a great increase in the number of people taken into protected custody. Jails and social systems are being overcrowded. In some areas the increases have been three or four-fold since the supreme court ruling.

Police have hundreds of contacts daily with people in varying stages of intoxication. I am concerned that this court ruling has placed a great financial burden on our communities and is hampering our police from performing their duties.

**Municipality
of
Anchorage**



OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4431

TOM FINK,
MAYOR

January 27, 1989

Representative Sam Cotten
P.O. Box 296
Eagle River 99577

Subject: Senate Bill 66/House Bill 116 - "Busby" Relief

Dear Representative Cotten:

I would like to take this opportunity to urge your support of Senate Bill 66 and House Bill 116 which offers local government's much needed relief from the "Busby" decision. I am sure you are aware of how the "Busby" decision has handicapped the day-to-day operations of our police and emergency services personnel, as well as the increased liability it imposes on state and local public safety agencies.

Sincerely,

Tom Fink
Mayor

"It is not the desire of the legislature that peace officers neglect their duty to provide protective custody to those that are incapacitated, but to prevent litigation that may arise from the inability to properly determine incapacitation."

Possible letter of intent
suggested by sponsor if
deemed necessary to allay
fears that police will shirk
~~on~~ their duties.

of the budget committee... the panel of Minnesota... the panel's ranking... said he believed Bush had presented... a pretty complete budget picture within 14 days of the inauguration.

Darman told the Senate budget... and new black...

panel on... the best way for Bush... and the Democratic-controlled Congress... to work out a budget was by negotiating.

But Darman ran into a torrent of criticism over the budget, that Bush presented to Congress on Feb. 9.

Much of it focused on what is becoming known as the budget's "black box" - a collection of more than 1,000 programs, mostly in domestic areas, that the president wants to hold to the same \$1 billion spending total in effect for this year.

for the Contr... cal mili... on Congress, in Amendment... "This wa... matter of po... fine, Har... bot possible floor of the without me the news st

High court rules states don't have to protect people

By JAMES H. RUBIN

WASHINGTON - The Supreme Court ruled today that public officials may not be sued when their alleged gross negligence permits a child to be abused by a parent.

By a 5-3 vote, the justices said a state does not have a constitutional duty to protect people, including abused children, who are not in the state's custody.

Chief Justice William H. Rehnquist, writing for the court, said, "As a general matter, we conclude that a state's failure to protect an individual against private violence simply does not constitute a violation of the (Constitution's) due process clause."

In other matters taken up today:

- The court, appearing eager to guard the line between church and state, rigorously questioned attorneys who defended holiday-time religious displays in two public buildings.
- The court ruled that states may not prohibit political party leaders from endorsing primary election candidates.
- The justices sidestepped deciding whether a criminal defendant's right to be tried by his peers is violated when prosecutors disqualify potential jurors based on their race.

In the child-abuse case, the court rejected an appeal on behalf of a Wisconsin boy, Joshua DeShaney, who since age 4 has been seriously and permanently brain damaged from beatings by his father.

In an unusual emotional dissent, Justice Harry A. Blackmun ex-

claimed, "Poor Joshua! It is a sad commentary upon American life and constitutional principles...that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded" and without an opportunity to sue the state.

Social workers were accused of violating Joshua's constitutional rights by failing to come to his rescue after they had repeated evidence he was being beaten.

But Rehnquist said the state's awareness of the boy's plight does not mean it has a duty to protect him.

Only "when the state takes a person into its custody and holds him there against his will" does the Constitution require officials to take responsibility for the individual's safety and well-being, Rehnquist said.

"While the state may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation nor did it do anything to render him any more vulnerable to them," he said.

Nor does the fact that the boy was once in the state's custody change the situation, the chief justice added. "The state does not become the permanent guarantor of an individual's safety by having once offered him shelter," he said.

Joining Rehnquist were Justices Byron R. White, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia and Anthony M. Kennedy. Justices William J. Brennan and Thurgood Marshall joined Blackmun in dissent.

Crimes on reservations

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 116
PUBLISH DATE: HOUSE 2/3/89

No. 1

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to immunity for treatment of intoxicated persons..."
Sponsor: MacLean & Swackhammer
Requestor: House C&RA

Agency Affected: Public Safety
BRU: Law Enforcement
Component: AST, FWP, VPSO

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

House Bill 116 would prevent lawsuits against the State, the Department, and its officers, employees, and agents for discretionary decisions regarding incapacitated (intoxicated) persons. Passage of this bill may eliminate future liability, but would have no fiscal impact on the Department's present budget.

