

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 00/2

9258 HOUSE LABOR & COMMERCE

- 1 society may be licensed to transact business in this state upon filing with the director
- 2 (1) a certified copy of its articles of incorporation;
- 3 (2) a copy of its bylaws, certified by its secretary or corresponding
- 4 officer;
- 5 (3) a power of attorney to the director as prescribed in AS 21.84.625;
- 6 (4) a statement of its business under oath of its president and secretary
- 7 or corresponding officers in a form prescribed by the director, verified by an
- 8 examination made by the supervising insurance official of its home state or other state,
- 9 territory, province, or country, satisfactory to the director;
- 10 (5) certification from the proper official of its home state, territory,
- 11 province, or country that the society is legally incorporated and licensed to transact
- 12 business therein;
- 13 (6) copies of its certificate forms;
- 14 (7) information showing that its assets are invested in accordance with
- 15 the provisions of this chapter; and
- 16 (8) other information the director may consider necessary.

17 * Sec. 30. AS 21.84 is amended by adding a new section to read:

18 **Sec. 21.84.535. Suspension, revocation, or refusal of license of foreign or**

19 **alien society.** (a) When the director, upon investigation, finds that a foreign or alien

20 society transacting or applying to transact business in this state (1) has exceeded its

21 powers, (2) has failed to comply with a provision of this chapter, (3) is not fulfilling

22 its contracts in good faith, or (4) is conducting its business fraudulently or in a manner

23 hazardous to its members or creditors or the public, the director shall notify the society

24 in writing of the deficiency or deficiencies and state in writing the reasons for the

25 director's dissatisfaction. The director shall immediately issue a written order to the

26 society requiring that the deficiency or deficiencies be corrected. After receipt of the

27 order, the society shall have 30 days to comply with the director's order for correction.

28 If the society fails to comply, the director shall notify the society of the findings of

29 noncompliance and require the society to show cause on a date to be named why its

30 license should not be suspended, revoked, or refused. If, on that date, the society does

31 not present good and sufficient reason why its authority to do business in this state

1 should not be suspended, revoked, or refused, the director may suspend or refuse the
2 license of the society to do business in this state until satisfactory evidence is furnished
3 to the director that the suspension or refusal should be withdrawn, or the director may
4 revoke the authority of the society to do business in this state.

5 (b) Nothing in this section shall be construed to prevent the society from
6 continuing in good faith all contracts made in this state during the time the society was
7 legally authorized to transact business in this state.

8 * **Sec. 31.** AS 21.84 is amended by adding a new section to read:

9 **Sec. 21.84.565. Licensing of agents.** (a) Agents of societies shall be licensed
10 in accordance with the provisions of AS 21.27.

11 (b) An examination or license may not be required of a regular salaried officer,
12 employee, or member of a licensed society who devotes substantially all the person's
13 services to activities other than the solicitation of fraternal insurance contracts from the
14 public and who receives for the solicitation of fraternal insurance contracts no
15 commission or other compensation directly dependent upon the amount of business
16 obtained.

17 * **Sec. 32.** AS 21.84 is amended by adding a new section to read:

18 **Sec. 21.84.575. Unfair methods of competition and unfair and deceptive**
19 **acts and practices.** A society and an agent authorized to do business in this state are
20 subject to the provisions of AS 21.36; however, nothing in those provisions shall be
21 construed as applying to or affecting

22 (1) the right of a society to determine its eligibility requirements for
23 membership; or

24 (2) the offering of benefits exclusively to members or persons eligible
25 for membership in the society by a subsidiary corporation or affiliated organization of
26 the society.

27 * **Sec. 33.** AS 21.84 is amended by adding new sections to read:

28 **Article 7. Miscellaneous.**

29 **Sec. 21.84.625. Service of process.** (a) A society authorized to do business
30 in this state shall appoint in writing the director and the director's successors in office
31 to be its true and lawful attorney upon whom all lawful process in an action or

1 proceeding against it shall be served. The society shall agree in writing that any
2 lawful process against it that is served on the appointed attorney is of the same legal
3 force and validity as if served on the society and that the authority continues in force
4 so long as any liability remains outstanding in this state. Copies of the appointment,
5 certified by the director, are sufficient evidence of the appointment and shall be
6 admitted in evidence with the same force and effect as the original.

7 (b) Service may only be made on the director or, if the director is absent, upon
8 the person in charge of the director's office. Service shall be made in duplicate and
9 shall constitute sufficient service on the society. When legal process against a society
10 is served on the director, the director shall immediately forward one of the duplicate
11 copies by registered mail, prepaid, to the secretary or corresponding officer. Legal
12 process shall not be served on a society except in the manner provided in this section.
13 At the time of serving a process on the director, the plaintiff or complainant in the
14 action shall pay to the director a fee set under AS 21.06.250.

15 (c) A society shall respond to the service of process as provided in the Alaska
16 Rules of Civil Procedure.

17 **Sec. 21.84.650. Penalties.** (a) A person who knowingly makes a false or
18 fraudulent statement or representation in or with reference to an application for
19 membership, or for the purpose of obtaining money from or a benefit in a society, is
20 guilty of a misdemeanor and is punishable by a fine of not more than \$2,500 and is
21 liable for a civil penalty of three times the amount received by the violator as
22 compensation or commission. A civil penalty may be sued for and recovered by the
23 aggrieved person or society for the person's or society's own use and benefit.

24 (b) A person who makes a false sworn statement in a report or declaration
25 required or authorized by this chapter or in a statement concerning the death or
26 disability of an insured for the purpose of obtaining payment of a benefit named in the
27 certificate and who does not believe the statement to be true is guilty of perjury and,
28 upon conviction, is subject to the penalties prescribed by law for perjury under
29 AS 11.56.200.

30 (c) A person who solicits membership for, or in any manner assists in
31 procuring membership in, a society not licensed to do business in this state is guilty

1 of a violation and, upon conviction, is punishable by a fine of not less than \$50 or
2 more than \$200.

3 (d) A person who knowingly engages in conduct that constitutes a violation
4 of the provisions of this chapter for which a penalty is not otherwise prescribed is
5 guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than
6 \$2,500.

7 (e) In this section, "knowingly" has the meaning given in AS 11.81.900.

8 **Sec. 21.84.675. Review.** Decisions and findings of the director made under
9 the provisions of this chapter are subject to review by proceedings in a court of
10 competent jurisdiction in this state.

11 **Sec. 21.84.700. Exemption of certain societies.** (a) Nothing contained in this
12 chapter shall be construed to affect or apply to

13 (1) grand or subordinate lodges of societies, orders, or associations
14 doing business in this state that provide benefits exclusively through local or
15 subordinate lodges;

16 (2) societies, orders, or associations that admit to membership only
17 persons engaged in one or more crafts or hazardous occupations, in the same or similar
18 lines of business, and that insure only members and families of the society, order, or
19 association, and the ladies' societies or ladies' auxiliaries of the societies, orders, or
20 associations;

21 (3) domestic societies that limit their membership to employees of a
22 particular city or town, designated firm, business house, or corporation and that
23 provide for death benefits of not more than \$400 or health care benefits of not more
24 than \$350 to a person in one year, or both; or

25 (4) domestic societies or associations of a purely religious, charitable,
26 or benevolent description that provide for death benefits of not more than \$350 or
27 health care benefits of not more than \$350 to a person in one year, or both.

28 (b) A society or association described in (a)(3) or (4) of this section that
29 provides for death or health care benefits for which benefit certificates are issued and
30 a society or association described in (a)(4) of this section that has more than 1,000
31 members are not exempt from the provisions of this chapter but shall comply with the

1 requirements of this chapter.

2 (c) A society that, by the provisions of this section, is exempt from the
3 requirements of this chapter, except a society described in (a)(2) of this section, may
4 not give or allow or promise to give or allow to a person compensation for procuring
5 new members.

6 (d) A society that provides benefits for health care or death resulting solely
7 from accident and that does not obligate itself to pay natural death or health care
8 benefits has all of the privileges and is subject to all the applicable provisions and
9 regulations of this chapter, except that the provisions of this chapter relating to medical
10 examination, evaluations of benefit certificates, and incontestability do not apply to the
11 society.

12 (e) The director may require a society or association to provide, by
13 examination or otherwise, information that will enable the director to determine
14 whether the society or association is exempt from the provisions of this chapter.

15 (f) Societies that are exempt from the provisions of this chapter under the
16 provisions of this section shall also be exempt from all other provisions of the
17 insurance laws of this state.

