

LEGAL SERVICES

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MEMORANDUM

February 9, 2017

SUBJECT: Department of Military and Veterans' Affairs immunity
(CSSB 9 (FIN); Work Order No. 30-LS0183\J)

TO: Senator Anna MacKinnon
Co-Chair, Senate Finance Committee
Attn: Juli Lucky

FROM: Susie Shutts 
Legislative Counsel

Attached is the committee substitute you requested to CSSB 9(CRA).

Note that new subsection 26.30.020(d), which was adopted by the Senate Community & Regional Affairs Committee, provides that the Department of Military and Veterans' Affairs' may rely on information provided by a municipality in considering the factors under AS 26.30.020(c) and the department may not be held liable for civil damages resulting from a military facility zone designation that is based on inaccurate or incomplete information provided by a municipality. However, military facility zone designation is a discretionary function on the part of the department. Therefore, the immunity provided by this new subsection appears to already be covered by the discretionary immunity enjoyed by the state under AS 09.50.250(1), which provides immunity for a tort claim that is "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused." Altering the state's immunity would require amending AS 09.50.250.

To the extent that this bill aims to allow the department to rely on information provided by a municipality in making a determination under AS 26.30.020(c), I would advise the committee to amend AS 26.30.020(c) to reflect that the department must only consider the municipality's statements regarding the factors listed under AS 26.30.020(c) that must be considered before designating a military facility zone. So, for example, the adjutant general could be required to consider the municipality's *statement* under AS 26.30.020(c)(1), not whether the proposed military facility zone would *actually* be consistent with the municipality's comprehensive plan or local zoning ordinances.

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Attachment