

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6318 SENATE JUDICIARY

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issued in the guise of certificated shares held by the issuer. The adoption of the proposed Uniform Commercial Code amendments will permit these systems to develop with that confidence in the legal consequences of transactions that is so essential to commercial acceptability.

- There is an even more critical consideration. A recurrence of a paperwork crisis in the securities industry is likely to evoke demands to abolish the stock certificate by law and thereby, in effect, compel the issuance of uncertificated shares. I fear that mandatory legislation, enacted under panic conditions, may fail to provide an adequate framework for dealing with the artifacts it creates.²⁸ It would be far better to be prepared for uncertificated shares before they exist than to have them thrust upon us before we are ready for them.

²⁸ Draftsmen of corporate statutes properly do not concern themselves with the solution of nitty-gritty commercial problems. The Michigan statute, note 4 *supra*, delegates that unpleasant task to the securities exchange on which the uncertificated shares are listed. The California statute, note 4 *supra*, is more expansive and defers to its Commissioner of Corporations, the Securities & Exchange Commission or Congress. And Congress, in section 17A(e) of the 1934 Act, blithely tells the SEC "to end the physical movement of securities certificates in connection with the settlement among brokers and dealers."

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Alaska State Legislature

Chairman
(907) 465-4523



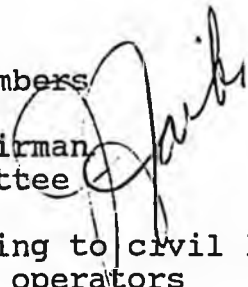
Jan Faiks
Post Office Box V
Juneau, Alaska 99811

Senate Judiciary Committee

January 17, 1989

MEMORANDUM

TO: Judiciary Committee Members

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee 

SUBJECT: SB 89 An Act relating to civil liability of
zoos and zoo operators

SB 89 has been referred to the Senate Judiciary Committee for consideration. The purpose of this bill is to modify the civil liability of zoos and zoo operators in Alaska.

SB 89 addresses the standard of care to be applied in liability cases which may be brought against zoos and zoo operators.

It provides that a zoo operated by a government entity or a nonprofit organization may not be held absolutely liable for personal or property injuries sustained as a result of an inherent risk of attendance at the zoo. Recovery for damages must be based upon negligence on the part of the zoo operator. Accordingly, the bill requires the zoo operator to use reasonable care to prevent the injury, and to post warning signs at prominent places within the zoo and at each entrance.

"Inherent risk of attendance" is defined as the dangers or conditions that are an integral part of the physical proximity of wild animals.

There are two theories of liability which have been applied to such keepers of wild animals. The rule of "absolute liability" is that one who keeps wild animals on his premises must

Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session

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see to it at his peril that they do no damage to others. Stated differently, one who harbors a wild animal, which by its very nature is vicious and unpredictable, does so at his peril, and liability for injuries inflicted by such animal is absolute, regardless of fault.

This theory of "absolute liability" has been refuted in several cases throughout the country involving city-owned zoos, in favor of a duty of reasonable care. The argument that maintenance of a caged polar bear creates absolute liability for any injuries sustained was first rejected in a 1952 California case. The court found that the bear was properly caged and that the injury occurred when the victim strained against the barrier and brought his hand close to the bear's mouth in trying to feed it sugar. McKinney v. City and County of San Francisco, 241 P.2d 1060 (Cal. 1952). The most recent case on point, Kennedy v. City and County of Denver, 506 P.2d 764 (Colo. App. 1972), held that the rule of absolute liability does not extend to situations where a municipality maintains and operates a zoo for the benefit of the public and in response to the public's obvious desires. The wild animal rule has been held inapplicable in the context of today's society and present zoological techniques, as it would be unrealistic to hold that operation of a municipal zoo exposes the public to inordinate risk. City and County of Denver v. Kennedy, 476 P.2d 762 (Colo. App. 1970).

However, that line of cases has been applied only to zoos which are owned by municipalities. There are no city-owned zoos in Alaska; the Alaska Zoo is owned and operated by a nonprofit organization for the benefit of the public.

The purpose of this legislation is to hold the Alaska Zoo, and other zoos which may be established in Alaska by government entities or nonprofit organizations, to a standard of reasonable care, rather than to the theory of absolute liability. I believe that it is reasonable to hold zoos operated by nonprofit organizations to the same standard of care to which a government-operated zoo would be held by the common law.

Should you need any additional information, please let me know.

obligor requests a hearing, an income assignment may not take effect until the conclusion of the hearing. The court shall hold a hearing requested under this section within 15 days after the date the obligor requests the hearing. If the obligor pays all support payments due before the hearing, an income assignment order may not take effect.

(e) The obligee or person or public agency that requested the income assignment order shall immediately send a copy of the income assignment order by certified mail to persons who may owe money to an obligor. An income assignment order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income assignment order.

(f) An employer may not discharge an obligor on the basis of an assignment under this section.

(g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.35.080(b)(1) do not apply to income assignments under this section; however, 50 percent of the gross wages of the obligor or \$100 a week, whichever is less, is exempt from execution under this section.

(h) The court may order an obligor to pay all court costs involved in an income assignment proceeding under this section. (§ 1 ch 96 SLA 1981; am §§ 16, 17 ch 59 SLA 1982; am § 1 ch 118 SLA 1982)

Effect of amendments. — The first 1982 amendment added "and by filing that statement with the court" at the end of subsection (c) and rewrote subsection (e).

The second 1982 amendment, in subsection (b), substituted "the obligor's" for "his" and inserted "obligee or, where the order is issued to the" and "or collections are being made through the child support enforcement agency, to that agency."

Editor's notes. — Section 12, chapter 96, SLA 1981, provides: "AS 09.65.132

added in sec. 1 of this act has the effect of changing Rule 77 of the Alaska Rules of Civil Procedure by establishing a procedure and time limits for court review of an income assignment order which differ from those generally applicable in civil actions."

AS 09.35.080, referred to in subsection (g), was repealed by § 14, ch. 62, SLA 1982. For present exemption provisions, see AS 09.39.

Sec. 09.65.135. Limitations on claims arising from skiing. (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) in this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of the skier's ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area. (§ 2 ch 80 SLA 1980)

Cross references. — For required snow ch. 80, SLA 1980, in Temporary and Special safety and operation plan, see AS cial Acts. 18.60.822; for legislative intent, see § 1.

Chapter 70. General Provisions.

Section

10. Applicability of title
20. Short title

Section

Sec. 09.70.010. Applicability of title. This title governs all proceedings in actions brought after January 1, 1963, and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event, the laws in effect before January 1, 1963, apply. (§ 31.03 ch 101 SLA 1962)

NOTES TO DECISIONS

Cited in *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 693 (1963).

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Supervision

in joint session, these orders become effective at a date thereafter to be designated by the governor.

SECTION 24. Each principal department shall be under the supervision of the governor.

Department Heads

SECTION 25. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the Secretary of State. The heads of all principal departments shall be citizens of the United States.

(The Sixth Legislature's Senate Joint Resolution No. 2 "changing the name of the secretary of state to lieutenant governor" in sixteen sections of the Alaska Constitution, approved by the voters August 25, 1970, inadvertently omitted express amendment of this section.)

Boards and Commissions

SECTION 26. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Recess Appointments

SECTION 27. The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.

ARTICLE IV

THE JUDICIARY

Judicial Power and Jurisdiction

SECTION 1. The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction

of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court

SECTION 2. (a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. Subsection (b) was added.)

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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January 9, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

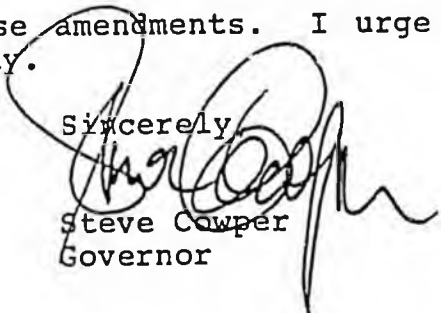
Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to methods of appointment of members of the Alaska Public Offices Commission (APOC).

The bill amends AS 15.13.020 to remedy technical problems with the present appointment process. The proposed amendments provide for legislative confirmation of all APOC members, and clarify the role of the governor in appointing the non-partisan, "fifth member" of the APOC. The bill includes a proposed conforming amendment to AS 15.13.020(h).

The APOC has endorsed these amendments. I urge that this bill be passed without delay.

Sincerely,


Steve Cowper
Governor

NOTES TO DECISIONS

Constitutionality. — In the case of *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 98 B. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 1196, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression.

Sec. 15.13.011. Inapplicability to presidential primary. [Repealed, § 1 ch 2 SLA 1984.]

Sec. 15.13.020. Alaska Public Offices Commission. (a) There is created in the Department of Administration the Alaska Public Offices Commission consisting of five members.

(b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party.

(c) The four members selected under (b) of this section shall, by a majority vote, appoint the remaining fifth member of the commission.

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

(e) A member of the commission, during tenure, may not

- (1) hold or campaign for elective office;
- (2) be an officer of a political party, political committee or group;
- (3) permit the member's name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including

Messerli v. State, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

Initiative substantially similar to ch. 76, SLA 1974, correctly withheld from ballot. — Substantial similarity existed between ch. 76, SLA 1974, which enacted this chapter, relating to election campaigns, and an initiative relating to campaign contributions and expenditures, which was filed with the lieutenant governor prior to the regular 1974 session of the legislature. The act effectively displaced the initiative, and the lieutenant governor was correct in withholding the initiative from the ballot. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

For comparison of ch. 76, SLA 1974, and the initiative, see *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ or assist a lobbyist.

(f) Members of the commission shall receive compensation of \$50 a day while attending commission meetings and shall be entitled to travel expenses and per diem authorized by law for members of other boards and commissions.

(g) The members shall elect a chairman. Three members of the commission constitute a quorum. A vacancy does not impair the powers of the remaining members to exercise all of the powers of the commission.

(h) A vacancy on the commission shall be filled by the appropriate appointing authority within 30 days of the occurrence of the vacancy. The appointee shall serve for the remaining term of the appointee's predecessor.

(i) The commission may employ an executive director and other employees it considers necessary. Neither the executive director nor an employee may have a vote.

(j) The commission shall establish an office, which may be called a regional office, in each senate district in the state to keep on file for public inspection copies of all reports filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. The regional office shall make all forms and pertinent material available to candidates. All reports shall be filed by candidates, groups and individuals directly with the commission's central district office. The commission shall insure that copies of all reports by statewide and legislative candidates in each senate district are forwarded promptly to that district or regional office.

(k) The commission shall insure that copies of reports filed by candidates for municipal office are made available for public inspection in the appropriate municipality. (§ 1 ch 76 SLA 1974; am § 23 ch 25 SLA 1975; am §§ 3 — 10 ch 189 SLA 1975; am E.O. No. 41 § 2 (1980); am § 24 ch 85 SLA 1988)

Effect of amendments. — The 1988 amendment, in subsection (d), deleted obsolete references to terms of initial mem- bers and rewrote the subsection for clarity.

NOTES TO DECISIONS

Subsection (j) requires forms to be made available in a regional office in each senate district. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).
Furnishing forms to Nome regional

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act amending the penalty for the
 crime of criminal mischief..."
 Sponsor: Senator Jones
 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
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)

This legislation will have minimal impact on the Department of Corrections. Very few persons actually serve jail time for the offense of Criminal Mischief III and if they actually do, the time served tends to be greater than this mandatory minimum.

Susan E. Knighton

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

Phone: 465-3376
 Date: 2-1-89

Approved by: Commissioner Humphrey-Barnett
 Agency: Department of Corrections

Date: 2-1-89

Distribution (by preparer):

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

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94

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 94 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act limiting civil liability for certain activ-
7 ities of the Alaska National Guard."

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

9 * Section 1. AS 26.05 is amended by adding a new section to read:

10 Sec. 26.05.145. IMMUNITY FROM CIVIL LIABILITY. The state, an
11 employee or representative of the state, and an individual member of
12 the Alaska National Guard are not civilly liable for damages arising
13 from Alaska National Guard activities of a member of the Alaska
14 National Guard while acting as an employee of the government. In this
15 section, "employee of the government" has the meaning given in
16 28 U.S.C. 2671 (Federal Tort Claims Act).

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history and U.S. Code

Service Afloat, Inc., Howard Harry, Inc. v. U.S. 1973, 353 F.Supp. 885, 70 Cust.Ct. —, A.R.D.

Since appellant, the only plaintiff in the entire litigation, did not contend it has not had proper notice of call for hearing or that it received timely a copy of the judgment order of dismissal under Rule 23(b) of the Customs Court, and since the filing of the motion for rehearing was untimely according to this section, the trial court properly denied the rehearing and no appeal lies from such denial. *A. W. Fenton Co. v. U.S.*, 1966, 53 CCPA 98.

Vacation of a judgment of dismissal for failure to prosecute under U.S. Court of International Trade Rule 86 was denied for noncompliance with this section and Rule 60(b) when motion was made about five months from date of entry of order of dismissal without foreclosing the bringing of an independent equitable action under section 1585 of this title and Rule 60(b). *Belwith International, Ltd. v. U.S.*, 1981, 2 CIT 14.

2. Delivery of motion

Mailing of a motion for rehearing or otherwise placing same in the course of delivery to its intended recipient does not constitute the making thereof until delivered to the official designated to receive same for the purpose intended, motion is not made within this contemplation of this section until filed with the clerk. *Minkap of California, Inc. v. U.S.*, 1967, 55 CCPA 1.

3. Grant

Upon plaintiff's motion for rehearing, the previous decision and judgment was vacated and set aside; however, plaintiff's request to adduce additional limited proof of its alleged status as a selected purchaser was denied. *Magnesium Elektron, Inc. v. U.S.*, 1970, 65 Cust.Ct. 762, R.D. 11730.

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-620, Title IV, § 402(29)(G), Nov. 8, 1984, 98 Stat.