18 * Sec. 34. AS 21.84.900 is amended to read:

19 Sec. 21.84.900. **Definitions.** In this chapter.

20 (1) "fraternal benefit society" means an incorporated society, order, or
21 supreme lodge, without capital stock, including one exempted under
22 AS 21.84.700(a)(2) [AS 21.84.020(a)], whether incorporated or not, that is conducted
23 solely for the benefit of its members and their beneficiaries and not for profit, that is
24 operated on a lodge system with ritualistic form of work, that has [HAVING] a
25 representative form of government, and that makes provision for the payment of
26 benefits under this chapter;

27 (2) "lodge system" means a society having a supreme [LEGISLATIVE
28 OR] governing body and subordinate lodges [OR BRANCHES BY WHATEVER
29 NAME KNOWN,] into which members are elected, initiated, or admitted under its
30 [CONSTITUTION,] laws, ritual, and rules; subordinate lodges [OR BRANCHES] are
31 required by the laws [LAW] of the society to hold regular meetings at least once in

1 each month in furtherance of the purposes of the society:

2 (3) "premiums" means rates, dues, or other required contribution by
3 whatever name known that are payable under the certificate:

4 (4) ["REPRESENTATIVE FORM OF GOVERNMENT" MEANS A
5 SOCIETY IN WHICH

6 (A) THERE IS PROVISION IN ITS CONSTITUTION OR
7 LAWS FOR A SUPREME LEGISLATIVE OR GOVERNING BODY,
8 COMPOSED OF REPRESENTATIVES ELECTED EITHER BY THE
9 MEMBERS OR BY DELEGATES ELECTED DIRECTLY OR INDIRECTLY
10 BY THE MEMBERS, TOGETHER WITH OTHER MEMBERS OF THE
11 BODY PRESCRIBED BY THE SOCIETY'S CONSTITUTION AND LAWS;

12 (B) THE REPRESENTATIVES ELECTED CONSTITUTE A
13 MAJORITY IN NUMBER AND HAVE NOT LESS THAN TWO-THIRDS OF
14 THE VOTES OR LESS THAN THE VOTES REQUIRED TO AMEND ITS
15 CONSTITUTION AND LAWS;

16 (C) THE MEETINGS OF THE SUPREME LEGISLATIVE OR
17 GOVERNING BODY AND THE ELECTION OF OFFICERS,
18 REPRESENTATIVES, OR DELEGATES ARE HELD AS OFTEN AS ONCE
19 IN FOUR CALENDAR YEARS;

20 (D) THE SOCIETY HAS A BOARD OF DIRECTORS
21 CHARGED WITH THE RESPONSIBILITY FOR MANAGING ITS AFFAIRS
22 IN THE INTERIM BETWEEN MEETINGS OF ITS SUPREME
23 LEGISLATIVE OR GOVERNING BODY, SUBJECT TO CONTROL BY
24 THE BODY AND HAVING POWERS AND DUTIES DELEGATED TO IT
25 IN THE CONSTITUTION OR LAWS OF THE SOCIETY;

26 (E) THE BOARD OF DIRECTORS IS ELECTED BY THE
27 SUPREME LEGISLATIVE OR GOVERNING BODY, EXCEPT IN CASE OF
28 FILLING A VACANCY IN THE INTERIM BETWEEN MEETINGS OF THE
29 BODY;

30 (F) THE OFFICERS ARE ELECTED EITHER BY THE
31 SUPREME LEGISLATIVE OR GOVERNING BODY OR BY THE BOARD

1 OF DIRECTORS; AND

2 (G) THE MEMBERS, OFFICERS, REPRESENTATIVES, OR
3 DELEGATES MAY NOT VOTE BY PROXY;

4 (5)] "society," unless otherwise indicated, means a fraternal benefit
5 society:

6 * **Sec. 35.** AS 21.84.900 is amended by adding new paragraphs to read:

7 (5) "alien society" means a society formed under the laws other than
8 those of the United States of America, its states, territories, or the District of
9 Columbia;

10 (6) "benefit contract" means the agreement for provision of benefits
11 authorized by AS 21.84.201, as that agreement is described in AS 21.84.255(a);

12 (7) "benefit member" means an adult member who is designated by the
13 laws or rules of the society to be a benefit member under a benefit contract;

14 (8) "certificate" means the document issued as written evidence of the
15 benefit contract;

16 (9) "domestic society" means a society formed under the laws of this
17 state;

18 (10) "foreign society" means a society formed under the laws of
19 another state, a territory belonging to the United States of America, or the District of
20 Columbia;

21 (11) "laws" means the society's articles of incorporation, constitution,
22 and bylaws, however designated;

23 (12) "lodge" means subordinate member units of the society known as
24 camps, courts, councils, branches, or another designation;

25 (13) "rules" means all rules, regulations, or resolutions adopted by the
26 supreme governing body or board of directors that are intended to have general
27 application to the members of the society.

28 * **Sec. 36.** AS 21.84.010, 21.84.020, 21.84.030, 21.84.040, 21.84.050, 21.84.110,
29 21.84.130(b), 21.84.130(c), 21.84.140, 21.84.150, 21.84.160, 21.84.170(b), 21.84.180,
30 21.84.190, 21.84.200, 21.84.210, 21.84.220, 21.84.250, 21.84.260, 21.84.270, 21.84.280,
31 21.84.300, 21.84.310, 21.84.320(c), 21.84.330, 21.84.340, 21.84.350, 21.84.360, 21.84.370,

- 1 21.84.380, 21.84.390, 21.84.470, 21.84.480, 21.84.490, 21.84.500, 21.84.510, 21.84.520.
- 2 21.84.550, and 21.84.590 are repealed.
- 3 * Sec. 37. This Act takes effect January 1, 1998.

HB

18

ALASKA STATE LEGISLATURE
House of Representatives



Labor and Commerce Committee

1/28/97 - 3:36pm

Mary Lou Elton

463-5152

hb 18- how did
members sign report.
Pls. call

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 18

Revision Date: _____
Title: "An Act extending to certain partnerships and corporations the 10 percent procurement preference..."

Department Affected: Administration
BRU: General Services

Sponsor: James
Requestor: (H) I&C

Component: Purchasing
COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER * CIP receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill extends the 10% bid evaluation preference for an Alaska bidder who is a sole proprietor with a disability to partnerships if each partner has a disability and to corporations if wholly owned by individuals with disabilities. The 10% evaluation preference is in addition to other preferences the bidder may qualify for. Under this bill, agency personnel evaluating quotes, bids, or RFPs must calculate the 10% preference for the additional entities if they appear on the disabled vendor list maintained by the Department of Education, Division of Vocational Rehabilitation.

Prepared by: Duqan Petty, Director
Division: General Services

Phone: 465-2250
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/21/97

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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 1/24/97

The LABOR AND COMMERCE Committee considered:

HB 18

HOUSE BILL NO. 18

STATE PROCUREMENT DISABILITY PREFERENCES

"An Act extending to certain partnerships and corporations the 10 percent procurement preference currently given to certain sole proprietorships who are Alaska bidders and owned by persons with disabilities."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal note(s) _____

[] fiscal note(s) _____

zero fiscal note(s) ADN


[] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John Anderson</i>	<input checked="" type="checkbox"/>			
<i>James Sanders</i>			<input checked="" type="checkbox"/>	
<i>Jim Ryan</i>			<input checked="" type="checkbox"/>	
<i>Bill Hulse</i>	<input checked="" type="checkbox"/>			
<i>Nam Kately</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE

Nam Kately

1/24/97

PHONE MESSAGE		DATE 1/29	TIME 9 <small>(A.M. P.M.)</small>
FOR	<i>Shiley</i>		<input type="checkbox"/> URGENT <input checked="" type="checkbox"/> PHONED <input type="checkbox"/> RETURNED YOUR CALL <input checked="" type="checkbox"/> PLEASE CALL BACK <input type="checkbox"/> WILL CALL AGAIN <input type="checkbox"/> WAS IN <input type="checkbox"/> WANTS TO SEE YOU
M	<i>Mary Lou Elton</i>		
OF			
PHONE ()	<i>463-5152</i>	EXT.	
<input type="checkbox"/> FAX <input type="checkbox"/> MOBILE <input type="checkbox"/> PAGER ()			
MESSAGE	<i>Wble Craft + Kuboma at meeting re hb 18 on Friday. She noticed neither one signed report</i>		
		SIGNED <i>fi</i>	

1/23/97
9:50am

Walt - from James'

Tomer news 6819
hb 18 hearing

witness: 1) Duyen Pette 209

2) Telecom w/ Duane

French - DVR

274-5630

plz make arrangements
for telecom

fiscal note from

Def Admin

com. (should be)

Thanks

James

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-4271

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House Of Representatives
House District 34

To: Rep. Rokeberg
From: Rep. James
Re: L & C hearing request for HB 18
1/14/96

Please schedule HB 18 for a hearing
as soon as possible. A bidders preference bill.
This Bill Passed & was vetoed by
the Governor 2 years ago. Last year
the Bill died in the adjournment rush.
No opposition to Bill known. Gov.
will not veto this time.
Walt Wilcox will be staff Thank you
on this Bill

1/14/97 - Called for fiscal note to Don Kauri for
HB18

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-4271



While in Juneau
State Capitol
Juneau, Alaska
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House Of Representatives
House District 34

SPONSOR STATEMENT

HB 18 PROCUREMENT PROCEDURES/ DISABLED PERSONS 1/18/97

House Bill 18 will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences

Current law allows disabled owned sole proprietorships to take advantage of certin disabled bidder preferences.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allows sole proprietorships

HB 18 has a zero fiscal note.

HB 18 is supported by the impacted Departments of Education and Administration.

The Legislature passed this Bill 2 years ago and the Governor vetoed it in error, last year it was lost in the rush of adjournment.

There is no known opposition.

The intent of this legislation is to create fairness.

Please contact me or Walt Wilcox if there are any questions.

HOUSE BILL NO. 18

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE JAMES

Introduced: 1/13/97

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act extending to certain partnerships and corporations the 10 percent
2 procurement preference currently given to certain sole proprietorships who are
3 Alaska bidders and owned by persons with disabilities."

