

SCS CSHB 82(JUD)

Amendment No. 1 by Senator(s) Ellis, Miller:

(S) AM NO 1 ADOPTED Y11 N9

MOTION TO RESCIND ACTION ADPTG AM 1

ACTION RESCINDED Y12 N8

AM NO 1 FAILED Y8 N12

Page 1, line 5, following "INTENT":

Insert "FOR SECTION 5"

Page 2, line 13, following "(b)":

Delete "It"

Insert "Regarding sec. 5 of this Act, it"

Page 2, line 14, following "(1)":

Insert "sec. 5 of"

Page 2, line 20, following "provisions of":

Insert "sec. 5 of"

Page 2, line 23, following "created in":

Insert "sec. 5 of"

Page 2, line 23, following "nothing in":

Insert "sec. 5 of"

Page 2, following line 27:

Insert new bill sections to read:

**** Sec. 2.** AS 09.50 is amended by adding a new section to read:

Sec. 09.50.255. Immunity for claims against the state arising out of or in connection with the year 2000 date change. (a) Notwithstanding any contrary provisions of AS 09.50.250, an action in connection with the year 2000 date change may not be brought against the state, or against an agent, officer, or employee of the state for an act or omission occurring in the scope of that person's employment or work for the state, for damages caused directly or indirectly by a failure (1) of an electronic computing device owned, controlled, or operated by the state, or (2) arising out of an inspection or review of an electronic computing device owned, controlled, or operated by others. The immunity described in this subsection does not apply if the affected party shows by clear and convincing evidence that the state did not use good faith efforts to avoid the failure that caused the damages claimed in the civil action. For purposes of this subsection, the state used good faith efforts as a matter of law if the state made efforts to identify, test, and develop contingency plans for critical systems.

(b) This section does not affect immunity provided to the state under another provision of law.

(c) In this section,

(1) "electronic computing device" includes computer hardware or software, a

computer chip, an embedded chip, process control equipment, or other information system that is used to capture, store, manipulate, or process data, or that controls, monitors, or assists in the operation of a physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function;

(2) "physical apparatus that is not primarily used as a computer" includes a vehicle, a vessel, a building, a structure, a facility, an elevator, medical equipment, a traffic signal, machinery, access controls, and similar types of items;

(3) "state" includes a department, institution, board, commission, division, authority, public corporation, council, committee, or other instrumentality of the state, including the University of Alaska;

(4) "year 2000 date change" includes processing date or time data from, into, and between the Twentieth and Twenty-First Centuries, and leap-year calculations; in this paragraph, "processing" includes calculating, comparing, sequencing, displaying, and storing.

* **Sec. 3.** AS 09.65.070(d) is amended to read:

(d) An action for damages may not be brought against a municipality or any of its agents, officers, or employees if the claim

(1) is based on a failure of the municipality, or its agents, officers, or employees, when the municipality is neither owner nor lessee of the property involved,

(A) to inspect property for a violation of any statute, regulation, or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made; or

(C) to abate a violation of any statute, regulation, or ordinance, or a hazard to health or safety discovered on property inspected;

(2) is based **on** [UPON] the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality, or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based **on** [UPON] the grant, issuance, refusal, suspension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

(4) is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis;

(5) is based **on** [UPON] the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements; [OR]

(6) is based on the exercise or performance of a duty in connection with an enhanced 911 emergency system and is not based on an intentional act of misconduct or on an act of gross negligence; **or**

(7) is caused directly or indirectly by a failure, in connection with the year 2000 date change, of an electronic computing device owned, controlled, or operated by the municipality, or by an agent, officer, or employee of the municipality and occurring in the scope of that person's employment or work for the municipality; the immunity described in this paragraph does not apply if the affected party shows by clear and convincing evidence that the municipality did not use good faith efforts to avoid the failure that caused the damages claimed in the civil action; for purposes of this paragraph, the municipality used good faith efforts as a matter of law if the municipality made efforts to identify, test, and develop contingency plans for critical systems; this paragraph does not affect immunity

provided to a municipality under another provision of law.

* **Sec. 4.** AS 09.65.070(e) is amended by adding new paragraphs to read:

(3) "electronic computing device" includes computer hardware or software, a computer chip, an embedded chip, process control equipment, or other information system that is used to capture, store, manipulate, or process data, or that controls, monitors, or assists in the operation of a physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function;

(4) "physical apparatus that is not primarily used as a computer" includes a vehicle, a vessel, a building, a structure, a facility, an elevator, medical equipment, a traffic signal, machinery, access controls, and similar types of items;

(5) "year 2000 date change" includes processing date or time data from, into, and between the Twentieth and Twenty-First Centuries, and leap year calculations; in this paragraph, "processing" includes calculating, comparing, sequencing, displaying, and storing."

Renumber the following bill sections accordingly.

Page 5, line 8, following "**Sec. 6.**":

Delete "AS 09.65.260 is"

Insert "AS 09.50.255; AS 09.65.070(d)(7), 09.65.070(e)(3), 09.65.070(e)(4), 09.65.070(e)(5), and 09.65.260 are"

Page 5, line 9, following "enacted by":

Delete "sec. 2"

Insert "sec. 5"

Page 5, lines 14 - 15:

Delete all material

Insert "described in AS 09.50.225, enacted by sec. 2 of this Act, AS 09.65.070(d)(7), enacted by sec. 3 of this Act, or AS 09.65.260, enacted by sec. 5 of this Act, that accrues on or after the effective date of this Act but before January 1, 2006."

This amendment text is provisional. Please refer to the certified journal text.