III, § 301,
led Pub.L.
1984, 98

U.S. Steel Corp. v. U.S., 1983, 578 F.Supp. 414, 6 C.I.T. 225, 240.

Findings of fact and conclusions of law were made by the United States Customs Court pursuant to an order entered in the United States Court of Customs and Patent Appeals on June 7, 1978 directing the Customs Court to stay proceedings in *Airco, Inc. v. Court No. 76-3-00643*, in which *Airco* had appealed from refusal of the Secretary of the Treasury to impose countervailing duties on certain imports from the Union of South Africa, pending a decision in Appeal No. 78-10; and to supplement the record for the appeal by making findings of fact and conclusions of law in support of orders of the Customs Court entered on December 14, 1977 and February 28, 1978. In the Matter of *N.C. Trading Company, Inc. v. U.S.*, 1978, 80 Cust.Ct. 258, C.R.D. 78-8.

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2. Collateral estoppel

A state of facts or cause of action that has been reduced to a final judgment in a court of competent jurisdiction may not again be the subject of a new litigation in the same court, even though the earlier adjudication may have been founded on an erroneous view or application of the law. *H. M.*

Yound Associates, Inc. v. U.S., 1972, 349 F.Supp. 1007, 69 Cust.Ct. 155, C.D. 4388.

3 Intervention

Consolidation of motions to intervene granted even though unaccompanied with a proposed pleading as denial would be an inappropriate exer-

cise judicial discretion respecting a technical but curable objection resulting in waste of judicial time and economy and unnecessary expenses and in view of intent of Congress that dumping review proceedings be handled expeditiously and with preference over other matters. *Zenith Radio Corp. v. U.S.*, 1981, 2 CIT 141.

CHAPTER 171—TORT CLAIMS PROCEDURE

Sec.

2672. Administrative adjustment of claims.

1966 Amendment. Pub.L. 89-506, § 9(b), July 18, 1966, 80 Stat. 30, substituted "claims" for "claims of \$2,500 or less" in item 2672.

§ 2671. Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

(As amended July 18, 1966, Pub.L. 89-506, § 8, 80 Stat. 307; Dec. 29, 1981, Pub.L. 97-124, § 1, 95 Stat. 1666.)

1981 Amendment. Pub.L. 97-124 added "members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32," in the definition of "Employee of the government" and "or a member of the National Guard as defined in section 101(3) of title 32" in the definition of "Acting within the scope of his office or employment".

1966 Amendment. Pub.L. 89-506 expanded the definition of "Federal agency" to include military departments.

Effective Date of 1981 Amendment. Amendment by Pub.L. 97-124 applicable only with respect to claims arising on or after Dec. 29, 1981, see section 4 of Pub.L. 97-124, set out as a note under section 1089 of Title 10, Armed Forces.

Effective Date of 1966 Amendment. Amendment of section by Pub.L. 89-506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub.L. 89-506, set out as a note under section 2672 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89-506, see 1966 U.S. Code Cong. and Adm. News, p. 2515. See, also, Pub.L. 97-124, 1981 U.S. Code Cong. and Adm. News, p. 2692.

Cross References

Atomic weapons testing program, contractor liability for injury or death due to radiation expo-

sure, application to, see section 2212 of Title 42, The Public Health and Welfare.

Secretary of the Interior, volunteers contributing services in connection with management, protection, development, acquisition, and conveying of public lands, see section 1737 of Title 43, Public Lands.

Settlement of claims for damages caused by Federal Bureau of Investigation that may not be settled under this chapter, see section 3724 of Title 31, Money and Finance.

Settlement of small claims for privately owned property damage or loss that may not be settled under this chapter, see section 3723 of Title 31, Money and Finance.

Federal Practice and Procedure

Commencement of third-party action by defendant in tort action, see *Wright & Miller: Civil* § 2376.

Consolidation of tort actions, see *Wright & Miller: Civil* §§ 2382, 2384.

Dismissal of tort actions, see *Wright & Miller: Civil* § 2372.

Excuse for lack of prosecution of tort actions, see *Wright & Miller: Civil* § 2370.

Impleading government employees, see *Wright & Miller: Civil* § 1447.

Joinder of individuals as codefendants with United States, see *Wright & Miller: Civil* § 1658.

Jury trial of third-party claim by United States in tort actions, see *Wright & Miller: Civil* § 2315.

MEMORANDUM

State of Alaska

TO: Chris Christensen
Legislative Aide
Senate Judiciary Committee

DATE: February 24, 1989

FILE NO.: SB94-3

THRU:

TELEPHONE NO.: 465-4600

SUBJECT: Suggested language
change to SB94

J Morrison
FROM: Jeff Morrison, Director
Administrative & Support
Services Division
Department of Military &
Veterans Affairs

In the Senate Judiciary Committee meeting held on February 23, Senator Faiks requested that we work together to develop a language change to SB94 which would remove specific reference to federal statutes from the text of the bill. The language that was originally submitted in SB94 was patterned after the language enacted by the states of California and Idaho. The State of Washington has enacted language which may be more to the liking of the Committee, as follows:

IMMUNITY FROM TORT LIABILITY. Neither the State of Alaska, its officers, employees, or agents, nor any member of the militia may be held liable in any civil action for damages arising out of any of the activities of the military forces of the State of Alaska while engaged in activities during which the officers, employees, agents, or members are considered employees of the federal government under the federal tort claims act, 26 U.S.C. Sec 2671 et seq.

The above language still contains a reference to the location in federal statutes of the federal tort claims act. In order to avoid the bill creating a blanket immunity for all acts of the Alaska National Guard, or from being overly vague, we believe that some degree of specificity regarding federal law is inescapable. This has not presented a problem for other states, and hopefully would not present a problem for the Judiciary Committee.

It is probably worth noting that the references to duty status in the original version of SB94 (i.e. 32 U.S.C. 316, 502, 503, 504, and 505) have existed in federal statutes essentially unchanged since 1916. The likelihood of any change in these references is felt to be virtually negligible. Any change in these statutes would constitute a fundamental change in the way the National Guard operates in every state.

In the event that the Committee still wishes to expunge from Alaska Statutes any reference to federal law, by ending the suggested language just before the reference, we would request that there be a letter of intent to specify the (current) legal reference for the federal tort claims act, and the (current) legal references for the duty status of National Guard activities covered under the federal tort claims act—i.e. 32 U.S.C. 316, 502, 503, 504, and 505.

We look forward to meeting with the Committee next Tuesday.

cc: Major Gary Bowen, Staff Judge Advocate, DMVA
Art Peterson, Department of Law
Shari Kochman, Governor's Legislative Office

STATE OF ALASKA

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

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January 31, 1989

The Honorable Jan Faiks
Chairman, Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811


Dear Senator Faiks,

This letter is to request that you schedule a hearing on SB94 in the Senate Judiciary Committee.

Senate Bill 94, introduced by the Governor, limits the liability of the State of Alaska when National Guard members are involved in federally-mandated guard activities. This bill was heard in the Senate State Affairs Committee and received four "do pass" recommendations.

I am enclosing pertinent backup information concerning this bill. Please contact me if you need any additional information.

Sincerely,


Jeff Morrison, Director
Administrative and Support Services

January 9, 1989

SB 93 cont'd

For purposes of computing workers' compensation benefits for a member of the organized militia, the bill provides that a member's earnings are presumed to be no less than the pay and allowances authorized for a member of the armed forces in the same grade and rank as the member at the time of the injury or death. Section 4 of the bill, in proposed AS 26.05.260(1). The bill also provides that members, or survivors of members, of the Alaska National Guard must apply for available benefits payable by the federal government for the injury or death of the member, and that workers' compensation payments will be reduced by the amount payable by the federal government for the disability or death. Section 4 of the bill, in proposed AS 26.05.260(k). The provisions on the federal setoff apply only to the National Guard because, of the three components of the organized militia, only that one is entitled to federal compensation under federal law. Notwithstanding the federal benefits, there will be some occasions when individuals will have recourse to the Alaska workers' compensation system. Therefore, some additional appropriation to cover the premium for this responsibility is anticipated.

This bill, then, provides for equity among the three components of Alaska's organized militia, and appropriately provides for setoff of federal payments. I commend it to you.

Sincerely,

/s/
Steve Cowper
Governor

SB 94

SENATE BILL NO. 94 by the Rules Committee by request of the Governor, entitled:

"An Act limiting liability for certain activities of the Alaska National Guard."

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

Fiscal notes published today from Department of Military and Veterans Affairs and the Department of Administration.

January 9, 1989

SB 94 cont'd

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to liability immunity of the state, its employees and agents, and members of the Alaska National Guard.

While training or on duty under federal mandate, the state national guards are performing a United States Government activity. Nevertheless, there have been occasions in which states, rather than the United States, have been exposed to tort liability for injuries or damage resulting from federally mandated guard activities.

In 1981, Congress amended 28 U.S.C. 2671 by adding to the definition of "employees of the government" members of the National Guard while training or on duty under federal order under 32 U.S.C. The effect of this amendment was to clarify that the United States considers the Guard as a federal function during 32 U.S.C. activities and that claims for injuries resulting from such activities could be pursued under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. In spite of this change in the law, there are rare occasions when the state remedy is preferred by an injured third party, who consequently will file a claim for damages in state court on the basis of state law. This bill will prevent suits of this nature, and assure that persons injured or property damaged as a result of federally mandated and controlled Guard activities will be required to seek damages from the United States Government. Existing worker's compensation coverage of guardsmen will not be affected by this bill.

Sincerely,

/s/
Steve Cowper
Governor

SB 95

SENATE BILL NO. 95 by the Rules Committee by request of the Governor, entitled:

"An Act authorizing the combining of a sales and use tax proposition with incorporation of a borough; and providing for an effective date."

was read the first time and referred to the Community and Regional Affairs Committee.

STATE OF ALASKA

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

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January 19, 1989

The Honorable Pat Pourchot
Chairman, Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Pourchot,

Thank you for scheduling a hearing for SB 94 in your committee. This bill, introduced by the Governor, protects the State from liability when members of the Alaska National Guard are acting under federally-mandated training.

This bill was introduced in the Fifteenth Legislature as SB 91, in virtually the same language as it now reads. Enclosed is a copy of SB 91 as it was introduced two years ago. SB 91 passed the Senate by a vote of 17-2 on April 2, 1987. In the House, it was referred out of the State Affairs Committee on April 17, 1987 with a report of 3 "do pass" and 2 "no recommendation." It remained in the House Judiciary Committee until the end of the Fifteenth Legislature.

The Staff Judge Advocate of the Alaska National Guard, Major Gary Bowen, sent a letter, dated March 18, 1988, to the Chairman of the House Judiciary Committee, concerning SB 91. A copy of that letter is enclosed for your information, as the reasons for our support of this bill have not changed. Please let me know if there is any additional information you need concerning SB 94.

Sincerely,

Jeff Morrison
Jeff Morrison, Director

cc: Major Gary Bowen, Staff Judge Advocate, DMVA
Bob Evans, Deputy Chief of Staff, Governor's Office



DEPARTMENTS OF THE ARMY AND THE AIR FORCE

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18 March 1988

John Sund
House of Representatives
Post Office Box V
Juneau, Alaska 98111

Subject: Senate Bill 91

Dear Representative Sund:

On behalf of the Adjutant General, the Alaska National Guard, and the Department of Military and Veterans Affairs I write to express interest in seeing Senate Bill 91 positively endorsed by the House Judiciary Committee. The bill is the product of the cumulative experience of many states. Alaska is one of the few states that to date has not enacted protective legislation to insure that the state is not held liable in tort for federally mandated training of the National Guard.

In order to appreciate the National Guard perspective on this matter, some background may be in order. In the early 1970s the President and Congress of the United States determined that the National Guard should become a more integral and functioning part of our national defense forces. Therefore, in the decade, Alaska National Guard units have intensified the complexity and frequency of their military training with active duty units of the Army, the Air Force, as well as the other services.

Then in 1981 Congress amended the Federal Tort Claims Act to permit suits against the United States for injuries or damage resulting from National Guard training. Until that time, persons who were injured because of National Guard activities had no recourse against the federal government and could seek redress only against the state military department concerned or against the individual Guardsperson. Congress so acted because nearly all of the training conducted by National Guard units today is done in accordance with procedures, programs, and direction issued by the United States Department of Defense through both Army and Air Force operational commands. Since the United States funds approximately 95% of all National Guard activities, it is appropriate that the United States should assume financial responsibility for this often hazardous training.

After the 1981 amendment to the Federal Tort Claims Act, a number of states amended their laws to provide that the state would not be liable for National Guard training accidents when the training or duty is being conducted pursuant to federal statutory requirements or authorization. As noted above, Alaska has not responded to this change in federal law.

Often the impetus for such remedial legislation is not provided until a law suit demonstrates the need to respond. A case in point is the recent experience of the State of Washington.

In 1983, while conducting weekend training at Fort Lewis, a Washington National Guard unit was involved in an accident which resulted in the death of 2 soldiers, and the injury of 4 others who were assigned at Fort Lewis. Those individuals or their estates sued the state of Washington alleging negligence. The state moved to dismiss the suit on grounds that the state of Washington ought not to bear the cost and trauma of defending suits arising out of national defense training (Emsley v. State, 106Wn.2d 474).

Ultimately, the Washington Supreme Court rejected the appeal and held there was no bar in Washington to the suit. The concurring judges noted that this legislative omission "should be corrected by the Legislature." The Washington legislature at the urging of the Washington National Guard and with the consent of the Washington Trial Lawyers Association followed the judicial suggestion and adopted the following statutory language:

"Neither the state of Washington, its officers, employees, or agents nor any member of the militia may be held liable in any civil action for damages arising out of any of the activities of the military forces of the state of Washington while engaged in activities during which the officers, employees, agents, or members are considered employees of the federal government under the federal tort claims act, 26 U.S.C. Sec. 2671 et seq."