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

5 * Section 1. AS 36.30.170(e) is amended to read:

6 (e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a
7 qualifying entity [SOLE PROPRIETORSHIP OWNED BY AN INDIVIDUAL WHO
8 IS A PERSON WITH A DISABILITY], and is the lowest responsible and responsive
9 bidder with a bid that is not more than 10 percent higher than the lowest bid, the
10 procurement officer shall award the contract to that bidder. This subsection does not
11 give a bidder who would otherwise qualify for a preference under this subsection a
12 preference over another bidder who would otherwise qualify for a preference under this
13 subsection or (f) of this section. In this subsection, "qualifying entity" means a
14 (1) sole proprietorship owned by a person with a disability;

1 (2) partnership if each of the partners is a person with a disability;

2 or

3 (3) corporation that is wholly owned by individuals and each of the

4 individuals is a person with a disability.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

DIVISION OF VOCATIONAL REHABILITATION

CENTRAL OFFICE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894
PHONE: (907) 465-2814 (V/TDD)
FAX: (907) 465-2856

December 7, 1994

Karl Brothers Inc.
P.O. Box 58040
Fairbanks, Alaska 99711

Certification AS. 36.30.170

Dear Mr. Karl:

I have reviewed your request for a bidder preference as a sole proprietor and determined that you do not qualify. I have based this decision on the fact that your corporation is not a sole proprietorship.

If the status of you business changes as we have discussed please reapply for certification at the time such a change occurs.

Thank you for you interest.

Sincerely,



Stan Ridgeway
Deputy Director



March 22, 1995

The Honorable Jeannette James
Alaska State Representative
Room 102, State Capitol
Juneau, Ak. 99801-1182

Dear Representative James:

As you may know, Karl Brothers, Inc., is a 100% handicapped owned business, certified by the U.S. Small Business Administration under Section 8(a) and by the Alaska Department of Transportation and Public Facilities as a Disadvantaged Business Enterprise. Karl Brothers offers complete contractor support services and equipment leasing capabilities and other services as shown in the attached brochure (Attachment 1).

Last year, we applied for certification under the bidders' preference law. As you can see in the attached correspondence with the State Division of Vocational Rehabilitation, our application was denied (Attachment 2). We believe the denial, while it may be in accord with the exact language of the law, violates the clear intent of this law, to promote businesses owned by disabled persons.

I am asking you to sponsor corrective legislation as shown in Attachment 3, or an amendment to a related procurement bill, as shown in Attachment 4. I believe this change to the law would allow the division of Vocational Rehabilitation to follow the intent of the original legislation.

Please let me know if you would be willing to sponsor such a bill, and whether any additional information would be helpful to you during the legislative process. I am also asking Senator Sharp for sponsorship in the other house. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "T. A. Karl".

Thomas A. Karl
President

Attachments

**100% Handicapped
Owned**



**U.S. Small Business
Administration
Section 8(a) Certified**



**State of Alaska
Department
of Transportation
and Public Facilities
DBE Certification
9409002**

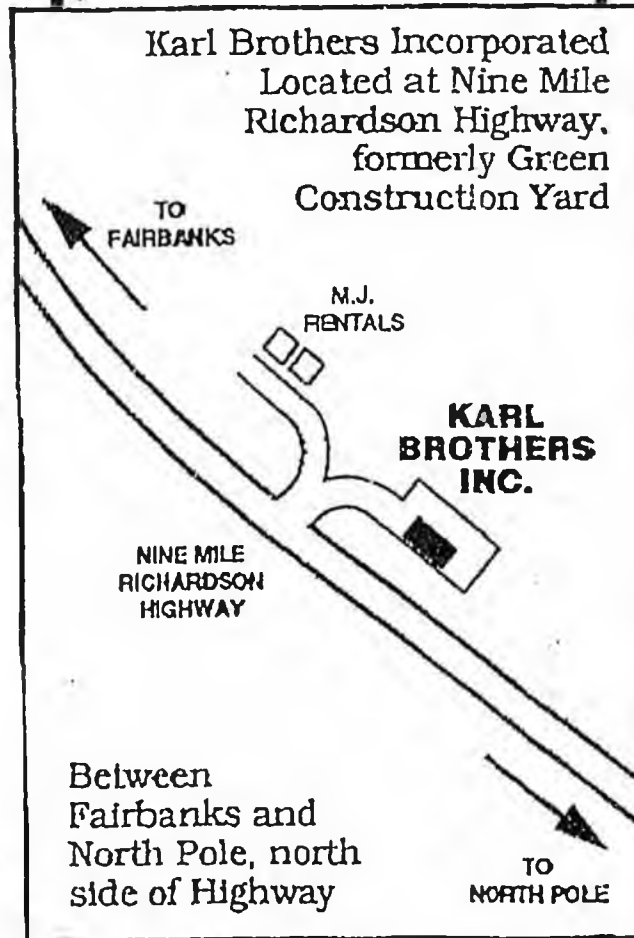


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General Contractors
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22689**



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in Peoria, Illinois**

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Services for all of Your
Contracting Requirements**



**Karl Brothers Incorporated
P.O. Box 58040
Fairbanks, Alaska 99711**

**Phone (907) 488-9053
Fax (907) 488-9346**

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Alaska State Legislature

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While in Juneau
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House of Representatives
House District 34

SPONSOR STATEMENT **HB 288 PROCUREMENT PROCEDURES** **/DISABLED PERSONS**

May 2, 1995

This Bill will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences

Current law allows disabled owned sole proprietorships to take advantage of the disabled bidder preference.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allow sole proprietorships

The Bill passed out of Committee with a zero fiscal note.

The Bill is supported by the Departments of Education and Administration.

The intent of this legislation is to create fairness.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

RECEIVED BY
APR 10 1995
Rep. Jeannette James
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 10, 1995

SUBJECT: Procurement preference in CSHB 288() (Work Order 9-LS0992\G,
4-10-95)

TO: Representative Jeannette James
Attn: Walt
JB

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the committee substitute that you requested for HB 288, relating to procurement preferences. In this draft, you amend the Alaska bidder definition to limit it to persons that have maintained and staffed a particular place of business in the state for six months that offers the supplies, services, or construction of the general nature solicited by the agency.

Please note that although a state agency is given some leeway to prefer its own residents, the new language still may raise constitutional issues when it imposes the six months' requirement. It raises a state equal protection issue because it discriminates against other state residents with a shorter residency. Although the federal equal protection test is fairly relaxed in a situation like this, the provision may also raise an equal protection issue under the federal constitution if the basic rationale for the six months' requirement is economic protectionism. The provision may also raise a privileges and immunities issue under the federal constitution if its practical application is too broad and the nature of the right involved is considered a fundamental right. The provision raises a freedom of interstate travel issue under the federal constitution because it discriminates against those persons who have moved to the state less than six months before the date of the bid.

These problems exist with the current language as well. If you would like further research done on this matter, please advise.

If I may be of further assistance, please advise.

TLB:glc
95-275.glc

Enclosure



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Capitol Building

Juneau, AK 99801-2197

(907) 465-3743 ph

(907) 465-2381 fax

Sponsor Statement HB 369

March 15, 1996

HB 369 PROCUREMENT PROCEDURES/DISABLED PERSONS

This Bill will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences.

Current law allows disabled owned sole proprietorships to take advantage of current disabled bidder preferences.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allow sole proprietorships

The Bill has a zero fiscal note.

The Bill is supported by the Departments of Education and Administration.

HB 369 is the same as HB 288 from last session.

HB 288 passed both the House and the Senate and was subsequently vetoed by the Governor due to last minute riders tacked on in the Senate by the Governor's staff. The Governor's office apologized and said the bill will be supported this time.

The intent of this legislation is to create fairness.

There is no known opposition.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 18

Revision Date: _____
Title: "An Act extending to certain partnerships and corporations the 10 percent procurement preference..."

Department Affected: Administration
BRU: General Services

Sponsor: James
Requestor: (H) I.&C.

Component: Purchasing
COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER * CIP receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill extends the 10% bid evaluation preference for an Alaska bidder who is a sole proprietor with a disability to partnerships if each partner has a disability and to corporations if wholly owned by individuals with disabilities. The 10% evaluation preference is in addition to other preferences the bidder may qualify for. Under this bill, agency personnel evaluating quotes, bids, or RFPs must calculate the 10% preference for the additional entities if they appear on the disabled vendor list maintained by the Department of Education, Division of Vocational Rehabilitation.

Prepared by: Duqan Petty, Director
Division: General Services

Phone: 465-2250
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/21/97

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Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES

P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-4271

Write in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House Of Representatives

House District 34

To: Rep. Rokberg
From: Rep. James
Re: L & C hearing request for HB 18
1/14/96

Please schedule HB 18 for a hearing
as soon as possible. A bidders preference bill.
This Bill Passed & was vetoed by
the Governor 2 years ago. Last year
the Bill died in the adjournment rush.
No opposition to Bill known. Gov.
will not veto this time.
Walt Wilcox will be staff Thank you
on this Bill

1/10/97 - Called for fiscal note to Don Kamin for
HB 18

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-4271



While In Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House Of Representatives
House District 34

SPONSOR STATEMENT

HB 18 PROCUREMENT PROCEDURES/ DISABLED PERSONS 1/18/97

House Bill 18 will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences

Current law allows disabled owned sole proprietorships to take advantage of certin disabled bidder preferences.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allows sole proprietorships

HB 18 has a zero fiscal note.

HB 18 is supported by the impacted Departments of Education and Administration.

The Legislature passed this Bill 2 years ago and the Governor vetoed it in error, last year it was lost in the rush of adjournment.

There is no known opposition.

The intent of this legislation is to create fairness.

Please contact me or Walt Wilcox if there are any questions.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION
DIVISION OF VOCATIONAL REHABILITATION

*CENTRAL OFFICE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894
PHONE: (907) 465-2814 (V/TDD)
FAX: (907) 465-2856*

December 7, 1994

Karl Brothers Inc.
P.O. Box 58040
Fairbanks, Alaska 99711

Certification AS. 36.30.170

Dear Mr. Karl:

I have reviewed your request for a bidder preference as a sole proprietor and determined that you do not qualify. I have based this decision on the fact that your corporation is not a sole proprietorship.

If the status of you business changes as we have discussed please reapply for certification at the time such a change occurs.

