

LEGAL SERVICES

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MEMORANDUM

January 30, 2017

SUBJECT: Department of Military and Veterans' Affairs immunity amendment (SB 9; Work Order No. 30-LS0183\A.1)

TO: Senator John Coghill
Attn: Chad Hutchison

FROM: Susie Shutts *Susie Shutts*
Legislative Counsel

Attached is the amendment you requested to SB 9.

As I discussed with Mr. Hutchison, it is unclear how the Department of Military and Veterans' Affairs' reliance on local zoning ordinance information provided by a municipality could, on its own, give rise to a liability claim for "environmental contamination and/or subsequent cleanup" or some of the other claims raised in the language Mr. Hutchison provided by e-mail. The attached amendment provides that the department may rely on information provided by a municipality and that 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, because military facility zone designation is a discretionary function on the part of the department, the immunity provided by the attached amendment 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." If you want to alter the state's immunity, that would require amending AS 09.50.250.

To the extent that you want to allow the department to rely on the municipality for a determination under AS 26.30.020(c)(1), you could amend that paragraph to read "whether the municipality has stated in its application that the proposed military facility zone designation is consistent with the municipality's comprehensive plan or local zoning ordinances." This would clarify that the adjutant general, in considering factors before designating a military facility zone, must consider the municipality's *statement*, not whether the proposed military facility zone would *actually* be consistent with the municipality's comprehensive plan or local zoning ordinances.

SLS:boo
17-081.boo

Attachment