California has also recently addresses this issue. Section 816 of the California Government Code states:

"A public entity is not liable for injury arising out of any activity conducted by a member of the California National Guard pursuant to Section 316, 502, 503, 504, or 505 of Title 32 of the United States Code and compensated pursuant to the Federal Tort Claims Act.

It is the intent of the Legislature, in enacting this section, to conform state law regarding liability for activities of the National Guard to federal law as expressed in Public Law 97-124.

(Added by Stats.1982, c.616,p. 2600, s 1.)"

Idaho has recently adopted a statute similar in language to Senate Bill 91. Although worded somewhat differently, these statutory enactments from sister states reflect their public policy, to wit, to immunize the State in cases where the federal government has agreed to be responsive in damages under the Federal Tort Claims Act (FTCA). By adopting Senate Bill 91 Alaska would be following the lead of other western/northwestern states in asserting immunity from federally mandated training of the National Guard.

The National Guard operates in one of three duty statuses. It may be called to active federal service by the President in which case the Guard is merged with the active forces. The torts committed by active duty soldiers incident to their employment as soldiers of the United States is compensated under the FTCA. Another status is that of state active duty where the Governor calls members of the National Guard to state active duty under AS 26.05.070. Torts which occur incident to this duty status subject the state to tort liability. SB 91 would not affect the liability of the State of Alaska during periods of state active duty. AS 26.05.140 immunizes officers and enlisted members of the militia for acts done in an official capacity, AS 26.05.150 immunizes commander of the militia for exercises in judgement. The most common status of the National Guard is that in which the National Guard participates in reserve component training under Title 32 United States Code (USC). Although this is a federally paid and federally mandated training function, it is often referred to as "state status". The state status refers to the fact that the Adjutant General who is appointed by the Governor, is in command of the National Guard during training under Title 32 USC. It is this concept of state status that potentially exposes the State of Alaska to liability for training mandated by federal authorities. Under the Federal Constitutional scheme the discretionary power to determine the training necessary for the militias of the various states is vested in the Congress. The operational authority has been vested in the states. Article 1, Section 8 of the U.S. Constitution provides that the Congress shall have power...

To provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress...

Congress has mandated that the discipline, including training of the National Guard conform to that of the active components of the Army and Air Force. 32 USC 501(a). Although the Governor is the commander and chief during these periods of training, the failure to conduct the training as prescribed by federal authorities could result in the loss of federal recognition and the federal funding which goes with that recognition. Since it is unlikely that the Governor would ever refuse to conduct the federally mandated National Guard training during service under Title 32 USC, the potential for exposure is great notwithstanding that the Governor has virtually no discretion over the type and manner of training. Under these circumstances it seems inappropriate that the State of Alaska should be responsible for any personal injury or property damage which occurs incident to this training.

In the 1981 Amendments to the FTCA Congress determined that federal government responsibility for personal injury or property damage incident to National Guard training should be coextensive with that for the Army and the Air Force Reserve. Since there is no state responsibility for Army or Air Force Reserve training, it seems appropriate that the state should assert immunity. The United States has waived sovereign immunity under the FTCA and has consented to be responsible in damages just as

though it were a private citizen. The law to be applied is the law of the situs of the injury. In other words, an Alaskan injured incident to National Guard training would have a remedy against the United States and the applicable tort law is that of Alaska. I understand that there is some apprehension in the House Judiciary Committee that Senate Bill 91 would leave Alaskans without a remedy in the event of personal injury or property damage which incurred incident to National Guard training. This is not so. Alaskans injured incident to National Guard training do have a remedy and that remedy is against the federal authority who has directed the training.

One final matter which should be mentioned. The question has been raised concerning why someone would sue the State of Alaska if the federal government will respond in damages. The answer may be found in Alaska's collateral source rule. As an attorney you understand that the collateral source rule means that settlement by one tortfeasor is not a set off against other tortfeasors. Therefore, assuming that someone were to obtain a settlement from the United States under FTCA or even achieve judgement, there would be no prohibition against then re-litigating those issues vis a vis the State of Alaska. Without passage of Senate Bill 91 it would be possible for anyone injured by National Guard Training to pursue both a federal and state remedy and achieve a double recovery!

Alaska Air National Guard deployments outside the State of Alaska are not unusual. Often these deployments are overseas. As this letter was being composed, elements of the Alaska Air National Guard were in Panama. Personal injury and property damage incident to military operation overseas (outside the United States) are subject to the Military Claims Act. Damage incident to military operations inside the United States or its' territories are subject to the FTCA.

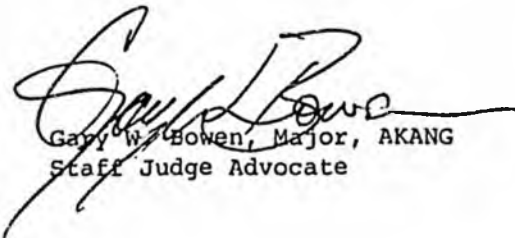
Notwithstanding these federal remedies, without Senate Bill 91, claims could be prosecuted against the U.S. under the FTCA and against the State of Alaska. It is not clear that the public policy of Alaska should be that the whole world has a cause of action against the state for damages occurring incident to training ordered by federal authorities.

I hope the foregoing explains why the National Guard and the Department of Military and Veterans Affairs believes that this bill is in the best interest of the state and in the best interest of the whole body politic of the State of Alaska. The bill would not leave residents of the State of Alaska remediless in the event of torts perpetrated by the Alaska National Guard. The FTCA gives them a remedy under the laws of the State of Alaska.

If this letter raises additional questions or if you would like further explanation about the matters contained herein, please do not hesitate to ask. I would be happy to arrange a meeting with National Guard attorneys if such would be of assistance to you. Additionally, I can arrange for a meeting with the active Army and Air Force Judge Advocates who can explain how the FTCA works to remedy personal injury or

property damage incident to training and operation of the armed forces of the United States. On behalf of the Department of Military and Veterans Affairs I earnestly solicit your support for this bill and request that it be favorably endorsed by the House Judiciary Committee.

FOR THE ADJUTANT GENERAL



Gary W. Bowen, Major, AKANG
Staff Judge Advocate

Territory, Puerto Rico, the Canal Zone, and the District of Columbia. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. With the permission of the President, an officer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.

(b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia.

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 604.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
315(a)	32:68 (less 2d sentence). 32:69.	June 3, 1916, ch 134, § 100, 39 Stat. 208.
315(b)	32:68 (2d sentence).	

In subsec. (a), 32 USC § 68 (last sentence) is omitted as surplusage, since positive provisions relating to the assignment or detail of retired officers to that duty are covered by 10 USCS § 3504(a) or 8504(a). The words "of the active list", in 32:68, are omitted for the same reason. The words "so detailed" are substituted for the words "detailed under section 68 of this title", in 32 USC § 69. The words "relative or lineal", in 32 USC § 69, are omitted as surplusage.

CROSS REFERENCES

Details of regular and reserve components for instruction of reserve components, 10 USCS § 715.

Assignments of regular or reserve officers to duty in National Guard Bureau, 10 USCS §§ 3541 and 8541.

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and noncommissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms.

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 605.)

Compensation for disablement during training, 32 USCS §§ 318 and 319.

When Secretary of Army or Secretary of Air Force may require hospitalization for injuries received in training, 32 USCS § 320.

Death gratuity for death in training, 32 USCS § 321.

Liability of National Guard medical personnel for malpractice occurring during training exercise to be paid by United States, 32 USCS § 334.

Payment of claims for property damage or personal injury resulting from training exercises, 32 USCS § 715.

Training duty compensation of members of National Guard, 37 USCS § 301.

Active duty for training, 38 USCS § 101(22).

Inactive duty training, 38 USCS § 101(23).

INTERPRETIVE NOTES AND DECISIONS

Because there was but grant of authority to state for participation in training offered and afforded by federal government and because no burden was impressed upon or power granted to federal government in this connection beyond provision for training of National Guard organi-

zations of states and territories under auspices and by use of federal facilities, national guardsman was in service of state during period of training. *Lind v Nebraska Nat. Guard* (1944) 144 Neb 122, 12 NW2d 652, 150 ALR 1449.

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) Participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 30 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

- (1) the number of members present equals or exceeds the minimum number prescribed by the President;
- (2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and
- (3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

- (1) without his consent, but with the pay and allowances provided by law; or
- (2) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay.

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 610; Oct. 3, 1964, P. L. 88-621, § 1(1), 78 Stat. 999; Dec. 1, 1967, P. L. 90-168, § 4, 81 Stat. 526; Nov. 17, 1971, P. L. 92-156, Title III, § 303(b), 85 Stat. 425.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
502(a)	32:62 (1st sentence, less proviso).	June 3, 1916, ch 134, § 92; restated June 3, 1924, ch 244, § 2; restated Oct. 14, 1940, ch 875, § 2, 54 Stat. 1135; Mar. 25, 1948, ch 157, § 5(a), 62 Stat. 90.
502(b)	32:62 (proviso of 1st sentence).	
502(c)	32:62 (last sentence, less 1st, 2d, and 3d provisos).	
502(d)	32:62 (1st proviso of last sentence).	
502(e)	32:62 (2d and 3d provisos of last sentence).	

In subsec. (a), the words "including target practice" and "such company, troop, battery, or detachment shall have been . . . from participation in any part thereof" are omitted as surplusage.

In subsec. (a) and (b), the word "troop" is omitted as obsolete.

In subsec. (b), the words "parts of those organizations" are substituted for the words "subdivisions or parts thereof". The words "but in the latter case", "of subdivisions or groups", "comprehend", and "the time limit of" are omitted as surplusage.

In subsec. (c), the word "member" is substituted for the words "officer, warrant officer, or enlisted man". The words "series of formations" are substituted for the words "separate consecutive formations announced". The words "regardless of the number of formations that he attends during the series" are substituted for the words "even though he may have attended more than one of the formations". The words "sum", "actual military", and "of time" are omitted as surplusage. 32 USC § 62 (4th proviso of last sentence) is omitted as superseded by 10 USCS § 683. 32 USC § 62 (last proviso of last sentence) is omitted as superseded by section 501(b) of the Career Compensation Act of 1949, 63 Stat. 826 (37 USC §§ 301(b)).

In subsec. (d), the word "members" is substituted for the words "officers and enlisted men". The words "for which a member is credited" are substituted for the words "participated in by each officer and enlisted man at each assembly at which he shall be credited as having been present". The words "for duty at such assembly", "actual", and "character of" are omitted as surplusage.

In subsec. (e), the word "member" is substituted for the words "officer or enlisted man". The words "Air Corps . . . assigned to an Air Corps unit thereof, or . . . an officer or enlisted man of the Medical Department of the said National Guard regularly attached to an Air Corps unit of the National Guard by appropriate authority" are omitted, since the revised subsection applies only to members who perform flights under competent orders and who are thereby prevented from attending a regular drill.

Amendments:

1964. Act Oct. 3, 1964 added subsec. (f).

1967. Act Dec. 1, 1967 (effective on the first day of the first calendar month following 12/1/67, as provided by § 7 of such Act), in subsec. (b), substituted "However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 30 consecutive days." for "However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within seven consecutive days of the same calendar month."

1971. Act Nov. 17, 1971, in subsec. (a), added the concluding sentence.

CROSS REFERENCES

Restoration of government employees to previous positions after being ordered to active duty or to duty under 32 USCS § 502, 5 USCS § 3551.

Compensation for disablement during training, 32 USCS §§ 318, 319.

Hospitalization for persons sustaining injuries in training, 32 USCS § 320.

Death gratuity for death incurred in training, 32 USCS § 321.

Liability of National Guard medical personnel for malpractice occurring during training exercise to be paid by United States, 32 USCS § 334.

Payment of claims for property damage or personal injury resulting from training exercises, 32 USCS § 715.

This section is referred to in 5 USCS §§ 3551, 5517, 6323; 10 USCS §§ 268, 701, 1208, 1332, 1333, 3571, 3686, 8571, 8686; 32 USCS §§ 318, 320, 321, 334, 715; 37 USCS § 204; 38 USCS §§ 101, 765, 2024; 50 USCS Appx § 456.

Injured party was not member of National Guard of Rhode Island of Armed Forces of United States. He was injured while at army firing exercises for purpose of training in firing M-1 rifle and fell into definition of Army member under 32 USCS § 101 and was eligible for 32 USCS § 502 to participate

§ 503. Participating

(a) Under such regulations as the Army and the Secretary of Defense provide for the participation in maneuvers, outdoor defense instruction, instruction in the Air Force, or both.

(b) Amounts necessary to defray proper expenses of an individual in Puerto Rico, the Canal Zone, or an exercise under subsection (a) from appropriations for such purposes.

(c) Members of the National Guard under subsection (a) may, at the discretion of the Secretary of Defense, with the date of leave determined in advance, receive credit of the disbursing officer (Aug. 10, 1956, ch 10).

HISTORY

Prior law and revision

Revised Section

503(a)
503(b)
503(c)

In subsec. (a), the words "Regular Air Force" are omitted as surplusage. The words "Regular Air Force" participate in the exercise only. Similarly, the words "Regular Air Force" participate in the exercise only. Similarly, the words "Regular Air Force" participate in the exercise only.

In subsec. (b), the words "such purposes" are substituted for the words "participating in the exercise". The words "as sh

INTERPRETIVE NOTES AND DECISIONS

Injured party was not merely member of National Guard of Rhode Island but also member of Armed Forces of United States since party was injured while at army base for weekend firing exercises for purpose of annual qualification in firing M-1 rifle and since injured party fell into definition of Army National Guard under 32 USCS § 101 and was required under 32 USCS § 502 to participate in certain training

activities, in which he was involved at time of his injury. *Coletta v United States* (1969, DC RI) 100 F Supp 19.

In the case of full time duty performed under 32 USCS § 502(f), full active duty pay and allowances are authorized. *Kentucky Nat. Guard v Bayles* (1976, Ky) 535 SW2d 234.