Thank you for you interest.

Sincerely,



Stan Ridgeway
Deputy Director



March 22, 1995

The Honorable Jeannette James
Alaska State Representative
Room 102, State Capitol
Juneau, Ak. 99801-1182

Dear Representative James:

As you may know, Karl Brothers, Inc., is a 100% handicapped owned business, certified by the U.S. Small Business Administration under Section 8(a) and by the Alaska Department of Transportation and Public Facilities as a Disadvantaged Business Enterprise. Karl Brothers offers complete contractor support services and equipment leasing capabilities and other services as shown in the attached brochure (Attachment 1).

Last year, we applied for certification under the bidders' preference law. As you can see in the attached correspondence with the State Division of Vocational Rehabilitation, our application was denied (Attachment 2). We believe the denial, while it may be in accord with the exact language of the law, violates the clear intent of this law, to promote businesses owned by disabled persons.

I am asking you to sponsor corrective legislation as shown in Attachment 3, or an amendment to a related procurement bill, as shown in Attachment 4. I believe this change to the law would allow the division of Vocational Rehabilitation to follow the intent of the original legislation.

Please let me know if you would be willing to sponsor such a bill, and whether any additional information would be helpful to you during the legislative process. I am also asking Senator Sharp for sponsorship in the other house. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "T. A. Karl".

Thomas A. Karl
President

Attachments

**100% Handicapped
Owned**



**U.S. Small Business
Administration
Section 8(a) Certified**



**State of Alaska
Department
of Transportation
and Public Facilities
DBE Certification
9409002**



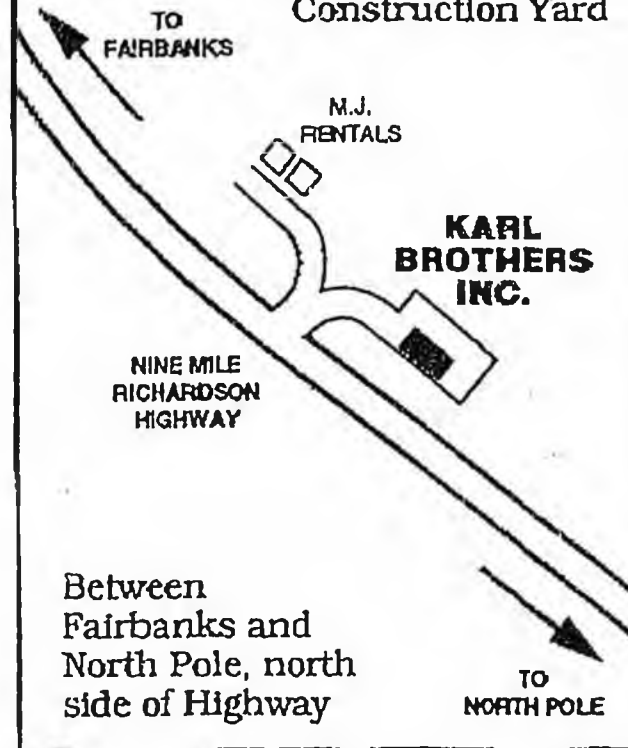
**State of Alaska
General Contractors
License
22689**



**Branch Office
in Peoria, Illinois**

**Equipment and Professional
Services for all of Your
Contracting Requirements**

Karl Brothers Incorporated
Located at Nine Mile
Richardson Highway,
formerly Green
Construction Yard



**Karl Brothers Incorporated
P.O. Box 58040
Fairbanks, Alaska 99711**

Phone (907) 488-9053

Fax (907) 488-9346



**Complete
Contractor
Support
Services and
Equipment
Leasing
Capabilities**

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives
House District 34

SPONSOR STATEMENT **HB 288 PROCUREMENT PROCEDURES** **/DISABLED PERSONS**

May 2, 1995

This Bill will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences

Current law allows disabled owned sole proprietorships to take advantage of the disabled bidder preference.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allow sole proprietorships

The Bill passed out of Committee with a zero fiscal note.

The Bill is supported by the Departments of Education and Administration.

The intent of this legislation is to create fairness.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

RECEIVED BY
APR 10 1995
Rep. Jeannette James
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 10, 1995

SUBJECT: Procurement preference in CSHB 288() (Work Order 9-LS0992\G,
4-10-95)

TO: Representative Jeannette James
Attn: Walt

FROM: *JB*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the committee substitute that you requested for HB 288, relating to procurement preferences. In this draft, you amend the Alaska bidder definition to limit it to persons that have maintained and staffed a particular place of business in the state for six months that offers the supplies, services, or construction of the general nature solicited by the agency.

Please note that although a state agency is given some leeway to prefer its own residents, the new language still may raise constitutional issues when it imposes the six months' requirement. It raises a state equal protection issue because it discriminates against other state residents with a shorter residency. Although the federal equal protection test is fairly relaxed in a situation like this, the provision may also raise an equal protection issue under the federal constitution if the basic rationale for the six months' requirement is economic protectionism. The provision may also raise a privileges and immunities issue under the federal constitution if its practical application is too broad and the nature of the right involved is considered a fundamental right. The provision raises a freedom of interstate travel issue under the federal constitution because it discriminates against those persons who have moved to the state less than six months before the date of the bid.

These problems exist with the current language as well. If you would like further research done on this matter, please advise.

If I may be of further assistance, please advise.

TLB:glc
95-275.glc

Enclosure



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Capitol Building

Juneau, AK 99801-2197

(907) 465-3743 ph

(907) 465-2381 fax

Sponsor Statement HB 369

March 15, 1996

HB 369 PROCUREMENT PROCEDURES/DISABLED PERSONS

This Bill will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences.

Current law allows disabled owned sole proprietorships to take advantage of current disabled bidder preferences.

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The Bill has a zero fiscal note.

The Bill is supported by the Departments of Education and Administration.

HB 369 is the same as HB 288 from last session.

HB 288 passed both the House and the Senate and was subsequently vetoed by the Governor due to last minute riders tacked on in the Senate by the Governor's staff. The Governor's office apologized and said the bill will be supported this time.

The intent of this legislation is to create fairness.

There is no known opposition.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 18

Revision Date: _____
Title: "An Act extending to certain partnerships and corporations the 10 percent procurement preference..."

Department Affected: Administration
BRU: General Services

Sponsor: James
Requestor: (H) I.&C

Component: Purchasing
COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER * CIP receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill extends the 10% bid evaluation preference for an Alaska bidder who is a sole proprietor with a disability to partnerships if each partner has a disability and to corporations if wholly owned by individuals with disabilities. The 10% evaluation preference is in addition to other preferences the bidder may qualify for. Under this bill, agency personnel evaluating quotes, bids, or RFPs must calculate the 10% preference for the additional entities if they appear on the disabled vendor list maintained by the Department of Education, Division of Vocational Rehabilitation.

Prepared by: Dugan Petty, Director *[Signature]*
Division: General Services

Phone: 465-2250
Date: _____

Approved by Commissioner: Mark Boyer *[Signature]*
Agency: Department of Administration

Date: 1/21/97

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HB

30

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 30

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Civil liability for skateboarding BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Mulder
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CC*
 Agency: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System

Phone: 264-8228
 Date: 01/28/97
 Date: 01/28/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HR 30

Title: CIVIL LIABILITY FOR
SKATEBOARDING
Sponsor: REP. MULDER
Requestor: L & C

Dept. Affected NOLIE
BRU: _____
Components: _____
Serial #: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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)

see attached analysis

Prepared by:

Tim Sullivan Staff - Rep. Mulder
2.7 JAN 97
LEGISLATURE

Date: 27 JAN 97

Phone: 465-2647

Phone: 465-2647

APPROVED BY:
AGENCY:

Around the State

City hall phones having problems

JUNEAU - Phones in city hall have been quiet, too quiet.

In many offices the phones aren't ringing when there is a call, so nobody answers, said assistant clerk Evelyn Stott.

Among the problem areas are the assessor's office, the director of finance, the Community Development and Engineering Department, the treasury office, the Parks and Recreation Department, and the Purchasing Department. Other departments may also be having difficulty, Stott said.

Telephone repair crews are working on the problem. Meanwhile, the phones are still working for the clerk, city manager and mayor and they can pass on messages.

"If they've been trying and the phone is just ringing and ringing and ringing then please give us a call and we'll try to get them a message to have them call back," Stott said.

Skate park before Planning Commission

JUNEAU - High school students backing a new skateboard and mountain bike park hope to take another leap forward tonight. Their proposal goes before the Planning Commission for a conditional use permit to use Bus Barn Park for their facility.

The students, working on a class project, already received approval for their Mendenhall Loop Road site from a Parks and Recreation Department committee. The project also requires an OK from the Juneau Assembly and various other permits.

As they go before the Planning Commission tonight, the students are on the cusp of learning whether their project will be funded. They expect to hear back on two major funding requests in February, according to Therese Ambrosi Smith, Parks and Recreation director.

"It'll either end up being a project or it will end up being a learning experience. Either way, they should know in the next couple of weeks," Smith said.

Sanders hearing delayed

JUNEAU - An ethics complaint hearing involving Rep. Jerry Sanders, an Anchorage Republican, was postponed until today because the representative was too ill to appear at a meeting Monday night.

Sanders is expected to deny the charge that he violated ethics rules by using state office supplies and time to send out a political letter. Sanders maintains he's done nothing wrong and has called the citizen-led Select Committee on Legislative Ethics a "kangaroo" commission attempting to persecute him.

The ethics committee recommended he be removed from his committee chairmanship, be forced to apologize on the House floor and not be allowed to use legislative money for travel outside Alaska. Sanders refused to testify before that committee.