Prepared by: Captain C. Roger McCoy, Special Assistant
Division: Office of the Commissioner

Phone: 465-4322
Date: 1/27/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: -30-89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to immunity for treatment of intoxicated persons."
 Sponsor: Rep. MacLean & Swackhammer
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Susan Humphrey-Barnett

Approved by Commissioner
 Agency: Department of Corrections

Phone: 465-3376
 Date: 1-30-89
 Date: 1-30-89

Distribution (by preparer):

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

6-0624E

Ford
3/2/89

Original sponsors: MacLean, Swackhammer,
and Foster

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 116 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity for treatment of intoxi-
7 cated or incapacitated persons; and providing for an
8 effective date."

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

10 * Section 1. AS 47.37.170(g) is repealed and reenacted to read:

11 (g) A person may not bring an action for damages against the
12 state, a municipality, officers, agents, or employees of the state or
13 a municipality, a peace officer, or members of the emergency service
14 patrol, based on the performance of or failure to perform a duty
15 imposed under this section. This subsection does not apply to an
16 action against (1) the state or a municipality based on gross
17 negligence, or reckless or intentional misconduct; or (2) an officer,
18 agent, or employee of the state or a municipality, a peace officer, or
19 member of the emergency service patrol based on gross negligence or
20 reckless or intentional misconduct arising from protective custody, or
21 based on reckless or intentional misconduct arising from a failure to
22 perform a duty imposed under this section. In this subsection "munic-
23 ipality" has the meaning given in AS 01.10.060 and includes a public
24 corporation established by a municipality.

25 * Sec. 2. This Act applies to causes of action that accrue on or after
26 the effective date of this Act.

27 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
28
29

of the department, considers this an effective and economical course to follow. Contracting under this subsection is governed by AS 36.30 (State Procurement Code). (§ 1 ch 207 SLA 1972; am § 5 ch 150 SLA 1980; am § 62 ch 106 SLA 1986; am E.O. No. 71, § 21 (1988))

Effect of amendments. — The 1986 amendment, effective January 1, 1988, added the last sentence in subsection (g).

The 1988 amendment, effective July 1, 1988, in subsection (a), substituted "alcoholics, intoxicated persons, and drug

abusers" for "alcoholics and intoxicated persons" in the first sentence and "and, when feasible, programs must" for "and when feasible, programs shall" in the third sentence.

Sec. 47.37.150. Acceptance for treatment. The coordinator shall adopt regulations for the admission of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons, and drug abusers. In adopting the regulations the coordinator shall be guided by the following standards:

(1) if possible a patient must be treated on a voluntary rather than an involuntary basis;

(2) a patient must be initially assigned or transferred to outpatient or intermediate treatment, unless the patient is found to require inpatient treatment;

(3) a person may not be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment;

(4) an individualized treatment plan must be prepared and maintained on a current basis for each patient;

(5) provision must be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will use other appropriate treatment and facilities. (§ 1 ch 207 SLA 1972; am E.O. No. 71, § 22 (1988))

Effect of amendments. — The 1988 amendment, effective July 1, 1988, substituted "alcoholics, intoxicated persons, and drug abusers" for "alcoholics and intoxicated persons" in the first sentence in the

introductory paragraph, "must" for "shall" in paragraphs (1), (2), (4), and (5), "may" for "shall" in paragraph (3), and "use" for "utilize" in paragraph (5).

Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to the person's home, an approved public

treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, the person may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers the person shall arrange for transportation.

(d) A person who, after medical examination, is found to be incapacitated by alcohol at the time of admission or to have become incapacitated at any time after admission, may not be detained at a facility after the person is no longer incapacitated by alcohol. A person may not be detained at a facility if the person remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless the person is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the patient's family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, the patient's request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until the person is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking the person to a treatment facility, an emergency medical service or a detention facility, is taking the person into protective custody and the officer or patrol member shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps for self-protection, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety. The definition in AS 47.37.270(9) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1-4 ch 101 SLA 1976)

Editor's notes. — This section is set out above to correct a minor error in subsection (j) in the main pamphlet.

NOTES TO DECISIONS

Actionable duty imposed on municipality. — This section imposes upon a municipality an actionable duty to take persons incapacitated by alcohol in a public place into protective custody. *Bushy v. Municipality of Anchorage*, Sup. Ct. Op. No. 3214 (File No. S-1580), 741 P.2d 230 (1987).