§ 503. Participation in field exercises

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer.

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 610.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
503(a)	32:63 (1st 56 words).	June 3, 1916, ch 134,
503(b)	32:63 (less 1st 56 words).	§§ 94 (less last 43
503(c)	32:158.	words after semicolon), 98, 39 Stat. 206, 207.

In subsec. (a), the words "the whole or any part" and "any part of" are omitted as surplusage. The word "Army" is substituted for the words "Regular Army", since the Army is the category that participates in the exercises, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsec. (b), the words "Amounts necessary" are substituted for the words "such portion of said funds as may be necessary". The words "participating in an exercise under subsection (a)" are substituted for the words "as shall participate in such encampments, maneuvers, or

other exercises, including outdoor target practice, for field and coast-defense instruction". The words "allocated to it from appropriations for field or coast-defense instruction" are substituted for the words "appropriated for that purpose and allocated to any State, Territory, or the District of Columbia".

In subsec. (c), the words "Members of the National Guard participating in an exercise under subsection (a)" are substituted for the words "When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, under the provisions of this title". The words "duly", "at any time", "rendezvous", "both dates inclusive", and "making the same" are omitted as surplusage.

CROSS REFERENCES

Restoration of government employees to previous positions after being ordered to active duty or to duty under 32 USCS § 503, 5 USCS § 3551.

Compensation for disablement during training, 32 USCS §§ 318, 319.

Hospitalization for persons sustaining injuries in training, 32 USCS § 320.

Death gratuity for death incurred in training, 32 USCS § 321.

Liability of National Guard medical personnel for malpractice occurring during training exercise to be paid by United States, 32 USCS § 334.

Payment of claims for property damage or personal injury resulting from training exercises, 32 USCS § 715.

Training duty compensation of members of National Guard, 37 USCS §§ 232, 301.

Regulations affecting pay and allowances of military personnel, 37 USCS § 324.

This section is referred to in 5 USCS §§ 3551, 6323; 10 USCS §§ 701, 1208, 1332, 1333, 3571, 3686, 8571, 8686; 32 USCS §§ 318, 319, 320, 321, 334, 715, 37 USCS § 204; 38 USCS §§ 101, 765, 2024.

INTERPRETIVE NOTES AND DECISIONS

When called for training by governor through order of Adjutant General under 32 USCS § 503, enlisted member of National Guard is in service

of State National Guard. *Lind v Nebraska Nat. Guard* (1944) 144 Neb 122, 12 NW2d 652, 150 ALR 1449.

§ 504. National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

- (1) attend schools conducted by the Army or the Air Force, as appropriate;
- (2) conduct or attend schools conducted by the National Guard; or
- (3) participate in small arms competitions.

(b) Activities authorized for members of the National Guard of a State or Territory or the District of Columbia may be prescribed by the Secretary of the Army or the Secretary of the Air Force (Aug. 10, 1956, ch 10, § 1(2), 78 Stat. 999.)

HISTORY

Prior law and revision

Revised Section	Section
504(a)	3
504(b)	3

In subsec. (a), the words "officers, warrant officers, and noncommissioned officers for that purpose" and "for that purpose" are substituted for the words "officers, warrant officers, and noncommissioned officers of the National Guard, or the District of Columbia, or the State, Territory, or National Guard of a State, Territory, or District of Columbia".

Amendments:

1964. Act Oct. 3, 1964, ch 10, § 1(2), 78 Stat. 999.

"(a) Under such regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, members of the National Guard may—

"(1) to attend

Regular Army schools

"(2) to participate

"Similarly, the Secretary of the Army or the Secretary of the Air Force, as the case may be, may prescribe regulations for members of the National Guard of a State, Territory, or District of Columbia to—

"(1) to attend

Regular Air Force schools

"(2) to participate

"(b) Assemblies authorized for members of the National Guard of a State, Territory, or District of Columbia may be prescribed by the Secretary of the Army or the Secretary of the Air Force (Aug. 10, 1956, ch 10, § 1(2), 78 Stat. 999.)

Restoration of government employees to previous positions after being ordered to active duty or to duty under 32 USCS § 503, 5 USCS § 3551.
Compensation for disablement during training, 32 USCS §§ 318, 319.
Hospitalization for persons sustaining injuries in training, 32 USCS § 320.
Death gratuity for death incurred in training, 32 USCS § 321.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries.

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 611; Oct. 3, 1964, P. L. 88-621, § 1(2), 78 Stat. 999.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
504(a)	32:64 (1st sentence).	June 3, 1916, ch 134, § 97 (less last sentence); restated May 28, 1926, ch 417, § 2 (less last sentence), 44 Stat. 674.
504(b)	32:64 (less 1st sentence).	

In subsec. (a), the word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "for the purpose" and "for that purpose" are omitted as surplusage.

In subsec. (b), the words "Assemblies under subsection (a)" are substituted for the words "such assemblages". The words "for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia . . . inside or outside of its boundaries" are substituted for the words "either within or without the State, Territory, or District of Columbia, to which the members of the National Guard designated to attend them shall belong".

Amendments:

1964. Act Oct. 3, 1964 substituted this section for one which read:

"(a) Under such regulations as the President may prescribe, the Secretary of the Army may provide for assemblies of members of the Army National Guard—

"(1) to attend schools conducted by commissioned officers of the Regular Army detailed by the Secretary; or

"(2) to participate in small arms competitions.

"Similarly, the Secretary of the Air Force may provide for assemblies of members of the Air National Guard—

"(1) to attend schools conducted by commissioned officers of the Regular Air Force detailed by the Secretary; or

"(2) to participate in small arms competition.

"(b) Assemblies under subsection (a) for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries."

CROSS REFERENCES

Restoration of government employees to previous positions after being ordered to active duty or to duty under 32 USCS § 504, 5 USCS § 3551.

Compensation for disablement during training, 32 USCS §§ 318 and 319.

Hospitalization for injuries incurred in training, 32 USCS § 320.

Death gratuity for death incurred in training, 32 USCS § 321.

Liability of National Guard medical personnel for malpractice occurring during training exercise to be paid by United States, 32 USCS § 334.

Payment of claims for property damage or personal injury resulting from training exercises, 32 USCS § 715.

This section is referred to in 5 USCS §§ 3551, 6323; 10 USCS §§ 701, 1208, 1332, 1333, 3571, 3686, 8571, 8686; 32 USCS §§ 318, 319, 320, 321, 334, 715; 37 USCS § 204; 38 USCS §§ 101, 765, 2024.

§ 505. Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State or Territory, Puerto Rico, or the Canal Zone, or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army may authorize a limited number of members of its Army National Guard to—

- (1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or
- (2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

- (1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or
- (2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 611.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
505	32:65.	June 3, 1916, ch 134, § 99 (1st 133 words); repeated Sept. 22, 1922, ch 423, § 5 (1st 129 words); repeated May 28, 1926, ch 417, § 3 (1st 133 words), 44 Stat. 674.

The words "branch of the Army corresponding" are substituted for the words "same arm, corps, or department", to conform to 10 USCS §§ 3063 and 3064. In the second sentence, the words "organization of the Air Force corresponding" are substituted for the words "same arm, corps, or department", since the Air Force is not organized by statute into branches, arms, corps, or departments. The word "members" is

TRAINING

substituted
The words
service scho
Force Acad
Academy A

Restoration o
ordered to acti
Compensation
Hospitalization
Death gratuity
Liability of N
during training
Payment of cl
training exercis
This section is
1332, 1333, 35
715; 37 USCS

1. Generally
2. Relation to other la

1. Generally
State, as employer,
are members of Army
absence to fulfill mil
USCS § 505 to attend
and field exercises.

§ 506. Assignm Regular Air Fo

(a) The President
members of the
necessary.

(b) The Secretar
to attend an enc
defense instructio
of the Air Force
exercises for field
Members so deta
the exercise, as d
governor or com
(Aug. 10, 1956, c

practice occurring
USCS § 334.
injury resulting from

USCS §§ 701, 1208,
19, 320, 321, 334,

exercises

to be performed on the
territory, Puerto Rico, or
the National Guard of
the United States may authorize a
commander to—
1. Detail members of the
United States Military Acad-
emy; or
2. Detail members of the
United States Air Force
Academy to which the
commander is assigned or near an Army

of a limited number

of the United States Air Force
Academy; or
3. Detail members cor-
responding to the
rank and member belongs,
to field training or

ACTIVES

(at Large)

134,
words);
22,
§ 5 (1st
stated
ch 417,
ords), 44

substituted for the
in 10 USCS
organization of
the words "same arm,
authorized by statute
"members" is

substituted for the words "officers, warrant officers, and enlisted men".
The words "service school" are substituted for the words "military-
service school of the United States". Reference to the United States Air
Force Academy is inserted to reflect its establishment by the Air Force
Academy Act (63 Stat. 47).

CROSS REFERENCES

Restoration of government employees to previous positions after being
ordered to active duty or to duty under 32 USCS § 505, 5 USCS § 3551.
Compensation for disablement during training, 32 USCS §§ 318 and 319.
Hospitalization of persons injured in training, 32 USCS § 320.
Death gratuity for death incurred in training, 32 USCS § 321.
Liability of National Guard medical personnel for malpractice occurring
during training exercise to be paid by United States, 32 USCS § 334.
Payment of claims for property damage or personal injury resulting from
training exercises, 32 USCS § 715.
This section is referred to in 5 USCS §§ 3551, 6323; 10 USCS §§ 701, 1208,
1332, 1333, 3571, 3686, 8571, 8616, 8686; 32 USCS §§ 318, 319, 320, 321,
715; 37 USCS § 204; 38 USCS §§ 101, 765, 2024.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relation to other laws

Transp. (1977, ND Fla) 443 F Supp 451, affd
(CA5 Fla) 600 F2d 1070.

1. Generally

State, as employer, must grant employees who
are members of Army National Guard leave of
absence to fulfill military obligation under 32
USCS § 505 to attend military training schools
and field exercises. Peel v Florida Dept. of

2. Relation to other laws

Veterans' Reemployment Rights Act (38
USCS § 2021 et seq.) applies to person called to
duty under 32 USCS § 505 to attend Army
training schools and field exercises. Peel v Flo-
rida Dept. of Transp. (1977, ND Fla) 443 F
Supp 451, affd (CA5 Fla) 600 F2d 1070.

§ 506. Assignment and detail of members of Regular Army or
Regular Air Force for instruction of National Guard

(a) The President shall assign for instruction of the National Guard such
members of the Regular Army or the Regular Air Force as he considers
necessary.

(b) The Secretary of the Army may detail members of the Regular Army
to attend an encampment, maneuver, or other exercise, for field or coast-
defense instruction of the Army National Guard. Similarly, the Secretary
of the Air Force may detail members of the Regular Air Force to attend
exercises for field or coast-defense instruction of the Air National Guard.
Members so detailed shall instruct the members of the National Guard at
the exercise, as directed by the Secretary concerned, or as requested by the
governor or commanding officer of the National Guard there assembled.
(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 611.)

* SB 94

The State Affairs Committee considered SENATE BILL NO. 94 (An Act limiting liability for certain activities of the Alaska National Guard) and a majority of the committee recommended do pass. The report was signed by Senator Pourchot, Chair, and concurred in by Senators Adams, Faiks and Kelly.

Previous negative fiscal notes published from Department of Military and Veterans Affairs and Department of Administration, Risk Management Division.

SENATE BILL NO. 94 was referred to the Judiciary Committee.

SB 39

The Rules Committee considered SENATE BILL NO. 39 (An Act relating to Amateur Radio Week) and a majority of the committee recommended calendar. The report was signed by Senator Sturgulewski, Chair, and concurred in by Senators Kelly and Kerttula.

SENATE BILL NO. 39 is on today's calendar.

SB 89

The Rules Committee considered SENATE BILL NO. 89 (An Act relating to civil liability of zoos and zoo operators) and a majority of the committee recommended calendar. The report was signed by Senator Sturgulewski, Chair, and concurred in by Senators Kelly and Kerttula.

SENATE BILL NO. 89 is on today's calendar.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SCR 11

SENATE CONCURRENT RESOLUTION NO. 11 by Senators Kerttula and Szymanski,

Relating to the homeport of the M/V Tustumena.

was read the first time and referred to the Transportation Committee.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Military & Veterans Affairs
 Title: An act limiting liabilities for
activities of the Alaska National Guard BRU: Alaska National Guard
 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	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	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
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	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
TOTAL	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The fiscal benefit is difficult to project because the State insurance deductible has varied, also this legislation would apply only to future claims. There could, however, be rather substantial savings in claims defense costs.

Prepared By: Donald J. Hitchcock Phone: 465-2180
 Division: Risk Management Date: 12-19-88

Approved by Commissioner: John M. Andrews Date: 12-19-88
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: December 22, 1988
 Title: An Act limiting liability for activities of the Alaska National Guard
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Military & Veterans Affairs
 BRU: Alaska National Guard
 Components: Office of the Adjutant General

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
FEDERAL FUNDS						
OTHER						
TOTAL		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Passage of this bill will reduce

the civil liability exposure of the State of Alaska. This reduction in exposure will be reflected by a reduction in the insurance costs charged to DMVA by the Division of Risk Management.

Prepared by: Jeff Morrison Phone: 465-4600
 Division: Administrative & Support Services, DMVA Date: 1/11/89
 Approved by Commissioner: John Schaeffer Date: 1/21/89
 Agency: Department of Military & Veterans Affairs

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

S B

98

1 IN THE SENATE

BY FAHRENKAMP, COGHILL
AND ELIASON

2

SENATE BILL NO. 98

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 the penalty imposed for certain traffic offenses."