Coast Guard pays \$602,000 penalty

KODIAK - The Coast Guard has agreed to pay a penalty of \$602,260 to settle a pollution complaint with the Environmental Protection Agency.

A Coast Guard contractor in Kodiak incinerated buildings that contained lead-based paint and failed to clean up the contamination in 1994, Alaska EPA Director Rick Albright said.

In addition, the Coast Guard also dumped solvents from a laundry facility in 1994 and failed to monitor ground water, Albright said. The Coast Guard has since cleaned up both problems, he said.

...n house of
...anked her fans for helping her
dream.

Jewel, who started her music career a 6-year-old in Homer, Alaska, said her mother were living in San Diego when she got off from a job at age 18. The two of them drove into their cars, and Jewel began singing in houses.

The woman-of-the-year magic didn't stop for anyone. Mariah Carey - last year's female artist in both pop-rock and soul - won all of her leading five nominations.

In all, 20 trophies were awarded in an annual ceremony, broadcast by ABC from the Auditorium.

Winners of the American Music Awards were selected by a national sampling of about 100 voters, who chose from nominees compiled by music industry publications.

Garth Brooks was once again favorite country artist, his 11th AMA honor. Shania Twain was country's favorite female artist.

Brooks & Dunn roped the trophy for best male duo or group, and George Strait's "Blue Clear Skies" received the category's album award.

Pop-rock winners included Eric Clapton as favorite male artist, and Hootie & The Blowfish as favorite band, duo or group.

Efforts to salvage fertilizer barge held up by bad weather

THE ASSOCIATED PRESS

HOMER - Stormy seas Monday put on hold efforts to salvage an overturned barge that spilled 12,500 tons of urea fertilizer into Cook Inlet over the weekend.

The 400-foot barge Oregon was being towed behind a tug in Kachemak Bay while Coast Guard officials waited for a break in the weather to decide where to take it.

The Oregon flipped over early Saturday about 5 miles west of Ninilchik. Coast Guard officials said it capsized after it collided with the tug that was towing it. The tug is thought to have punctured a hole in a ballast tank.

Urea is a crystalline compound that dissolves in water. It was manufactured at Unocal Corp.'s fertilizer plant in Nikiski and was being shipped to Sacramento, Calif.

The compound breaks down to carbon dioxide and ammonia, Unocal said. The Coast Guard said it does not think the fertilizer poses a threat to the inlet.

The Oregon still is carrying 1,600 gallons of diesel fuel, which officials said does not appear to be leaking.

At a community meeting in Homer Monday to discuss the situation, some residents told offi-

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SHOWTIME HOTLINE 463-FLEX (3549)

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AMENDMENT 1

OFFERED IN THE HOUSE

TO: HB 30

1 Page 2, line 14, following "safely":

2 Insert "; in the case of a minor who uses a municipal skateboard facility, the minor's
3 parent or legal guardian is responsible for determining whether the minor satisfies the
4 requirements of this paragraph"

5 Page 3, line 18, following "ability":

6 Insert "; in the case of a skateboarder who is a minor, the minor's parent or legal
7 guardian is responsible for determining whether the minor satisfies the requirements of this
8 paragraph"

*Price objected
to 1 + 2 for
adopted by
the committee.*

AMENDMENT 2

*Adopted
no objection*

OFFERED IN THE HOUSE

TO: HB 30

1 Page 3, following line 13:

2 Insert a new subsection to read:

3 "(c) A municipality shall clearly delineate the boundaries of a municipal
4 skateboard facility with fencing or another type of enclosing or surrounding structure."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 30

1 Page 1, line 1:

2 Delete "civil liability for"

3 Page 2, following line 10:

4 Insert new material to read:

5 "Sec. 05.50.025. Prohibition of skateboarding in undesignated places. (a)

6 A person may not skateboard on public or private property without the written
7 permission of the property owner unless the property is posted with signs that clearly
8 indicate that the property is available for skateboarding.

9 (b) In addition to being subject to civil liability under AS 05.50.020, a person
10 who violates this section is guilty of a violation and, upon conviction, the court may
11 impose a fine of not more than \$50."

*Sponsor of
HB 30 objected
to amend.
Chair indicated
he would leaf
through it in
Jed*

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX (907) 258-2916

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

JUST THE FAX

Date: 1/25/97

TO: LAA Legal / Jerry Lauterbach

FAX: 2029 Telephone 2450

FROM: Representative Norman Rokeberg

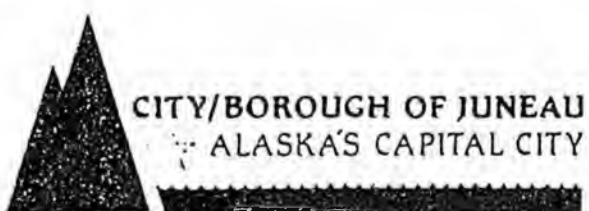
FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 3 (including this page)

Comments: Attached are 2 amendments that
were adopted for HB30. Please prepare a
committee substitute for HB30 for Labor and
Commerce Committee

Shirley
Shirley Arting

Have A Nice Day



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

JAN 28 1997
*received
4:00pm*

OFFICE OF THE MAYOR

January 27, 1997

The Honorable Eldon Mulder
Representative
Alaska State Legislature
Alaska State Capital, Rm 501
Juneau, Alaska 99801-1182

RE: House Bill 30

EL Don
Dear Representative Mulder:

On behalf of the City & Borough of Juneau Assembly, I am writing to express our support for House Bill 30, pending legislation limiting municipal liability for skate park operation. The introduction of this bill is timely for Juneau's youth; a group of students from Juneau Douglas High School has undertaken a class project to construct a skate facility on borough land. Of concern to the Borough Assembly is liability for skate park operation.

In their proposal for the skate park, the youth included a summary of survey data substantiating the need for the facility. From the data they gathered at three schools, we learned that over 80% of our youth roller skate, in-line skate, skate board or BMX bike. We suspect that recreation patterns in Juneau are similar to those in other Alaskan communities. Like other municipalities, we have no facility to accommodate these activities. An Alaska law limiting a municipality's exposure to liability for park operation will go a long way towards enabling us to accommodate our youth without breaking the budget.

Please contact me if I can provide additional information regarding our efforts to provide a venue for skating in Juneau. Thank you for your effort on behalf of Alaskan skaters.

Sincerely,

Dennis Egan
Dennis Egan
Mayor

*received
4:00pm*

Municipality of Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499
<http://www.ci.anchorage.ak.us>

Rick Mystrom, Mayor

OFFICE OF THE MAYOR

January 23, 1997

Representative Eldon Mulder
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: House Bill No. 30. "An Act relating to civil liability for skateboarding"

Dear Eldon:


There is significant community interest in a municipal skateboard park and our 1997 Capital Improvement Budget includes plans for construction of one.

Like alpine skiing, skateboarding is an active sport that includes numerous inherent risks of injury. Before construction of a municipal skateboard park, the Municipality of Anchorage desires adoption of a statute that would insulate it from claims arising from the hazards inherent in skateboarding.

House Bill 30 helps fulfill that need and will eliminate a roadblock to the completion of this long awaited facility.

Thank you for your assistance with this legislation.

Sincerely,


Rick Mystrom
Mayor

"City of Lights and Flowers"

SPONSOR STATEMENT HOUSE BILL 30

by
Representative Eldon Mulder

HB 30 was introduced at the request of the Municipality of Anchorage.

The municipality would like to create a skateboard park so skateboarders will have a place to ride, rather than using other areas designed for pedestrians. Anchorage and Fairbanks are willing to develop areas suitable for skateboard riding if they can be insulated from liability for claims arising from hazards inherent in skateboarding.

The intent of House Bill 30 is to encourage the municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily. The bill applies only to municipal skateboard parks.

This bill is patterned after the legislation passed providing this limited protection to ski areas. The protection from liability relates to inherent dangers and risks of skateboarding. The municipality is required to post signs warning that there are inherent risks and the liability rests with the skateboarder. It was amended in the Judiciary Committee to make it certain that the parks are not required to have on-site supervision provided by the municipality.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

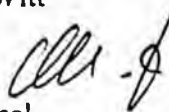
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 23, 1997

SUBJECT: Sectional Summary of HB 30

TO: Representative Eldon Mulder
Attn: Dennis DeWitt

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1

Sec. 05.50.010. - Prohibits a person from bringing a lawsuit against a municipality, for an injury resulting from an inherent danger and risk of skateboarding at a municipal skateboarding facility.

Sec. 05.50.020. - Describes the effect of a violation of AS 05.50. A municipality or other person who violates AS 05.50 is negligent and civilly liable to the extent the violation causes injury or property damage. Provides that if an injury occurs and an inherent danger and risk of skateboarding was a contributory factor or the injured person violated a provision of AS 05.50, that a municipality is not liable unless the municipality also violated a provision of AS 05.50.

Sec. 05.50.030. - Sets out the duties of a person who uses a municipal skateboarding facility.

Sec. 05.50.040. - Requires that municipalities maintain a sign system for protection and instruction of skateboarders.

Sec. 05.50.050. - Sets out the duties and responsibilities of a skateboarder who uses a municipal skateboarding facility.

Representative Eldon Mulder

January 23, 1997

Page 2

Sec. 05.50.060. - Requires that a municipality must allow a person participating in a skateboard competition to visually inspect the course or area. Provides that a person participating in a skateboard competition assumes certain risks and cannot hold the municipality liable for the assumed risks.

Sec. 05.50.100. - Definitions.

Section 2. Applicability section.

Section 3. Effective date.