Sec. 47.37.270. Definitions. In this chapter

(1) "alcoholic" means a person who habitually lacks self-control in using alcoholic beverages, or uses alcoholic beverages to the extent that the person's health is substantially impaired or endangered, or the person's social or economic function is substantially disrupted;

(2) "approved private treatment facility" or "private facility" means a private agency meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(3) "approved public treatment facility" or "public facility" means a treatment agency operating under the direction and control of the office or providing treatment under AS 47.37.010 — 47.37.270 through a contract with the office under AS 47.37.130(g) or through a grant awarded under AS 47.30.475, and meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(4) [Repealed, § 23 ch 71 SLA 1988.]

(5) "commissioner" means the commissioner of health and social services;

(6) "coordinator" means the coordinator of the office of alcoholism and drug abuse;

(7) "department" means the Department of Health and Social Services;

(8) "emergency service patrol" means a patrol established under AS 47.37.230;

(9) "incapacitated by alcohol" means a person who is unconscious or whose judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to a need for treatment, as evidenced objectively by extreme physical debilitation, physical harm or threats of harm to others or chronic inability to hold regular employment;

(10) "incompetent person" means a person who has been adjudged incompetent by the appropriate court;

(11) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(12) "office" means the office of alcoholism and drug abuse within the Department of Health and Social Services;

(13) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care which may be extended to alcoholics and intoxicated persons, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling;

(14) "work therapy"

(A) means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community;

(B) does not include

(i) activities such as personal housekeeping chores or cooperative responsibilities expected of each patient in the program; or

(ii) work that produces goods or services for sale or distribution, the proceeds of which would be returned to the owners, operators, or businesses of the rehabilitation program. (§ 1 ch 207 SLA 1972; am § 4 ch 116 SLA 1/78; am §§ 15 — 18 ch 150 SLA 1980; am § 3 ch 58 SLA 1983; am § 69 ch 37 SLA 1986; am E.O. No. 71 § 23 (1988))

Resolution of the Alaska Municipal League

Resolution No. 89-9

**A RESOLUTION URGING THE LEGISLATURE TO PROVIDE FUNDING
TO MUNICIPALITIES TO OFFSET THE COST OF COMPLYING
WITH THE PROVISIONS OF AS 47.37**

WHEREAS, alcohol abuse is purported to be the number-one health problem in the State of Alaska, and

WHEREAS, the Alaska Supreme Court has held that municipalities have an affirmative duty to take persons incapacitated by alcohol in a public place into protective custody and transport them to an appropriate treatment facility, if one is available, and

WHEREAS, if a treatment facility is not available, the municipality must detain incapacitated persons in a state or municipal detention facility, and

WHEREAS, failure to provide protective custody to persons incapacitated by alcohol may result in liability for damages to the intoxicated person when injury results, and

WHEREAS, this increased responsibility and liability have been imposed on municipalities at a time when there are decreasing state revenues to fund municipal jail contracts, and

WHEREAS, treatment facilities and detention facilities have no real means to enforce the collection of fees from those who are taken into protective custody, and

WHEREAS, those taken into protective custody often do not have the resources to pay for medical treatment or detention, and

WHEREAS, local governments have been forced to assume the financial burden of providing medical examination, treatment, and protective custody detention as required by AS 47.37, and

WHEREAS, once an incapacitated person is taken into protective custody, the treatment facility or detention facility assumes further liability for the safety and welfare of that person while detained, and

WHEREAS, many standard municipal insurance policies specifically exclude "custodial care" from coverage, and

WHEREAS, a special alcohol tax would seem to make sense in that it would place the cost of the problem on the source of the problem, and

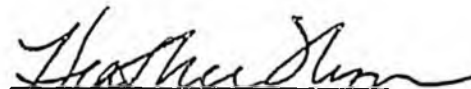
WHEREAS, AS 4.21.010 specifically prohibits municipalities from imposing such a tax, and

WHEREAS, barring this avenue for funding a State-mandated responsibility and liability, municipalities must look to the State for relief from the burden imposed on municipalities by AS 47.37 and the State Supreme Court;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that:

1. The Alaska State Legislature is hereby urged to provide direct funding to municipalities to offset the cost of complying with the provisions of AS 47.37; and
2. The Alaska State Legislature is further urged to amend AS 4.21.010 to allow local governments to impose a special tax on alcohol to fund mandated programs and procedures to deal with alcohol abuse within local communities and to fund substance abuse education.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director

Position Paper

HB 116

For An Act Entitled: " An Act Relating to immunity of treatment for intoxicated persons...