7

8

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

9

* Section 1. AS 28.05.151 is amended to read:

10

Sec. 28.05.151. CITATIONS FOR SCHEDULED VEHICLE AND TRAFFIC OFFENSES. The supreme court shall determine by rule or order those motor vehicle and traffic offenses, except for offenses subject to a scheduled municipal fine, that are amenable to disposition without court appearance and shall establish a scheduled amount of bail, not to exceed fines prescribed by law, for each offense. A municipality shall determine by ordinance the municipal motor vehicle and traffic offenses that may be disposed of without court appearance and shall establish a fine schedule for each offense. A schedule of bail established by the supreme court or a schedule of fines established by a municipality must incorporate the reduction applicable under AS 28.40.050(f).

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* Sec. 2. AS 28.40.050 is amended by adding a new subsection to read:

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(f) A person who is cited for committing a moving traffic infraction for which the supreme court or a municipality has established a scheduled amount of bail or fine shall receive a 10 percent reduction in the amount of bail or fine otherwise applicable to the offense if the person and all passengers were wearing seat belts or appropriate safety devices at the time of the commission of the infraction.

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6-0462E ✓
Ford
3/8/89

Original sponsors: Fahrenkamp, Coghill,
Eliason, and Zharoff

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 98 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing a reduction in the scheduled bail
7 or fine imposed against certain persons cited for
8 committing a moving traffic infraction; and providing
9 for an effective date."

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

11 * Section 1. AS 28.05.151 is amended to read:

12 Sec. 28.05.151. CITATIONS FOR SCHEDULED VEHICLE AND TRAFFIC
13 OFFENSES. The supreme court shall determine by rule or order those
14 motor vehicle and traffic offenses, except for offenses subject to a
15 scheduled municipal fine, that are amenable to disposition without
16 court appearance and shall establish a scheduled amount of bail, not
17 to exceed fines prescribed by law, for each offense. A municipality
18 shall determine by ordinance the municipal motor vehicle and traffic
19 offenses that may be disposed of without court appearance and shall
20 establish a fine schedule for each offense. A schedule of bail estab-
21 lished by the supreme court or a schedule of fines established by a
22 municipality must incorporate the reduction applicable under AS 28.-
23 40.050(f).

24 * Sec. 2. AS 28.40.050 is amended by adding a new subsection to read:

25 (f) A person who is cited for committing a moving traffic in-
26 fraction for which the supreme court or a municipality has established
27 a scheduled amount of bail or fine shall receive a 10 percent re-
28 duction in the amount of bail or fine otherwise applicable to the
29 offense if the person and all passengers were wearing seat belts or

1 were secured in child safety devices as required under AS 28.05.095,
2 at the time of the commission of the infraction.

3 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
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Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE
119 N. CUSHMAN STREET, SUITE 201
FAIRBANKS, ALASKA 99701
OFFICE (907) 452-4882
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Senate

WHILE IN JUNEAU
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JUNEAU, ALASKA 99811
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HOME (907) 780-6027

MEMORANDUM

TO: Senator Al Adams, Chairman
Senate Community & Regional Affairs Committee

FROM: Senator Bettye Fahrenkamp

DATE: February 20, 1989

RE: Sectional Analysis of SB 98

SB 98 "An Act Relating to the penalty imposed for certain traffic offenses".

Section 1. AS 28.05.151 Citations for scheduled vehicle and traffic offenses.

Amended to include reference to proposed Section 2 of the bill.

Section 2. AS 28.40.050 Penalty for violations of law, regulations, and municipal ordinances.

Adds a new subsection (f) which would give a 10% reduction in the amount of a bail or fine if the driver and any passengers were wearing seatbelts at the time of a commission of a moving traffic infraction for which the Supreme Court has established a scheduled amount of bail.*

*Examples of such infractions are speeding, ignoring a stop sign or red light, i.e. infractions that do not carry jail time or require a court appearance. It does not apply to felonies, misdemeanors, or infractions requiring court appearances. For instance, if a driver was charged with driving while intoxicated, reckless driving, or negligent homicide, he or she would not receive a reduction.

**STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE**

JAN 26 1989

REQUEST: Bill Version: SB 98
Publish Date: 1/10/89

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to the penalty BRU: Trial Courts
imposed for certain traffic offenses
Sponsor: Components:
Requestor: Fahrenkamp

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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL
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REVENUE	(19.2)	(19.2)	(19.2)	(19.2)	(19.2)
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FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: *Jan Strandberg* Jan Strandberg, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 01/23/89

Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 01/23/89
Agency: Alaska Court System

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

Alaska Court System

Fiscal Analysis for SB 98

This legislation allows a 10 percent reduction in traffic bail or fine amounts for moving violations, if all persons in the vehicle are wearing seatbelts at the time of committing the infraction. This legislation will reduce fine and forfeiture revenues to the state.

To estimate the fiscal impact, the court obtained information from the Alaska Seatbelt Use Coalition on seatbelt utilization. The Coalition's studies indicate that approximately 35 percent of Anchorage drivers and 39 percent of Fairbanks drivers wear seatbelts or a simple average of 37 percent for both areas. Information is not available for other areas of the state or for passenger seatbelt usage. For estimating the impact of this legislation on revenues, it is assumed that driver and passenger seatbelt utilization will average 37 percent for the entire state.

The fiscal impact is estimated as follows:

Estimated statewide traffic violation revenues from moving violations	\$520,000
Estimated percentage of seatbelt usage	37% -----
Estimated statewide revenues for traffic violations involving drivers and passengers using seatbelts	192,400
Bail or fine reduction percentage for seatbelt use	10% -----
Estimated reduction in statewide traffic violation revenues	\$19,240 =====

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 98
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the penalty imposed for certain traffic offenses."
Sponsor: Senator Fahrenkamp
Requestor: Senate C&RA

Agency Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments & C.I.B.

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-
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REVENUE						
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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)
No fiscal impact is anticipated.

Prepared by: Francis C. Allan *G.C.A.*
Division: Alaska State Troopers

Phone: 269-5691
Date: 01/20/89

Approved by Commissioner: U.H. English
Agency: Department of Public Safety

Date: 1-24-89

Hearings.

Unless otherwise specified, title or regulations of the department under the department's practice and procedures shall be in force. A person who requesting officer shall be removed from the department if it must be impartial which is under review. A hearing officer must state the evidence recorded. A hearing shall be held at the request of the person if the person agrees that the hearing shall be held. If a person fails to appear at the hearing, the department may order the person to appear. If it appears that the hearing, limitation, or title and, if necessary, total accruing officer may, pursuant to rescind the order in accordance with the matters. The court

shall conduct a hearing de novo. The decision of the department suspending, revoking, canceling, limiting, restricting or denying a license, registration, title, permit or privilege is stayed and does not take effect during the pendency of an appeal. (§ 6 ch 178 SLA 1978; am § 2 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (c) inserted "registration, or title."

Article 4. Disposition of Certain Vehicle and Traffic Offenses.

Section

151. Citations for scheduled vehicle and traffic offenses



Sec. 28.05.151. Citations for scheduled vehicle and traffic offenses. The supreme court shall determine by rule or order those motor vehicle and traffic offenses, except for offenses subject to a scheduled municipal fine, that are amenable to disposition without court appearance and shall establish a scheduled amount of bail, not to exceed fines prescribed by law, for each offense. A municipality shall determine by ordinance the municipal motor vehicle and traffic offenses that may be disposed without court appearance and shall establish a fine schedule for each offense. (§ 6 ch 178 SLA 1978; am § 8 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, rewrote this section.

Chapter 10. Vehicle Registration and Title.

Article

1. Registration (§§ 28.10.011, 28.10.021, 28.10.041, 28.10.051, 28.10.101 — 28.10.151, 28.10.165, 28.10.181)
2. Title (§ 28.10.201)
3. Transfer of Vehicle (§ 28.10.321)
5. Fees and Charges (§§ 28.10.411 — 28.10.441)
7. General Provisions (§§ 28.10.495, 28.10.502)

Article 1. Registration.

Section

- 11. Vehicles subject to registration
- 21. Application for registration
- 41. Grounds for refusing registration
- 51. Department may suspend or revoke registration
- 101. [Repealed]
- 105. [Repealed]

Section

- 107. [Repealed]
- 108. Registration procedures
- 111. Renewal of registration
- 121. Vehicles of nonresidents
- 131. Vehicles previously registered in other jurisdictions
- 141. Interstate use of vehicles

(b) The administrator of each party state shall furnish to the administrator of each other party state the information or documents reasonably necessary to facilitate the administration of the compact. (§ 18 ch 60 SLA 1986)

Sec. 28.37.180. Compact as law; withdrawal procedure.

(a) The compact shall become effective as to any state in which the compact becomes effective as the law of that state.

(b) A party state may withdraw from the compact by enacting a statute repealing the compact as the law of the state, but a withdrawal may not take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. Withdrawal does not affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring before the withdrawal. (§ 18 ch 60 SLA 1986)

Sec. 28.37.190. Construction and validity; severability. The compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact are severable and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any party state or of the United States or the applicability of it to a government, agency, person or circumstance is held invalid, the validity of the remainder of the compact and the applicability of it to any government, agency, person or circumstance shall not be affected by it. If the compact is held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (§ 18 ch 60 SLA 1986)

Chapter 40. General Provisions.

Section	Section
50. Penalty for violations of law, regulations, and municipal ordinances	100. Definitions for title

* **Sec. 28.40.050. Penalty for violations of law, regulations, and municipal ordinances.** (a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or by both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

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(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed \$300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 — 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

(e) [Repealed, § 5 ch 85 SLA 1987.] (§ 50-1-8 ACLA 1949; am § 12 ch 241 SLA 1976; am §§ 22, 23 ch 144 SLA 1977; am § 5 ch 85 SLA 1987)

Effect of amendments. — The 1987 amendment repealed subsection (e), concerning overweight penalties.

NOTES TO DECISIONS

Prerequisite to suspension of license or privilege to drive. — A driver's license or privilege to drive cannot properly be suspended unless the driver was in fact licensed or otherwise actually privileged to drive a motor vehicle within the state. *Roberts v. State*, Ct. App. Op. No. 478 (File No. A-342), 700 P.2d 815 (1985).

Generic penalty provision. — Subsec-

tion (b) is not a penalty provision dealing specifically with the offense of driving while license suspended; rather it is a generic penalty provision, broadly applicable to violations of all Title 28 provisions for which the specific penalties are given. *Roberts v. State*, Ct. App. Op. No. 478 (File No. A-342), 700 P.2d 815 (1985).

Sec. 28.40.100. Definitions for title. (a) Unless otherwise specifically defined or unless the context otherwise requires, in this title and in regulations adopted under this title

(1) "cancel" means the annulment or termination by formal action of the department of a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

(2) "commissioner" means the commissioner of public safety;

(3) "department" means the Department of Public Safety;

(4) "driver" means a person who drives or is in actual physical control of a vehicle;

(5) "driver's license", or "license" when used in relation to driver licensing, means a license, permit, or privilege to obtain a driver's

Lists of other persons available to provide required services will be compiled from names of qualified persons who have indicated their willingness to provide the required services.

(D) When the court appoints an attorney or other person under the provisions of section (d)(2) of this rule, the clerk of the court from which the appointment was made shall immediately send a copy of the appointment order to the administrative director.

(E) All claims for compensation must be submitted within 30 days following the disposition of a case on forms provided by the court. Claims will be submitted to the assigned trial judge, who shall make a recommendation regarding approval and forward the recommendation to the administrative director. The administrative director shall approve or disapprove the claim.

(F) Attorneys will be compensated at the rate of \$40.00 per hour; provided, that total compensation for any case will not exceed \$500.00 without prior approval of the administrative director.

(G) A person other than an attorney appointed to provide services will receive compensation if the court deems it appropriate not to exceed \$25.00 per hour; provided, that total compensation for any case will not exceed \$300.00 without prior approval of the administrative director.

(H) Extraordinary expenses will be reimbursed only if prior authority has been obtained from the administrative director, upon recommendation by the assigned trial judge or the presiding judge. The assigned trial judge may recommend extraordinary expenses up to a total amount not to exceed \$1,000.00, and the presiding judge may recommend an amount not to exceed an additional \$1,500.00. Extraordinary expenses exceeding \$2,500.00 may be authorized only in extremely complex cases by the administrative director upon the recommendation of the presiding judge. In this paragraph, "extraordinary expenses" are limited to expenses for:

(1) Investigation;

(2) Expert witnesses; and

(3) Necessary travel and per diem expenses. Travel and per diem may not exceed the rate authorized for state employees.

(I) If necessary to prevent manifest injustice, the administrative director may authorize payment of compensation or expenses in excess of the amounts allowed under this rule.

(Added by SCO 652 effective July 1, 1985; amended by SCO 676 effective April 25, 1986; by SCO 680 effective April 25, 1986; by SCO 703 effective May 12, 1986; by SCO 714 effective September 15, 1986; by SCO 889 effective July 15, 1988; and by SCO 909 effective January 15, 1989)

Rule 37.5. Public Access to Public Records Within the Alaska Court System.

(a) All public records within the Alaska Court System shall be open to inspection by any member of the public at all times during the regular office hours of the courts as prescribed in these rules. The administrative director shall establish written guidelines to insure that all members of the public will upon request be given reasonable access and opportunity to inspect such public records and to insure the preservation and safekeeping of such public records for such period of time as they may be kept by the Alaska Court System.

(b) "Public records" means all or any portion of: any written, typed or printed document; any magnetic or electronic recording of sounds, pictures and symbols; any papers, maps, photographic film or prints, any electronic or magnetic tapes or punched cards; or any other document or item filed with, or prepared, owned, or used, by the Alaska Court System which contains information relating to the conduct of the public's business and which does not contain any information or subject matter within the following categories:

(1) Personal information, performance evaluations or disciplinary matters of or relating to any past or present employee of the Alaska Court System or any other person who has applied for employment with the Alaska Court System; except that employment applications for magistrate positions and for other positions as provided by Alaska Court System Personnel Rule 3.04 are open to public inspection;

(2) Memoranda, notes or preliminary drafts prepared by or under the direction of any judicial officer of the Alaska Court System which relate to the adjudication, resolution or disposition of any past, present or future case, controversy or legal issue;

(3) The work product of any attorney or law clerk employed by or representing the Alaska Court System which is produced in the regular course of business or representation of the Alaska Court System;

(4) Matters which are required to be kept sealed or confidential pursuant to statute, court rule or order of a court for good cause.