MFF:jdr

97-042.jdr



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMORANDUM

DATE: January 23, 1997

TO: Representative Norm Rokeberg, Chair
House Labor & Commerce Committee

FROM: Representative Eldon Mulder

RE: House Bill 30

House Bill 30 has been referred to the Labor & Commerce Committee for consideration. The bill will provide limited protections from the risks inherent to skateboarding for municipalities. This is similar to the limitation on liability that we granted to ski areas.

Please schedule HB 30 for hearing as early as possible. It is important it receives early consideration so that the Municipality of Anchorage and the Fairbanks North Star Borough can proceed with the development of skateboard parks this Spring.

Included are copies of HB 30, sponsor statement, and bill sectional.



January 29, 1997

Representative Eldon Mulder
State Capital
Juneau, AK 99801

Dear Representative Mulder:

Thank you for introducing HB 30, relating to civil liability for skateboarding. This issue is becoming increasingly important for municipalities around the state and we support its passage.

As stated in the 1997 AML Policy Statement, which was adopted unanimously by AML members at their November conference:

C. Liability Issues


1. Liability for Injury in Recreational Activities: The League supports legislation that would limit the liability of a government, organization, volunteer, or private property owner providing recreational activities, facilities, and trail easements.

There is increasing pressure on local governments to provide additional recreational areas for young people, but they are reluctant to do so because of the unacceptable risk to their taxpayers. With passage of HB 30, those municipalities would be able to provide a safe place for skateboarders without putting the rest of the population at financial risk.

This issue is also a part of our 1997 Legislative Platform (attached). We believe providing recreational opportunities for youth will give communities more tools to help reduce youth crime.

Thanks again for your continued support.

Sincerely,


Kevin C. Ritchie
Executive Director

Attachment

c:\jk\leg97\hb30ltr.doc



**Alaska Municipal League &
Alaska Conference of Mayors
1997 Legislative Platform**

1. Approval of the "Safe Communities" bill and maintain current funding for municipal revenue sharing to avoid further state generated local property tax increases. The "four legs" of the Safe Communities bill are:
 - Directs the funds to be used primarily for public safety and health services
 - Establishes a minimum sharing of \$40,000 for small municipalities
 - Removes the "hold harmless" to allow equal treatment to all municipalities
 - Distributes municipal funds on July 31 each year
2. Provide for the long term construction, operation, and maintenance of state and municipal airports, roads, and harbors, including revenue sharing programs for maintenance. Bring state harbors up to an adequate maintenance level through a statewide bond issue, or other funds, to prepare them for possible negotiated transfer to municipalities.
3. Approval of a Long Range Financial Plan that prohibits unfunded mandates and unfunded service responsibilities, adequately funds schools and maintenance of public infrastructure, reasonably reduces state expenses, protects the Permanent Fund, and phases in new tax revenue sources.
4. Actively encourage the construction of a natural gas pipeline with an emphasis on jobs for Alaskans.
5. Restore funding for Municipal Capital Matching Grant Program to \$20 million because local communities can most efficiently determine and meet local capital needs.
6. Create a permanent State/Local Government Partnership Council to negotiate methods to most efficiently provide public services at the lowest possible cost to taxpayers.
7. Provide long term funding of public safety and health services through the equitable sharing of increased statewide alcohol and tobacco taxes, and removing the current prohibition against municipalities voting for local special taxes on the sale or use of alcohol.
8. Reduce the state unfunded mandate for the Senior Citizen Property Tax exemption.
9. Adequately fund a program to construct efficient sanitation systems throughout Alaska.
10. Give communities more tools to reduce youth crime by limiting confidentiality of youth crime information to protect the community, allow municipalities the option of assuming greater jurisdiction over juvenile justice, and limit liability for providing recreational opportunities for youth, such as skateboard parks.

HB

31

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
REPRESENTATIVE BILL HUDSON
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REPRESENTATIVE JERRY SANDERS
REPRESENTATIVE TOM BRICE
REPRESENTATIVE GENE KUBINA
COMMITTEE HEARING ROOM 17 STATE CAPITOL



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716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee AGENDA

Good Afternoon

This Meeting Of The House Labor & Commerce Committee Is Called To Order
On February 3, 1996 At _____ PM

For The Record The Committee Members Present Are:

Rep. Norman Rokeberg, Chairman - On Teleconference at the Anchorage LIO

Rep. John Cowdery, Vice Chairman

Rep. Bill Hudson

Rep. Joe Ryan

Rep. Jerry Sanders

Rep. Tom Brice

Rep. Gene Kubina

If A Committee Member Arrives Late Announce:
Representative (Name) Has (Joined) (Left) The
Committee At (Time).

Our committee secretary for our committee is Ms. Kathy Wood, Supervisor for House Records.

A Quorum (Is) (Is Not) Present.

On Today's Calendar We Have a public hearing on:

HB 31 Civil Liability For Improper Litigation

Anyone Wishing To Testify On HB 31

Should Sign The Witness Register For The Legislative Record
Print Your Name, Address, Telephone Number, Agency Or Business And Title.

The Public Hearing For HB 31 Is Now Open:

Teleconference Site Today is:

Anchorage -

Representative Norman Rokeberg

Mr. Robert A. Mintz

Would the sponsor of HB 31 like To Make Any Opening Remarks - Representative Mulder

Sponsor Statement, Rep Eldon Mulder
or Staff: Dennis Dewitt

Take Testimony In Order, Recognizing Each Witness By Name:

1. Other Legislators (Ask Other Legislators To Join The Committee At The Table)
2. Individuals With Time Constraints
3. Individuals In Order On Witness List.
4. Teleconferenced Testimony Should Be Rotated Between Locations.
(Teleconference Moderator Will Provide You With A List Of Witnesses
At The Various Locations)

Each New Witness Should Be Reminded Of The Following:

For The Record, Please Clearly State Your Full Name, Your Affiliation And Title. If You Have Written Testimony, Please Summarize It And Provide The Committee With A Full Written Copy.

Signal The Importance Of Particular Testimony Or Discussion By Saying: **For The Record Or Will The Committee Secretary Note For The Record.....**So The Committee Secretary Will Take Special Note Of The Discussion.

After Hearing All The Speakers Announce:

Is there any further testimony - Hearing None

Public Testimony Is Now Closed For HB 31 Is There Any Further Discussion By The Committee.

If Not.....

**The Chair Will Entertain A Motion To Move HB 31
(As Amended) From Committee With Individual Recommendations.**

At the end of committee business announce: **THIS COMMITTEE STANDS AJOURNED AT (time)**

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/3/97

The LABOR AND COMMERCE Committee considered:

HB 31

HOUSE BILL NO. 31

CIVIL LIABILITY FOR IMPROPER LITIGATION

"An Act relating to civil liability for certain false allegations or material misstatements of fact in a civil pleading or proceeding, for certain improper acts relating to signing a civil pleading, for certain improper acts relating to civil pleadings or proceedings, for making an intentional false statement of a material fact, for acting on a civil claim or defense without probable cause, or for acting for a purpose other than proper adjudication of a civil claim; amending Rules 13(e) and 82(b), Alaska Rules of Civil Procedure; and providing for an effective date."

recommends it be replaced the same title
with the following committee substitute _____ a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) LAW, COURT

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John Sanders</i>	✓			
<i>Alfred Brier</i>			✓	
<i>Jim Kavanagh</i>	✓			
<i>Bill Hudson</i>			✓	
<i>John Coedery</i>	✓			

CHAIR'S SIGNATURE

John J. Coedery 2-3-97

AMENDMENT /

OFFERED IN THE HOUSE
TO: HB 31

BY REPRESENTATIVE MULDER

1 Page 3, following line 11:

2 Insert a new subsection to read:

3 "(h) The state, or an agent or employee of the state acting within the agent's
4 or employee's scope of agency or employment, is not subject to liability under this
5 section."

filed 3-2
~~3-2~~
Sardus No
Burr No
Ryer No
Hudson Yes
Cowdrey Yes

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 31

Revision Date: _____
Title: Civil liability for improper litigation

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Rep. Mulder
Requester: House Labor & Commerce

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	25.0	25.0	25.0	25.0	25.0	25.0
TRAVEL						
CONTRACTUAL	12.5	12.5	12.5	12.5	12.5	12.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	37.5	37.5	37.5	37.5	37.5	37.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	37.5	37.5	37.5	37.5	37.5	37.5
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other						
TOTAL	37.5	37.5	37.5	37.5	37.5	37.5

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System

Phone: 264-8228
Date: 01/30/97

Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Date: 01/30/97

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Alaska Court System
Fiscal Analysis
HB 31

HB 31 creates civil liability for actions which it describes as false claims and improper practice in civil cases. It does this by adding AS 09.65.190(a) - (g) to the Code of Civil Procedure.

Proposed AS 09.65.190(a), (b), (c), and (e) essentially codify Civil Rule 11, with two primary differences. First, CR 11 gives a judge the discretion to impose monetary or non-monetary sanctions for improper practice on motion by the aggrieved party. HB 31, on the other hand, allows an aggrieved party to file an action for compensatory damages. The action must be part of the same action in which the injury arose if the action is the result of an act or omission by a party. However, the action must be asserted as a separate action if the injury is the result of an act or omission by a nonparty (such as an attorney). Handling the issue of frivolous practice as a separate claim in a civil suit, or as a separate civil suit entirely, is more time consuming (and thus more expensive) than handling it as a motion.

Second, by allowing a civil action for improper practice, HB 31 essentially makes financial sanctions (in the form of compensatory and punitive damages) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Proposed AS 09.65.190(d) and (f) codify the common law cause of action for malicious prosecution. It modifies the common law by allowing the civil action if the defendant acted without probable cause on a claim or defense, or acted primarily for an improper purpose. Under the current standard, the defendant must have acted without probable cause on a claim or defense, and acted primarily for an improper purpose. By making it easier to prove malicious prosecution, more prevailing litigants can be expected to file such claims.