This legislation would provide that a person may not bring an action for damages against the state, a municipality (or officers, agents, or employees of the municipality or state), a peace officer or members of the emergency services patrol based on the performance or failure to perform a duty imposed under AS 47.37.170. AS 47.37.170 provides that (1) an individual who is intoxicated in public may be taken into protective custody by a peace officer or member of the emergency services patrol and (2) that an individual who is incapacitated by alcohol shall be taken into protective custody by a peace officer or member of the emergency services patrol.

In 1987, the Alaska Supreme Court in Busby v. Municipality of Anchorage, found that AS 47.37.170 creates an affirmative and mandatory duty for law enforcement personnel to place persons who are incapacitated into protective custody. According to the court, failure to take an incapacitated person into protective custody creates a cause for action for damages against peace officer (or member of an emergency service patrol who decides not to do so, for injuries that occur as a result. The Busby decision has increased municipalities fear of potential liability.

Department Position

The Department of Health and Social Services does not support the granting of absolute immunity to municipalities with regard to their actions under AS 47.37.170. Absolute immunity would shield all action, however improperly motivated, and would deny individuals traditional tort recourse.

The Department believes that conditional liability, based on the standard of gross negligence, would preserve the rights of individuals while at the same time protecting Municipalities from lawsuits.

HB

117

Alaska State Legislature

Anchorage * District 10

P.O. Box V
Juneau, Alaska 99811
(907) 465-2828



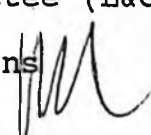
Member
Alaska Legislative
Council
Labor & Commerce
Committee
Special Committee
on Foreign Trade
Finance Sub-Committee
for Labor

3111 C Street, Suite 412
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(907) 561-2040

Representative Virginia Collins

M E M O R A N D U M

To: Representative Dave Donley, Chairman
House Labor & Commerce Committee (L&C)

From: Representative Virginia Collins 
L&C Member

Date: April 13, 1990

Subject: HB 117 - Approp: Power Transmission Facilities

Please consider this my request for a hearing on HB 117 as soon as possible. Thank you.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

6
File

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Dave Donley
Capitol Rm 13

FROM: Representative Bert Sharp *BMS*

DATE: January 30, 1989

SUBJECT: Information for your evaluation of HB 117
Railbelt Energy Fund Appropriation

This is background information which I hope you will find important in your evaluation of the merits of increasing the capacity of the Southcentral Interior Power Transmission Grid.

The current cold spell in our areas have resulted in Golden Valley Electric Association (GVEA) surpassing its previous record consumer demand peak which was established over 12 years ago. The new mark was 92,100 kw for GVEA's peak on January 21, 1989. This plus the Fairbanks Municipal System peak of 30,000 kw results in a combined area power demand of over 122,000 kw. The present operating capacity of the Parks Highway Transmission Line is approximately 65,000 kw. This total includes the 26,000 kw output of GVEA's Healy Power Station thus leaving the ability to purchase an additional 39,000 kw from Southcentral utilities.

During the peak levels, the two Fairbanks utilities utilized oil fired turbines to meet the consumer needs over and above the combined output capabilities of their coal-fired units and the transmission tie. The consumption of liquid fuel to accomplish this is currently running about 95,000 gallons daily. During a

recent 7 day period, over 625,000 gallons of oil (which equates to about 4.7 million pounds of fuel) was burned and exhausted into an already heavily laden atmosphere, more commonly known as "ice fog."

A very viable option to this situation is presently available to us; that of authorizing and funding via the Railbelt Energy Fund, projects that will increase the capacity of a Southcentral-Interior power transmission facility. This would assure that the full peaking capacity of Bradley Lake will be usable and appropriate portions deliverable to the Anchorage and Fairbanks load centers. The present system capacity will not do this for either location.

Another point of interest is that GVEA purchased 215 million kwh of electricity from the two Anchorage utilities in 1988. The price paid included well over \$1,000,000 in bottom-line enhancements to these utilities, thereby reducing by that amount the rate of return required from Anchorage consumers.

There will be no costs to the state in future years for ownership, operation, and maintenance of these proposed projects as the user utilities picks up all these costs. The economic benefits to all Southcentral and Interior citizens can only increase with time, and contribute to the future growth and prosperity of Alaska.

HB

122

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: Name change ASBA/ASHA; BRU: ASBA
property disposal
 Sponsor: Rules Committee Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Linda Wild Phone: 465-2500
 Division: Commissioner's Office Date: 1/16/1989

Approved by Commissioner: *Larry Mercurieff* Larry Mercurieff, Commissioner Date: 1/16/1989
 Agency: Dept. of Commerce & Economic Development

Distribution (by preparer):

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