(SCO 503 effective February 1, 1982; amended by SCO 943 effective January 15, 1989)

Rule 43.1. Traffic Bail Forfeiture Schedule. *

Pursuant to AS 28.05.151(b), the following vehicle and traffic offenses are amenable to disposition without court appearance upon payment and forfeiture of the bail amounts listed. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail amount for that offense listed below. An offense for which a bail forfeiture

ADMINISTRATION RULES

Rule 43.1

amount has been established shall be charged on a citation which meets the requirements of District Court Criminal Rule 8(c) and shall not be filed, numbered or processed as a criminal case.

Statute or Regulation	Description of Offense	Fine	13 AAC 02.010(b)	Position of vehicle stopping at intersection	30
AS 05.30.010	Operating an unregistered snow vehicle	\$20	13 AAC 02.015	Failure to obey pedestrian control signal	20
AS 05.30.040(a)	Failure to display snow vehicle numbered registration decal	20	13 AAC 02.020(a)(1)	Failure to yield after stopping for flashing red signal	50
AS 28.10.451	Failure to register vehicle	50	13 AAC 02.020(a)(1)	Failure to stop for flashing red signal	50
AS 28.10.461	Plates/decals/permits must be properly attached and displayed	20	13 AAC 02.025	Lane use control signals	30
AS 28.10.461	Failure to carry certificate of registration in vehicle	20	13 AAC 02.030(a)	Display of unauthorized signs, signals, or markings	20
AS 28.10.471	Operating vehicle w/expired registration	50	13 AAC 02.050(a)	Failure to drive on right side of roadway	30
AS 28.15.011(b)	Driving with expired license	30	13 AAC 02.050(a)(3)	FTY when driving left of obstructed roadway	50
AS 28.35.029	Open Container of Alcoholic Beverage In Motor Vehicle	50	13 AAC 02.050(b)	Vehicle not to use left lane at less than speed limit	30
AS 28.35.031(e)	Refusal to submit to a preliminary breath test	50	13 AAC 02.050(b)	Turn off required when 5 or more vehicles are behind	50
AS 28.35.135(b)	Failure to notify dept. of change of name/address	20	13 AAC 02.055(a)	Improper overtaking on right	30
AS 28.35.140	Obstructing or blocking traffic	20	13 AAC 02.055(b)	Return to lane only when clear	50
AS 18.35.145(e)	Ownership of a Vehicle Which Illegally Passes a School Bus	50	13 AAC 02.060(a)	Limitations on driving left of center	30
AS 28.35.180	Disobedience to signal of officer regulating traffic	30	13 AAC 02.065(a)	Improper overtaking on the left	30
AS 28.35.235	Unauthorized Use of Handicapped Parking	100	13 AAC 02.065(a)	FTY to overtaking vehicle	50
AS 28.35.251	Contained or confined loads	100	13 AAC 02.065(b)	FTY to on-coming traffic when passing	50
13 AAC 02.005(a)	Disobedience to traffic control devices	30	13 AAC 02.070	FTY 1/2 of roadway to on-coming vehicle and failure to pass on right of on-coming vehicle	50
13 AAC 02.010(a)(1)(A&B)	FTY to vehicle in intersection after green signal	50	13 AAC 02.075(b)	Passing/driving left of center in no pass zone	50
13 AAC 02.010(a)(1)(A&B)	FTY to pedestrian in crosswalk after green signal	50	13 AAC 02.080(b—c)	Wrong way on one-way roadway	30
13 AAC 02.010(a)(3)(A)	Failure to stop for steady red traffic signal	50	13 AAC 02.085(a)	Improper lane change	30
13 AAC 02.010(a)(3)(B)	FTY when turning on red signal	50	13 AAC 02.085(b)	Improper use of center lane of 3-lane roadway	30
13 AAC 02.010(a)(3)(B)	Turning on red signal when prohibited	30	13 AAC 02.090(a—c)	Following too closely	50
13 AAC 02.010(a)(3)(C)	Failure to stop for steady red arrow	50	13 AAC 02.095(a)	Driving over, across or within barrier/median	50
			13 AAC 02.095(a)	Failure to stay on right side of divided highway	50
			13 AAC 02.095(c)	Improper entry/exit—controlled-access highway	30
			13 AAC 02.107	Drive nearest right edge on narrow/winding roadway	30

Rule 43.1

ALASKA RULES OF COURT

13 AAC 02.120(a)	FTY to vehicle on right at unsigned intersection	50	13 AAC 02.250(a)	Certain vehicles to stop at all railroad crossings	50
13 AAC 02.120(b)	FTY to vehicle entering intersection after stop	50	13 AAC 02.255(a&b)	Heavy equipment to give notice of RR crossing	20
13 AAC 02.125	FTY when turning left	50	13 AAC 02.255(a&c)	Heavy equipment to stop at RR crossing	50
13 AAC 02.130(b)	Improper position of vehicle stopping at stop sign	30	13 AAC 02.257	Give warning w/horn when vision restricted/alley/driveway/bldgs.	30
13 AAC 02.130(bc)	FTY after stopping or at yield sign	50	13 AAC 02.257	Stop: Emerging from alley/driveway/building	50
15 AAC 02.130(b)	Failure to stop for stop sign	50	13 AAC 02.257	Position of stop when emerging from alley/driveway/bldg.	30
13 AAC 02.135(b)	FTY when entering roadway from non-roadway	50	13 AAC 02.265	Stop when traffic may be obstructed	30
13 AAC 02.140(c)	Driver of emergency vehicle not to disregard safety	30	13 AAC 02.275(a)	Basic speed: Reasonable & prudent for road conditions	30
13 AAC 02.150(a—b)	Pedestrians subject to traffic regulations	20	13 AAC 02.275(b)	Speeding:	
13 AAC 02.155(a)	FTY to pedestrian to crosswalk	50		3—9 mph over posted limit	4/mi.
13 AAC 02.155(b)	Pedestrian to exercise due caution	20		10—19 mph over posted limit	4/mi.
13 AAC 02.155(c)	Vehicle not to pass vehicle stopped for pedestrian	50	13 AAC 02.280(a—d)	Altered speed limits:	
13 AAC 02.155(e)	Not to drive within or through pedestrian safety zone	30		3—9 mph over posted limit	4/mi.
13 AAC 02.160(a—f)	Pedestrian crossing at other than crosswalks	20		10—19 mph over posted limit	4/mi.
13 AAC 02.175(a—c)	Pedestrian to use sidewalk/left edge of roadway and not interfere, sleep, loiter or obstruct	20	13 AAC 02.295	Minimum speed regulation	30
13 AAC 02.180	Pedestrian not to distract drivers when soliciting rides and pedestrian not to solicit employment, business or contributions from vehicle occupants	20	13 AAC 02.325(a)	Speed limitation on motor-driven cycles at night	30
13 AAC 02.190(a)	FTY to pedestrian w/white cane/guide dog	50	13 AAC 02.325(b), (c), (e)	Special speed limit when: towing mobile home/equipped with lighted headlights/passing school bus with flashing yellow lights	
13 AAC 02.190(b)	Not to use white cane/guide dog unless blind	20		3—9 mph over	4/mi.
13 AAC 02.195(a)	Pedestrian FTY to authorized emergency vehicle	20	13 AAC 02.325(f)	Overweight, oversize or excess speed when crossing over bridge or through tunnel	
13 AAC 02.200(a—c)	Improper position/method turning at intersection	30		3—9 mph over	4/mi.
13 AAC 02.205(a—b)	U-turn only when safe/not on hill, crest or curve	30	13 AAC 02.340(a—d)	Overwidth	25/ft.
13 AAC 02.210	Improper start from parked/stopped standing	30		Overlength	10/ft.
13 AAC 02.215(a—f)	Signals required turn/stop/slowing-discontinue after	30		Overweight	.05/lb.
13 AAC 02.240(a—b)	Obedience to train signals and barriers	50	13 AAC 02.365(a—g)	Stopping/standing/parking on highway/other location	10
			13 AAC 02.367(d)	Additional parking regulations	10
			13 AAC 02.372(b)	Not to stop/stand/park in loading zone	10
				Position of bus stopping to load/unload passengers	10

ADMINISTRATION RULES

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13 AAC 02.372(c)	Taxi cab restrictions on standing/parking	10	13 AAC 02.517(a—g)	Emergency vehicle regulations	30
13 AAC 02.372(d)	Stop/stand in bus stop/taxi stand	10	13 AAC 02.520(a)	Following emergency vehicle closer than 500 feet	50
13 AAC 02.377(c—f)	Parking meter violations	7	13 AAC 02.520(b)	Improper stopping/parking at emergency scene	20
13 AAC 02.395(b—c)	Special bicycle violations	20	13 AAC 02.520(c)	Crossing fire hose	30
13 AAC 02.400(a—h)	Riding bicycles on roadways/bike paths	20	13 AAC 02.530(d)	Haul/drag material causing damage to highway	30
13 AAC 02.420(a—c)	Parking of bicycles	10	13 AAC 02.532	RR trains not to block roadways	20
13 AAC 02.425(a—d)	Special motorcycle violations	30	13 AAC 02.545(a)	Drinking while driving	50
13 AAC 02.427(a)	Motor vehicle not to deprive motorcycle of full lane use	30	13 AAC 02.545(b)	Drivers to exercise due care to avoid collision	30
13 AAC 02.427(a)	Motorcycles more than two abreast	30	13 AAC 04.003	Minimum equipment required for sale/rent/lease/loan	20
13 AAC 02.427(b)	Motorcycle passing in same lane as other motor vehicle	30	13 AAC 04.004(a—c)	Sale or use of equipment	20
13 AAC 02.445	Snowmobile and other off-highway vehicle violations	20	13 AAC 04.005	Disconnection/alteration of equipment	20
13 AAC 02.455(a—g)	Snowmobile and other off-highway vehicle operation on highways and other locations	20	13 AAC 04.006(b—c)	Submit to roadside vehicle inspection	30
13 AAC 02.480	Requirements for unattended motor vehicle	20	13 AAC 04.009(a—c)	Prohibited practices — inspection/repair	20
13 AAC 02.482(a)	Bicycles/pedestrians traveling in prohibited area	20	13 AAC 04.010	Illuminate lights as required	30
13 AAC 02.482(a)	Driving a motor vehicle where prohibited	30	13 AAC 04.015(a)	Lights in good working order/not obstructed	20
13 AAC 02.482(b)	Non-motorized vehicle to yield to traffic on roadway	20	13 AAC 04.020(e)(1&2)	Headlight dimming requirements	30
13 AAC 02.485(a—b)	Limitation on backing	30	13 AAC 04.070(e)	Parking lights not used when vehicle in motion	30
13 AAC 02.487	Driving vehicle on sidewalk	30	13 AAC 04.095(d), (g), (i)	Flashing yellow lights used when required	30
13 AAC 02.495(a—c)	Obstructing driver's view/control of vehicle	30	13 AAC 04.097(a)	Use of flashing red light school bus	30
13 AAC 02.495(d)	Opening doors/entering or leaving when vehicle in motion	20	13 AAC 04.100(a—h)	Improper use of flashing blue lights	30
13 AAC 02.495(c—f)	Person riding outside vehicle or in trailer	20	13 AAC 04.145(a—c)	Improper use of auxiliary/spot lights	30
13 AAC 02.497(a)	Interfering w/funeral procession	30	13 AAC 04.210(a)	Failure to give audible warning as required	20
13 AAC 02.497(b)	Requirements for drivers in funeral procession	30	13 AAC 04.225(a—b)	View not to be obstructed	30
13 AAC 02.497(c)	Permit requirements for funeral procession/parade	20	13 AAC 04.240(a—c)	Flares/other warning devices requirements	20
13 AAC 02.505(d—e)	Motor vehicle drivers to exercise due care re/animals	30	13 AAC 04.245(a—i)	Display of warning lights/devices	20
13 AAC 02.515	Coasting prohibited	30	13 AAC 04.247(d)	Improper use of signs/stop arm on school bus	30
			13 AAC 04.250(a), (d)	Requirements for transporting hazardous material	20

Rule 43.1

ALASKA RULES OF COURT

13 AAC 04.250(b)	Give notice of transporting hazardous material	20	17 AAC 40.030(a)(2), (c)(3)	Speeding: 3—9 mph over prescribed limits	4/mi.
13 AAC 04.252(a—c)	Slow moving vehicle emblem requirements	20		10—19 mph over prescribed limits	4/mi.
13 AAC 04.260(a—c)	Restrictions on television/headset in motor vehicle	20	17 AAC 40.030(b)(1—4)	For-hire vehicles must obtain permit	20
13 AAC 04.275(a—e)	Connections/safety devices—towed vehicles	20	17 AAC 40.030(b)(5)	For-hire vehicles not to solicit passengers	20
13 AAC 04.320(d)	Lights turned on when on Hwy. — Motor driven cycle	30	17 AAC 40.030(c)(1)	Improper operation on runways, taxiways, etc.	30
13 AAC 04.350(a)	Helmet Required Minors/passengers (AS 28.35.245 exempts adults)	20	17 AAC 40.030(c)(4)	Ramp operator's permit required for ramp operation	20
13 AAC 04.350(b)	Eye-protective device required when no wind-screen	20	17 AAC 40.030(d)(1)&(d)(3)	Illegal parking/abandoning vehicle	10
13 AAC 04.350(c)	Minimum equip. for rent/lease/loan of motorcycle	20	17 AAC 40.030(d)(2)	Expired parking meter	7
13 AAC 06.020(a)	Refusing to submit vehicle to inspection or test	30	17 AAC 40.030(e)	Improper operation of vehicle inside buildings	30
13 AAC 06.020(b)	Operating vehicle after being directed to have it repaired	20	17 AAC 40.420(a)	Permit required for operation on landing area/apron/etc.	20
13 AAC 06.040(a)	Failure to stop & submit to roadside inspection	30	17 AAC 40.420(b)	Operate vehicle for disposing garbage/waste material	20
13 AAC 08.140	Unlawful use of classified license	30	17 AAC 40.440(b)	Vehicles to have proper identification	20
17 AAC 40.030(a)(1)	Operate vehicle in accordance with general rules at airport	30			

(Added by SCO 775 effective January 1, 1987; amended by SCO 910 effective September 1, 1988; and by SCO 944 effective September 30, 1988)

SB 98

The Community and Regional Affairs Committee considered SENATE BILL NO. 98 (An Act relating to the penalty imposed for certain traffic offenses) and a majority of the committee recommended do pass. The report was signed by Senator Adams, Chair, and concurred in by Senators Frank, Szymanski and Pearce. Senator Pourchot signed "no recommendation."