Those proposing these changes believe that they will reduce frivolous litigation, and they may be correct. However, the legal standard for proving frivolous conduct is very high, and thus the actual percentage of claims which are frivolous as a matter of law is very small, notwithstanding the average defendant's view to the contrary. Most commonly such cases are filed by prisoners or other pro se litigants. Those

Alaska Court System
Fiscal Analysis
HB 31

categories of plaintiff are generally unaware of the details of the Code of Civil Procedure, and are judgment-proof if they do violate its provisions.

While potentially beneficial for certain litigants in specific cases, we believe that this legislation will result in a net increase in the number of cases before the court system, as well as a lengthening of some existing cases. At the present time, approximately 95 percent of civil cases settle without trial, and the discovery phase of a lawsuit is spent attempting to convince the opposing party that it would be more financially advantageous to settle than to continue. Accordingly, litigants can be expected to use HB 31 as a new tool to pressure the opposing party into settling a case. In FY 95, there were 16,306 civil cases filed in superior court, and 8,005 civil cases (not counting small claims) filed in district court. If only one percent of those cases resulted in a civil action for frivolous practice (either by the defendant alleging frivolous prosecution, or the plaintiff alleging frivolous defense, or both), there would be 243 new cases or new claims in existing cases. This fiscal note assumes additional judicial time, clerical costs and jury fees.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 31 |

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to civil liability. . .; amending Rule 13(e) and 82(b), Alaska Rules of Civil Procedure..." BRU: Criminal Division, Civil Division
 Sponsor: Representative Mulder Component: Criminal Division, General Legal Services
 Requester: House Labor & Commerce Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	322.5	322.5	322.5	322.5	322.5	322.5
TRAVEL	19.2	19.2	19.2	19.2	19.2	19.2
CONTRACTUAL	123.0	123.0	123.0	123.0	123.0	123.0
SUPPLIES	6.3	6.3	6.3	6.3	6.3	6.3
EQUIPMENT	32.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	503.5	471.0	471.0	471.0	471.0	471.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	243.6	227.4	227.4	227.4	227.4	227.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other - Interagency Receipts	259.9	243.6	243.6	243.6	243.6	243.6
TOTAL	503.5	471.0	471.0	471.0	471.0	471.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill creates several new causes of action similar to but broader than common-law abuse of process, and makes some such causes of action compulsory claims and counterclaims in the underlying lawsuit. Claims against the opposing attorney would be filed in a separate, parallel suit. As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state that would have merit, but rather by encouraging a large number of unfounded claims that would increase litigation costs.

The department handles a disproportionate volume of pro se litigation, much of it initiated by prisoners. We anticipate that many pro se litigants would assert that state filings and defenses violated this provision, would assert new claims on this basis in the main action, and would also file parallel suits against the state attorneys. This would complicate and increase the cost of handling litigation, and in some instances would force the state to hire private counsel to defend the state attorneys in the spin-off litigation. While the state could counterclaim on its own behalf under the provisions of HB 31, many of these litigants are judgment proof.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 1/31/97
 Approved by Commissioner: Bruce M. Betelho, Attorney General *Bruce M. Betelho for* Date: 1/31/97
 Agency: Department of Law

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ANALYSIS CONTINUATION:

HB 31 would also complicate other litigation and increase state expenses. For example, we anticipate that the federal government would attempt to use these new causes of action as a defensive tool in suits the state has filed or will file against the United States or federal officials, and would seek to have the spin-off claims adjudicated by sympathetic federal judges. At a minimum, the state's legal costs would increase. (The increased defensive burden would fall solely on the state, since the United States is immune to liability under this provision, not having waived its sovereign immunity). Another potential source of expense would be suits by private citizens against troopers or other state employees. The Department of Law currently defends these suits under provisions of the collective bargaining agreements, but does not provide free representation for countersuits; these are left to the employee to bring through private counsel after the case is over. By making some such suits compulsory counterclaims in the main action, this bill could force the state to assert some claims of this type on the employee's behalf or, alternatively, lead the employee to hire private counsel to participate in the main action. Either eventuality would add complication and expense.

Overall, the department estimates that HB 31 would increase the cost of litigation by about four percent in the civil division, and increase the cost of prisoners' rights litigation in the criminal division by about 12.5 percent. Based on the current number of equivalent positions handling civil litigation, this will result in an increase of two and one-half attorney positions in the civil division, and one-half of an attorney position in the criminal division.

The department's weighted cost for an attorney position is \$127,000 per year, plus \$6,500 for one-time new position equipment. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel. Thus, the department's in-house staff cost would be \$317,500 for the civil division (37.5% GF and 62.5% IAR) and \$70,000 in general funds for the criminal division. Additionally, due to conflicts, \$60,000 in outside counsel costs will probably be incurred by the civil division (37.5% GF and 62.5% IAR), and \$15,000 in outside counsel GF costs will be incurred by the criminal division. Likewise, \$12,500 will be needed by the civil division for case travel (37.5% GF and 62.5% IAR), and \$2,500 GF will be needed for case travel costs in the criminal division.

Finally, new positions include two PFT Attorney IV's, one PPT Attorney IV, and one PFT legal secretary in the civil division, and one PPT Attorney IV in the criminal division. Please also note that although no clerical support position is being added in the criminal division, proportionate support position funding is included in the standard attorney cost schedule to reduce clerical support vacancy so that the new part-time attorney's clerical burden can be handled. One-time equipment costs are added for the civil division secretary position as such costs are not included in the standard attorney cost schedule.



CHAIR,
LEGISLATIVE COUNCIL

CO-CHAIR,
HOUSE SPECIAL COMMITTEE
ON MILITARY AND
VETERANS' AFFAIRS

CO-CHAIR,
MILITARY AFFAIRS FOR
ANCHORAGE CAUCUS

JAN 24 1997

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON

MEMORANDUM

DATE: January 23, 1997

TO: Representative Rokeberg

FROM: Representative Mulder *Eldon*

RE: HB 31

Please schedule HB 31 for hearing in the Labor and Commerce Committee.

I attached a sponsor statement. I ordered a sectional analysis which I will provide as soon as it arrives.

I expect that both Robert Mintz and Michael Lessmeier will appear in support of the bill.



CHAIR,
LEGISLATIVE COUNCIL

CO-CHAIR,
HOUSE SPECIAL COMMITTEE
ON MILITARY AND
VETERANS' AFFAIRS

CO-CHAIR,
MILITARY AFFAIRS FOR
MEMORIAL COUNCIL

ALASKA STATE LEGISLATURE HOUSE OF REPRESENTATIVES

REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON



SPONSOR STATEMENT

House Bill 31

The Frivolous Lawsuit Prevention Act

House Bill 31 will prevent frivolous lawsuits by requiring parties to lawsuits to be truthful and responsible in their pleadings. This bill discourages false statements in litigation and encourages responsibility by all parties and their attorneys. It requires more careful and focused preparation and presentation of pleadings.

This bill creates an obligation for litigants and attorneys to make reasonable efforts to assure that claims have a probability of succeeding. If the claim is knowingly or recklessly false, both the attorney and the party can be assessed damages. Currently, there is no effective way of holding parties responsible for frivolous pleadings. Frivolous pleadings increase the costs of litigation for the parties involved. They also increase the cost of our judicial system.

HB 31 requires attorneys as well as their clients to research their claims to assure they are factually supported before filing a suit. This bill will help eliminate "boiler plate" pleadings in lawsuits and encourage responsible and focused pleadings. "Boiler plate" pleadings include everything anyone could ever imagine could have happened rather than focusing on those specific issues that actually did happen. These extraneous pleadings are expensive to work through and are most often thrown out. They simply cause one party, and the court system, to expend significant dollars to pare filing down to real issues.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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


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

MEMORANDUM

January 24, 1997

SUBJECT: Sectional Summary of HB 31
(Work Order No. 20-LS0193\A)

TO: Representative Eldon Mulder
Attn: Denny DeWitt

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Prohibits a person from knowingly or recklessly filing civil pleadings that contain false allegations or misstatements of fact, from signing a civil pleading before making a determination that the claim is factually based and warranted by existing law or a good faith argument for modification of existing law, and from raising a claim or defense for the purpose of delay or harassment. Requires that judgment be entered against a party making an intentional and material misstatement of fact in a civil action. Imposes civil liability if a person in a civil action acts without probable cause or primarily for a purpose other than that of securing the proper adjudication of a civil claim. Allows a person who is injured by a violation of (a) of this section to recover compensatory damages and requires that claim be brought in the same action if the person is a party. Allows a person who is injured by a violation of (d) of this section to recover both compensatory and punitive damages and requires that final judgment be entered in the civil action in which the violation occurred. If a person obtains judgment for damages allowed under this section, the court is required to also award actual reasonable attorney fees to the prevailing party.

Section 2. Court rule change section for Civil Rule 13(e).

Section 3. Court rule change section for Civil Rule 82(b).

Section 4. Severability clause.

Section 5. Effective date.

MFF:jdr
97-045:jdr

Many suits are often less expensive to settle than litigate, regardless of their merit. This bill does not affect suits filed in good faith. It will, however, have a significant deterrent effect on those without merit. A system that allows deceit to be rewarded must be changed. This is not why we have and support a judicial system.

This bill assigns financial liability to those who:

- File suits without probable cause,
- Provide false information,
- Use claims and cross claims to cloud the issues and
- File unsuccessful claims on the hope of finding someone, somewhere willing to settle rather than spend the dollars to fight the suit.