Fiscal note published today from Alaska Court System. Zero fiscal note published today from Department of Public Safety.

SENATE BILL NO. 98 was referred to the Judiciary Committee.

S B

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6-0019E
Ford
3/2/89

as amended

Original sponsor: Kelly

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 101 (Judiciary)

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 civil liability for sports offi-
7 ciating; and providing for an effective date."

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

9 * Section 1. AS 09.65 is amended by adding a new section to read:

10 Sec. 09.65.145. CIVIL LIABILITY FOR SPORTS OFFICIATING. (a) A
11 sports official is not liable for civil damages as a result of an act
12 or omission in officiating an ^{amateur} athletic contest, if the sports official

13 (1) does not receive compensation for officiating the
14 athletic contest; or

15 (2) receives less than ^{\$5,000} ~~\$2,000~~ in compensation for officiat-
16 ing athletic contests during the 12 months preceding the act or omis-
17 sion in officiating and at the time the act or omission in officiating
18 occurs is a member of a local, state, or national organization that
19 provides education and training in officiating the type of athletic
20 contest at which the act or omission in officiating occurred.

21 (b) This section does not apply to a person who acts with gross
22 negligence or reckless or intentional misconduct.

23 (c) In this section,

24 (1) "compensation" means money or other property received
25 for services rendered, but does not include reimbursement of actual
26 expenses incurred for acting as a sports official;

27 (2) "sports official" means a person who acts as a referee,
28 judge, umpire, line judge, or other official during an amateur ath-
29 letic contest.

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* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Proposed CS

1 IN THE SENATE

BY KELLY

2

SENATE BILL NO. 101

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 civil liability for sports
7 officiating; and providing for an effective date."

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

9 * Section 1. AS 09.65 is amended by adding a new section to read:

10 Sec. 09.65.145. CIVIL LIABILITY FOR SPORTS OFFICIATING. (a) A
11 sports official is not liable for civil damages as a result of an act
12 or omission in officiating an ^{amateur} athletic contest, if the sports official
13 is a member of a local, state, or national organization that provides
14 education and training in officiating the type of athletic contest at
15 which the act or omission in officiating occurred.

16 (b) This section does not apply to a person who acts with gross
17 negligence or reckless or intentional misconduct.

18 (c) In this section, "sports official" means a person who acts
19 as a referee, judge, umpire, line judge, or other official during an ^{amateur}
20 athletic contest. ^

21 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

1) Extend limited liability to
pure volunteers.

2) Make application only to those
who officiate as an avocation (not
professional) by deriving income less than
\$5000/year from officiating activities.

SAMPLE OF CURRENT PAY RATES FOR AMATEUR SPORTS OFFICIALS

	JNU	ANC	FBKS
	(\$/game unless otherwise noted)		
H. S. Basketball	40-45	45	
College Basketball	75	125	115
Adult Basketball	15	17-35	
Softball	11	11	
H. S. Baseball Am. Legion	20/10	25	
College (Glacier Pilots, et. al.)		50	50
Little League		25	
H. S. Football	35	295(7)*	
Junior Football	15		
Youth Soccar	10		
Wrestling	3-5/match	3-5	
H. S. Volleyball	25		
H. S. Ice Hockey			30
Junior Hockey		15	10-18
Adult Hockey		20	15-100
College Hockey		90	45,90
Skiing			
Swimming			

*Cost of 7 officials.

Information Sources: Claire Markey, Bob Sims, Juneau; Dave Strike, Jim Brett, Emmitt Wilson, Anchorage; Chris Milles, Fairbanks.

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3822

P.O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

February 7, 1989

Senator Jan Faiks, Chairman
Judiciary Committee
Alaska State Senate
Box V
Juneau, Alaska 99811

Re: Scheduling SB 101, limiting civil liability of sports officials.

Dear Senator Faiks,

I would appreciate a Judiciary Committee hearing on SB 101 at your earliest convenience. Nationwide there is a growing recognition of the value and necessity of this kind of legislation (see attachment). This summer I was asked by several Alaskan sports official groups to introduce SB 101.

In the last several years the legislature has passed similar legislation offering protections from civil liability to a variety of volunteer and paraprofessional groups. Search and rescue and ski patrol groups most recently come to mind. In every case it is the recognition that the value and public service of certain activities would be irreparably harmed if exposed to the full effect of liability and the counter balancing cost of insurance.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tim".

TIM KELLY
Alaska State Senator



NATIONAL ASSOCIATION OF SPORTS OFFICIALS

SPECIAL NEWS RELEASE • SPECIAL NEWS R

FOR RELEASE: July 23, 1987

FOR INFORMATION: Barry Mano (415) 692-9100 San Francisco or (414) 632-5448 Wisconsin
Mel Narol (415) 692-9100 San Francisco or (609) 452-0808 New Jersey

NATIONAL ASSOCIATION SPEARHEADS LEGISLATIVE EFFORTS FOR SPORTS OFFICIALS

SAN FRANCISCO, CA.

The launching of a national legislative effort to protect sports officials from physical abuse and civil lawsuits will be an important focus of the 7th annual National Convention of Sports Officiating.

Sponsored by the National Association of Sports Officials, this annual event will convene today at the Marriott Hotel at San Francisco International Airport.

With the increased visibility and economic stake in sports, greater attention has been focused on the referees and umpires who work the games. No longer are verbal jabs the only recourse being used by disgruntled players, coaches and fans.

Some examples:

* Last year a parent came out of the stands during a Little League game in Huntington Beach, CA., and attacked a

Phy ABUSE

17-year old umpire. The attacker was fined \$500 and ordered to write an essay on sportsmanship.

* In 1982, an ice hockey referee was attacked by players and fans on his way from the ice to the dressing room in a Fairfax, VA., arena. He underwent two spinal operations and was totally incapacitated for one year. There was a substantial monetary settlement.

* Last year, a softball umpire was attacked by players with bats in Long Beach, CA., resulting in him nearly losing his eyesight in one eye and suffering serious other injuries. The two attackers were sentenced to jail.

During the past five years, the men and women who participate in the avocation of sports officiating, have begun to fight back. "As officials we must let the players, fans, coaches and parents know we will no longer tolerate physical abuse," stated Barry Mano, founder and President of the 13,000 member National Association of Sports Officials (NASO). And the officials, through the education and awareness campaigns by NASO, have been very successful convincing judges in court that physical abuse cannot be part of sports at any level.

The leading authority on sports officials and the law continues to be New Jersey attorney, Mel Narol. Narol, past Chairman and current NASO board member comments: "Criminal court penalties have increased. Last year in California two men were sentenced to six months and one year respectively for their part in a vicious attack on a softball umpire."

Phy
A B USP

Now NASO has drafted Model Legislation which makes it a criminal offense, greater than merely assault, to physically abuse a sports official. This was made public to the more than 500 attendees at the NASO convention and will be sent to all state legislatures for use in statute writing. NASO plans to lend its expertise and support in fostering this type of protection for officials in every state.

Already in 1987 NASO worked in coordination with legislators in Arkansas to assist passage of such a bill. Arkansas Governor Clinton signed the measure in April.

The other state which has adopted similar legislation is Oklahoma. Its 1978 law makes it a felony to assault a sports official. This is punishable by a fine of up to \$1,000 and/or six months in jail.

NASO also made public today Model Legislation which would make it more difficult to sue sports officials. It would only permit such lawsuits to be successful if the official intentionally injured a person or acted in a "grossly negligent manner."

"Currently most states give limited liability to coaches, athletic directors, public institutions and municipalities," emphasized Narol. "We are seeking parity for officials and umpires."

Liability lawsuits have greatly increased during the past five years. Examples of lawsuits now pending or recently concluded:

* Two New York umpires have been sued for their alleged failure to timely stop a Connie Mack League baseball

Phy
ABUSE

Protection
of
Civil
Lawsuits

game resulting in a player being struck and killed by lightning.

* A New Jersey track referee was sued by a high school trackster who claimed to have been injured on a slippery take-off board while participating in a long-jump competition. A jury found the referee was not responsible.

* A major-college basketball referee was sued because of a disagreement on a call he made near the end of a Big Ten game. The court ruled judges should not review referee's calls and dismissed the case.

* A California umpires' association has been sued by a softball player who claims second base was not properly fastened in the ground resulting in injury to him while sliding.

The Model Legislation should be viewed in the context of the fees received by the more than 350,000 sports officials in the U.S. "Officials at the high school, recreation and lower levels earn just \$15 to \$40 per game," noted Mano.

Officials are also beginning to rethink whether the risks of officiating are still worth it. Aside from the difficult task of game control and decision making, they now have real concern for their safety and the spectre of being hauled into a court of law.

NASO, headquartered in Racine, Wisconsin, plans to continue its ground-breaking work to improve the environment in which officials work today. The convention in San Francisco demonstrates this commitment.

Prof
Lawsuits
Civil

STATE OF ALASKA FISCAL NOTE

Bill Version: SB 101

Publication Date:

Agency Affected: Alaska Court System
SRC1
Trial Courts

Components:

Subject: an act relating to civil liability for sport officiating...
Topic: Judiciary

FUNCTIONS	VENDOR: (Thousands of Dollars)					
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contracts
Supplies
Printing
Food & Drink
Office & Printing
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

FUNCTIONS	VENDOR: (Thousands of Dollars)					
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	.	.	.	.	.	.
Contracts	.	.	.	.	.	.
Supplies	.	.	.	.	.	.
Printing	.	.	.	.	.	.
Food & Drink	.	.	.	.	.	.
Office & Printing	.	.	.	.	.	.
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

No fiscal impact.

Reviewed by: Jan Stranberg, General Counsel
 Alaska Court System
 Approved by: Kenneth H. Snowdon, II, Administrative Director
 Agency: Alaska Court System

- Legislative Sponsor
- Legislative Sponsor
- Regulator
- Office of Management & Budget
- Agency(ies)



DAVID J. STRIKE INSURANCE
AUTO-LIFE-HEALTH HOME AND BUSINESS
2213 EAST TUDOR RD SUITE 54
ANCHORAGE, ALASKA 99507 PHONE (907) 562-2721

February 22, 1969

Senator Jan Falks
Judiciary Committee
Alaska State Senate
Box V
Juneau, Alaska 99811

Re Senate Bill 101

Dear Senator Falks:

We need your help!

I am writing to you on behalf of the Anchorage Baseball Officials Association, and fellow referees, umpires and officials throughout this great State of ours.

Sports Officials liability needs to be limited to the point that only if we act in a willful or negligent manner can we be sued.

In most states, Coaches, Athletic Directors, Public Institutions and Municipalities have all been granted limited liability. As sports officials all we are seeking is parity.

Please do all possible to pass this very important piece of legislation.

Best Personal Regards,

David J. Strike

DJS:sjd

Encl (1)

a) a sports official is not liable for civil damages as a result of an act or omission in officiating an amateur athletic contest, if the sports official is a volunteer officiating the contest without compensation.

A PERSON WHO
IS A VOLUNTEER
AT AN EVENT
IS IMMUNE

b) a sports official who is officiating an amateur athletic contest for compensation is not liable for civil damages as a result of an act or omission in officiating the contest, if the sports official is a member of a local, state, or national organization that provides education and training in officiating the type of athletic contest at which the act or omission in officiating occurred, and the sports official receives less than \$2000 per year from officiating athletic contests, not including reimbursement of expenses actually incurred.

A PERSON
WHO IS NOT
A VOLUNTEER
AT AN EVENT
IS IMMUNE
UNLESS HE
DID RECEIVE
(A))
TRAINING
AND (B)

c) This section does not apply to a person who acts with gross negligence or reckless or intentional misconduct.

RECEIVES
LESS THAN

d) In this section, "sports official" means a person who acts as a referee, judge, umpire, line judge, or other official during an (amateur) athletic contest.

\$2000 PER
YEAR

Effective date.

S B

108

AMENDMENT #3

OFFERED IN JUDICIARY

BY HALFORD

TO: CSSB 108 (SA)

A. Page 4, line 20, delete

"a new subsection"

and insert

"new subsections"

B. Page 4, line 25, insert

"(e) In addition to the approval by law required under (c) of this section, a lease or lease-purchase agreement for a public building must be approved by a majority of the qualified voters voting at the next State general election if the lease or lease-purchase agreement

(1) provides annual rent anticipated to exceed \$1,000,000;

(2) would be entered into prior to the completion of construction of the public building, excluding alterations, repairs, maintenance, or improvements to an existing public building; and,

(A) contains minimum lease payments, including minimum lease payments during any renewals provided in the lease or lease-purchase agreement, whose present value, at inception, equals 90 percent or more of the fair market value of the property at inception; present value shall be determined by using as a discount rate the most recent Bond Buyer 20-Bond G.O. Index; or

(B) prohibits the department, legislative branch, or judicial branch, for a period of time following non-appropriation of lease payments, from acquiring, leasing, or using similar property to perform the same function as the property subject to the lease or lease purchase agreement."