The trier of fact, usually a jury, will make the determination whether the untrue information presented was intentional and material. If honest errors are made, there will be no sanctions.

A jury can make these decisions. The deterrent effect of this bill will reduce those cases that are inappropriate without inhibiting the filings of cases believed to have merit.

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January 31, 1997

Representative Eldon Mulder
State Capitol
Juneau, AK 99801-1182

RE: HB 31

Dear Representative Mulder:

HB 31 is important legislation which will reduce frivolous and unnecessary civil litigation. It will save private litigants and, in the long run, the State time and money currently spent to address frivolous and unnecessary claims and allegations.

The basic purpose of House Bill 31 is to give injured parties effective remedies for bad faith civil litigation. Essentially, the Bill enables people who actually suffer harm due to abuse of the civil justice system to be compensated for their injuries. The Bill accomplishes this goal by creating a cause of action against people who abuse the civil justice system.

The Bill establishes standards of conduct, violation of which constitute an abuse of the civil justice system:

1. Intentionally, maliciously or unreasonably asserting false allegations and claims, and
2. Asserting claims and allegations without first making an effort to determine if they have a reasonable basis.

The standards of conduct embodied in House Bill 31 are similar to existing standards of conduct, such as Civil Rule 11 and the common law tort of malicious prosecution. A significant aspect of the bill is that it empowers victims of bad faith civil litigation, not the legal community, to be rule enforcers. House Bill 31 is an addition to the existing system of self-regulation of the legal profession. It gives victims of unscrupulous attorneys and their clients the ability to be compensated in cases of what ordinary people will consider to be outrageous conduct.

One section of the Bill provides that a person, and that can either be a client or an attorney, shall not knowingly or recklessly file a pleading that contains false or misleading misstatements of fact or allegations. A person cannot get in trouble by making a simple mistake. Rather, they have to intentionally make a misstatement. Or, they have to make a misstatement where they already have a reason to believe it is untrue and a reasonable person would have made additional investigations before he cast a stone, so to speak.

HB 31 imposes reasonable consequences on attorneys for violating familiar standards of conduct. One section of the Bill is very similar to Civil Rule 11 in terms of the standard of conduct that is utilized. It requires each claim and defense (so it goes both ways), to be well grounded in fact and supported by existing law. Another section of the Bill is a variation of the existing malicious prosecution common law action. Currently, under the common law, a person who is a victim of a malicious lawsuit has to prove both that the lawsuit was brought maliciously and that the conduct of the party bringing the lawsuit was unreasonable. HB 31 uncouples these and allows a person to bring an action for malicious prosecution if conduct is either malicious or if somebody conducted themselves unreasonably.

Again, the key to this Bill and the difference between this Bill and existing law is that the client and the attorney will be held personally liable for all damages caused by their conduct.

If the Bill is enacted, most attorneys will experience a minor inconvenience. Because of the potential personal liability for

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VIA FACSIMILE AND HAND-DELIVERED

February 3, 1997

Representative Eldon Mulder
Room 501
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Mulder:

I am writing to you on behalf of State Farm regarding HB 31. At the outset, we thank you for introducing a bill that in our view will fundamentally change civil litigation by placing increased responsibility on those involved in civil litigation. This bill contains two concepts that are unique. The first and most important concept is the emphasis on truth set forth in 9.65.190(b) of this bill. In essence, this provision provides that if a party lies to further their claim or defense, they lose. At the present time there is no such existing disincentive in our system.

There can be little doubt that there is a problem in our system with truth. I am enclosing herewith a press release from the Insurance Research Council which describes a new study that found 17 to 20 percent of total injury claim payments can be attributed to fraud and/or claim buildup. Although this is a significant problem in automobile bodily injury claims, it is a problem that is in no way limited to just insurance claims. It is also a problem that imposes a tremendous cost on our civil justice system.

We have seen false statements in virtually every kind of case we have been involved in. At the present time, the only risk a party takes in telling a false statement is the damage their credibility may suffer. This bill would change that, for the consequences of making a false statement would be predictable, certain and meaningful.

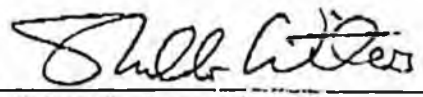
One of the most significant benefits from this provision is that it would force lawyers to explain the consequences of lying to every client and hopefully would at the outset limit those claims which are false or exaggerated. Those that are trying to tell the truth will have nothing to fear from this bill, as it would only apply if the trier of fact finds that a party has made an intentional, false, statement of material fact. Since the bill applies to all parties, it is hard to see how one can argue it is unfair.

Representative Eldon Mulder
February 3, 1997
Page 2

The second aspect of this bill are those provisions which impose liability on parties and/or attorneys who misuse the litigation process, recklessly or knowingly file false pleadings or sign pleadings without making a reasonable inquiry and determining the claims are warranted. Anyone who has been involved in a lawsuit knows the financial and emotional cost of defending frivolous claims. To those who claim that such a cause of action would result in an explosion of secondary litigation, one only need to look to Subsection (g), which provides that actual reasonable attorney fees will be awarded to the prevailing party in such an action. Given such serious consequences, I doubt very much whether such claims would be made often or made without considerable thought.

Certainly this bill will raise the level of responsibility of attorneys, regardless of which side they represent. It is difficult to see how this would not benefit our civil justice system.

Sincerely,
LESSMEIER & WINTERS

By 
for Michael L. Lessmeier

M.L.
enclosure

EM2197WTD



NEWS RELEASE

For more information contact:

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For Immediate Release

Claim Fraud May Appear in More Than One-Third of All Auto Bodily Injury Claims, Study Finds

WHEATON, IL—More than one-third of all bodily injury insurance claims associated with car crashes appear to involve some element of fraud.

RECEIVED

NOV 12 1996

LESSMEIER & WINTERS

A new study shows that while three of every 100 bodily injury liability claims appear to be based on premeditated criminal acts such as staged accidents, another 33 of every 100 claims appear to involve opportunistic acts by doctors, lawyers and/or claimants who take advantage of accidents to cheat the system.

In other words, according to the Insurance Research Council (IRC) which conducted the study, "Of claims with the appearance of fraud and buildup, the vast majority involve the exaggeration of the claim as a result of a real accident. Very few claims involve a fake or staged accident."

"Auto insurance policyholders nationwide pay the tab for these continuing scams in the form of over higher insurance premiums," said Terrie Troxel, executive director of IRC.

In fact, the excess dollars in these claims represent between 17 and 20 percent of total injury claim payments, meaning that 17 to 20 cents of every injury claim payment dollar for automobile accidents can be attributed to fraud and/or claim buildup (padding).

IRC estimates that between \$5.2 and \$8.3 billion is added each year to the bill of American auto insurance policyholders because of outright fraud and/or injury claim padding. The bulk of these excessive payments (90%)

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are due to opportunistic fraud and/or buildup resulting from a real accident and just 10% to stayed accidents. Troxal noted that fraudulent claims involving property damage losses also contribute significantly to rising auto insurance costs, but only injury claims are included in the latest study.

Findings from the study, entitled *Fraud and Buildup in Auto Injury Claims: Pushing the Limits of the Auto Insurance System*, are drawn from an in-depth review of 15,000 closed injury claims. Twenty-eight insurance companies reviewed their claim files for the IRC, a not-for-profit research organization of the property-casualty insurance industry. Nine states were examined: Arizona, California, Connecticut, Illinois, Michigan, Missouri, New York, South Carolina and Texas.

The study also demonstrates that the level and type of fraud and buildup vary conspicuously across the United States. For instance, claims involving fraud and buildup appear to be more prevalent in California and Texas than in the other states in this study. States with relatively few claims involving fraud and buildup are Michigan and Missouri. Within states, fraud and buildup are more prevalent in major cities than in other types of communities. For example, 67 percent of the claims in Los Angeles have the appearance of buildup and/or fraud, or about double the levels seen in the entire nine-state sample (36 percent appear to involve buildup and/or fraud).

Some of the key objective factors associated with the appearance of fraud and/or buildup in injury claims, according to the study, include:

- Sprain or strain injuries
- Attorney hired in connection with the claim
- Moderate medical, wage and other losses (\$2,000 to \$15,000)
- No disability associated with the injury, and
- High numbers of visits to medical professionals.

Several trends in claiming behavior have been documented in recent IRC reports. More

declining. Many of these additional injury claims are for relatively minor injuries, such as sprains and strains. Medical expenses and insurance payments for auto injuries are climbing rapidly. People are more likely to hire an attorney to help with an insurance claim. The latest IRC study backs previously-published research by analyzing multiple dimensions of these claiming patterns and providing an empirical demonstration of the ways in which some claims affect the automobile insurance system in the United States.

Copies of *Fraud and Buildup in Auto Injury Claims: Pushing the Limits of the Auto Insurance System* are available for purchase from the Insurance Research Council, Inc., 211 S. Wheaton Avenue, Wheaton IL 60187, telephone 830.871.0255.

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Variation Across States and Cities in Suspicion of Fraud and Buildup for Paid Bodily Injury Claims

State/City	Percent of bodily injury claims with the appearance of fraud and/or buildup
California	45%
Los Angeles	67%
San Francisco/Oakland	34%
San Diego	22%
Texas	38%
Houston	54%
Dallas/Fort Worth	47%
New York	31%
New York City	34%
Arizona	30%
Phoenix	38%
Connecticut	28%
South Carolina	28%
Illinois	25%
Chicago	37%
Michigan	21%
Detroit	33%
Missouri	20%
Total sample	36%

Source: Insurance Research Council, *Fraud and Buildup in Auto Injury Claims: Pushing the Limits of the Auto Insurance System*, 1996.