C. Page 5, line 11, delete

"publicly owned structure"

and insert

"improved real property"

THESE DISCUSS CHANGES
IN HALFORD CS

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 13, 1989

SUBJECT: Draft of CSSB 108 (Judiciary)
(Work Order No. go0449sH)

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Terry Bannister *TB*
Legislative Counsel

This memo accompanies the draft of CSSB 108 (Judiciary) that you requested. Please note that I have done the following:

- (1) substituted "improved real property" for "structure" where it occurs the second time in AS 36.30.990(19);
- (2) included the new sec. 36.30.080(e) in sec. 12 of the bill;
- (3) made various changes and additions to the new sec. 36.-30.080(e) during the drafting either for clarity or to carry out the intent of the subsection as I understand it.

Please examine the above to determine if they are consistent with your intent.

In addition, I suggest several changes that are not related to the changes you requested, but which would improve the bill.

- (1) I suggest adding language to AS 18.55.255 indicating that the section only applies to property that is not covered by AS 18.55.320 or 18.55.540, if that is your intent. This would eliminate any question about the section's coverage. AS 18.55.230 applies to surplus property sales under article 2. AS 18.55.540 applies to property sales under article 3. Article 4 does not cover ASHA. Unless the committee intended for AS 18.-55.255 to supplant AS 18.55.320 and 18.55.540, it

Senator Jan Faiks
Page 2
April 13, 1989

appears that AS 18.55.255 applies to property not covered by those sections. Adding the suggested language would clear up any confusion on this point.

- (2) I suggest clarifying the relationship between sec. 18.-55.255(c) and the rest of the section. I presume (c) stands alone and is not covered by the procedures in (a) or (b), but it is not clear.
- (3) I suggest adding "requiring notice" after the word "agreement" in the third sentence of sec. 36.30.080(c). This would seem to be a technical clarification, but I was not sure.

If you wish language drafted to accomplish the suggested changes, please advise. Or you may wish to pass these suggested changes along to the next committee of referral.

TB:gc:kb
WkG9/056

Enclosure



May 4, 1989

Senator Jan Faiks
Committee Chair, Senate Judiciary
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811
Attention: Chris Christensen

RECEIVED

MAY 8 1989

JAN FAIKS
SENATE OFFICE

Re: CSSB108

Dear Senator Faiks: *please - provisions*

CS FOR SENATE BILL NO. 108 adds a new subsection, (d), under Sec. 4 of the bill as follows:

(d) This section does not apply to property that is covered by AS 18.55.320 or 18.55.540.

My understanding is that this new subsection was added to avoid the potential for inconsistency between AS 18.55.255, as amended, and AS 18.55.320 (governing moderate cost and rental housing) and AS 18.55.540 (governing urban renewal and redevelopment). My concern, which is great, is that the new subsection will create more of a problem than that which it seeks to redress. This is particularly true in the area of the Mental Health Housing program.

Subsection (c) was drafted to ensure that ASHA had authority to convey property interests under the Mental Health Housing program established by the Department of Health and Social Services. Subsection (c) provides that such conveyances "... are not subject to ... (a) or (b) of this section ...". When subsection (d) is tacked on, a double negative occurs, leaving significant room for doubt about ASHA's ability to transact business under the Mental Health Housing program, when the transaction involves moderate cost or rental housing.

I believe that a better approach to avoid the potential for inconsistency between AS 18.55.255, as amended, and AS 18.55.320/.540 would be to delete the proposed subsection (d) under Sec. 4., and amend Sec. 3. to provide that the first sentence of AS 18.55.255 reads as follows:

The authority may convey real or personal property held by it under AS 18.55.010--18.55.290 that it determines is in excess of its needs.

This would parallel the statutory construction of AS 18.55.320, and avoid negating ASHA's ability to assist in the Mental Health Housing program.



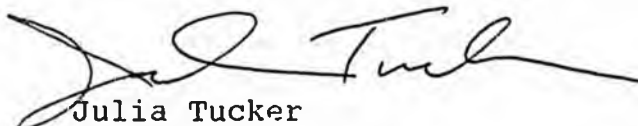
Senator Jan Faiks
May 4, 1989
Page 2

In the interest of the time constraints facing the legislature, I will forward a copy of this letter to Terry Bannister, Legislative Legal Services. Based on my previous conversations with her concerning SB 108, I anticipate her concurrence.

Thank you in advance for your attention to this matter. If there is additional information or comment that I can provide, I may be reached at 786-6222 or 786-6224.

Sincerely,

ALASKA STATE HOUSING AUTHORITY



Julia Tucker
General Counsel

cc: Terry Bannister
Senator Pat Pourchot c/o Sandra Shubert

mg:c:\wp5\jt\sb108.1



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 12, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating, for the most part, to lease-financing under the Procurement Code.

The main purpose of the bill, embodied in sec. 7, is to centralize all lease-financings for public buildings in the Alaska State Building Authority (ASBA). Section 6 of the bill adds to the existing requirement for the executive branch a requirement that the legislative and judicial branches notify the legislature of leases and lease-purchases, including lease-financings, if the cost is expected to exceed \$1,000,000 annually. Currently, only the executive branch, through the Department of Administration, and the University of Alaska are subject to this requirement.

"Lease-purchase agreement" and "public building" are defined in sec. 8 of the bill. "Lease-financing agreement" is also defined in that section as a type of lease-purchase agreement.

Section 5 of the bill statutorily authorizes the legislative and judicial branches to enter into lease-purchase agreements. Other amendments relating to the new definitions added by sec. 8 of the bill are also made in sec. 5.

Sections 3 and 4 of the bill make amendments to reflect the amendments made by secs. 5, 6, and 7 of the bill.

The amendments made by sec. 1 of the bill, and the new statute proposed by sec. 2, relate to the University of Alaska's financing authority in general.

Under sec. 9 of the bill, university projects, and lease-purchase agreements entered into by the university, the legislature, or the court system, will not be subject to proposed AS 14.40.253 (university), and AS 36.30.080(c) (legislature and court system) as it is amended by sec. 6 of the bill, if the project is authorized by law before July 1, 1989, regardless of whether arrangements for the project or agreement are made final by that date.

Section 10 of the bill exempts projects authorized by law before July 1, 1984 from the requirement that a lease-financing agreement for such a project may be entered into only with ASBA. (This provides a type of "grandfather clause" exception for the Anchorage court facility, authorized by sec. 2, ch. 78, SLA 1984.) Projects authorized by law after July 1, 1984, for which a lease-financing agreement is not signed before July 1, 1989 (the effective date of this Act), will be subject to AS 36.30.080(d); however, those for which a lease-financing agreement is signed before July 1, 1989 will not be subject to that subsection.

As mentioned earlier in this letter, sec. 7 of the bill centralizes all lease-financings for public buildings in ASBA. There are at least four reasons for consolidating lease-financing in ASBA: efficiency, accountability, market acceptance, and coordination.

Using one issuer/lessor for state lease-financing will build expertise in both ASBA staff and retained professionals, such as bond counsel, about the legal and financial requirements and procedures of both the credit markets and the state. This will create greater efficiency not only in processing such transactions, but in structuring them as well. An example of this effect is the innovative and low-cost financing obtained by the Alaska Housing Finance Corporation (AHFC) for mortgage loans in Alaska. It is improbable that the overseas and other creative financing AHFC employs would have been possible if housing financing in this state had been splintered among many municipal or regional housing finance authorities.

One issuer/lessor for lease-financing would also provide clearer accountability and a central, uniform source of reporting. This would enable the state to provide timely, accurate responses to inquiries about or reviews of lease-financing from auditors, legislative committees, or national credit rating agencies.

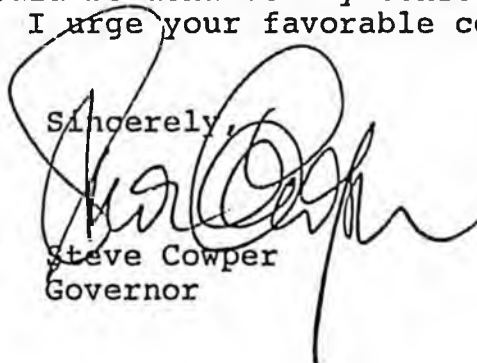
The credit markets should also respond favorably to a single issuer for state lease-financing. More regular issuance from one issuer should lead to greater market recognition and confidence, and a broader base of bond holders and lower interest rates as a result.

Another, and possibly the most important, reason for consistently using ASBA for state lease-financing is financial. In the absence of this bill, lease-financings of state projects could continue to be undertaken by municipalities or private developers. These entities might have little incentive to control costs and might be inclined to enlarge project scopes. This can result in significant increases in state rental payments and operating costs for the leased facilities.

Lease-financing is paid entirely from the state's general fund. Its rate is based on the state's credit rating, and is normally one notch below the state's general obligation bond rating because lease payments are subject to appropriation. Lease-financing is counted as part of the state's debt burden by Moody's and Standard & Poor's credit rating services. In the event of default, it is the state's rating that would suffer. A multiplicity of issuers can have an adverse effect on the state's rating and frustrate attempts to properly coordinate such issuances.

State lease-financing capacity is not unlimited. It is limited by the ability to appropriate lease payments from the general fund and by the credit rating of the state. The best use of that capacity would be achieved by consolidation or lease-financing in ASBA. I urge your favorable consideration of this legislation.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Steve Cowper', is written over the typed name and title.

Steve Cowper
Governor

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



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

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: Today's Committee Hearing
DATE: March 22, 1989

SB 108, An Act relating to public finance, including lease-financing, will be back before the State Affairs Committee today.

SB 108 would require that all lease-financings for public buildings be handled by the Alaska State Building Authority. It would also require notice to the legislature of lease-purchase agreements entered into by the legislature and the court system if the costs exceed \$1 million annually (this provision currently applies to the executive branch and the University). In addition, SB 108 would amend the general powers of the University to allow them to issue debt.

At our first hearing on this bill, questions were raised regarding the authority of the University to issue debt and the ability of ASBA to transfer property to other public entities for less than fair market value. Amendments addressing these concerns are attached.

Throughout the lease purchase sections of SB 108, reference is made to the "department, legislature, or court system". The question of whether the University is included in the definition of "department" was raised. AS 36.30.005(c)(5), the current definition section of the procurement code, specifies that "department" means the University of Alaska.

AMENDMENT #1

page 2, after line 2, add:

The university may not enter into an obligation requiring a financing notice under this section, other than a refinancing obligation, unless the project has been approved by the legislature by law. An appropriation for the project does not constitute approval of the project for the purposes of this section.

NOTE: Sec. 1 of SB 108 authorizes the University to issue debt and enter into long-term obligations. Sec. 2 requires that the University provide notice to the legislature of any obligation with an annual payment exceeding \$1 million. Amendment #1 would require that the University receive legislative approval before proceeding with the obligation.

This procedure parallels the procedure in current law for lease financing by the executive branch, including the University.

The University has issued debt in the past, including bonds for student housing and a student center. The University sought legislative authorization of the issuance of this debt, and under Amendment #1 would continue to do so for issuances resulting in debt service of \$1 million or more annually.

AMENDMENT #2

page 2, after line 2, insert a new section to read:

AS 18.55.255 is amended to read:

Sec. 18.55.255. DISPOSAL OF SURPLUS PROPERTY [PROCEDURE FOR SALE OF LAND]. (a) The authority may convey real or personal property that it determines is in excess of its needs. Except as provided in (b) and (c) of this section, the sale [SALE OF LAND] shall be by public auction or by sealed bids at a price not lower than the fair market value determined by an appraisal made within 180 days before [OF] the sale by a qualified appraiser. Public notice shall be given by publishing notice of the sale at least once a week for two consecutive weeks in a newspaper of general circulation within the area in which the property to be sold is located, and by posting notice of sale in at least two public places in the area. In no event may [SHALL] the auction be held less than 30 days after the last day of publication. If no acceptable bids are received, the authority may sell the property at negotiated sale [,] within six months after [OF] the date of the auction. A negotiated sale may not be made on an appraisal made more than nine months before the date of sale. The price at a negotiated sale may not be less than the appraised value.

(b) Real or personal property of the authority may be sold to a state or federal agency or political subdivision for less than the appraised value without competitive bidding, upon a determination by the board that the terms are fair and proper and

in the best interests of the state. The board shall consider both the nature of the agency's or political subdivision's public services or functions and the terms under which the property was acquired by the authority.

NOTE: This amendment has been requested by ASBA and the Department of Revenue. ASBA interprets existing law to mean that it cannot dispose of its property except at fair market value. This makes it difficult and expensive for other state agencies to use excess property of ASBA for other public purposes, and prohibits ASBA from transferring into state ownership ASHA-funded projects for which the bonds have been paid off (such as the state office building in Juneau).

Amendment #2 would allow transfer of property at less than fair market value upon a determination by the ASBA board that it is in the best interest of the state.

AMENDMENT #3

page 2, after line 2 add a new paragraph to AS 18.55.255:

(c) property acquired or renovated to provide mental health community housing may be conveyed for less than the fair market value to grantees selected by the Department of Health and Social Services upon terms and conditions consistent with grants administered by the Department of Health and Social Services under AS 47.30.520 - 47.30.620.

NOTE: The FY 89 capital budget appropriated \$2,350,000 to the Department of Health and Social Services from the Mental Health Trust Account for acquisition and renovation of community housing for the mentally ill. Through an RFP process DHSS has awarded funds to non-profit grantees who, with the assistance of ASBA, are in the process of purchasing/renovating facilities. The non-profits hold title to the facilities; in the case of default the title would revert to ASBA.

Amendment #3 would authorize ASBA to transfer mental health housing properties that may revert to ASBA to another grantee for less than fair market value. The grantee would be selected by DHSS through their general grant award process.