

**CS FOR HOUSE BILL NO. 461(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered: 5/1/04**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVE HOLM**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to enhanced 911 surcharges and to 911 and emergency services**  
2 **dispatch systems."**

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

4 **\* Section 1.** AS 09.50.250 is amended to read:

5 **Sec. 09.50.250. Actionable claims against the state.** A person or corporation  
6 having a contract, quasi-contract, or tort claim against the state may bring an action  
7 against the state. A person who may present the claim under AS 44.77 may not bring  
8 an action under this section except as set out in AS 44.77.040(c). A person who may  
9 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this  
10 section except as set out in AS 36.30.685. However, an action may not be brought if  
11 the claim

12 (1) is an action for tort, and is based upon an act or omission of an  
13 employee of the state, exercising due care, in the execution of a statute or regulation,  
14 whether or not the statute or regulation is valid; or is an action for tort, and based upon

1 the exercise or performance or the failure to exercise or perform a discretionary  
 2 function or duty on the part of a state agency or an employee of the state, whether or  
 3 not the discretion involved is abused;

4 (2) is for damages caused by the imposition or establishment of a  
 5 quarantine by the state;

6 (3) arises out of assault, battery, false imprisonment, false arrest,  
 7 malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or  
 8 interference with contract rights;

9 (4) arises out of the use of an ignition interlock device certified under  
 10 AS 33.05.020(c); [OR]

11 (5) arises out of injury, illness, or death of a seaman that occurs or  
 12 manifests itself during or in the course of, or arises out of, employment with the state;  
 13 AS 23.30 provides the exclusive remedy for such a claim, and no action may be  
 14 brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C.  
 15 688), in admiralty, or under the general maritime law; or

16 **(6) is based on the exercise or performance of a duty in connection**  
 17 **with an emergency services dispatch system or an enhanced 911 system,**  
 18 **including providing, maintaining, or operating any toll-free, statewide default**  
 19 **public safety answering point, and is not based on an intentional act or omission**  
 20 **amounting to misconduct or on an act or omission amounting to gross negligence.**

21 \* **Sec. 2.** AS 09.65.070(d) is amended to read:

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

24 (1) [IS BASED ON] a failure of the municipality, or its agents,  
 25 officers, or employees, when the municipality is neither owner nor lessee of the  
 26 property involved, **to**

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

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

31 or

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

3 (2) [IS BASED UPON] the exercise or performance or the failure to  
4 exercise or perform a discretionary function or duty by a municipality or its agents,  
5 officers, or employees, whether or not the discretion involved is abused;

6 (3) [IS BASED UPON] the grant, issuance, refusal, suspension, delay,  
7 or denial of a license, permit, appeal, approval, exception, variance, or other  
8 entitlement, or a rezoning;

9 (4) [IS BASED ON] the exercise or performance during the course of  
10 gratuitous extension of municipal services on an extraterritorial basis;

11 (5) [IS BASED UPON] the exercise or performance of a duty or  
12 function upon the request of, or by the terms of an agreement or contract with, the  
13 state to meet emergency public safety requirements; or

14 (6) [IS BASED ON] the exercise or performance of a duty in  
15 connection with **an emergency services dispatch system or** enhanced 911 emergency  
16 system and is not based on an intentional act of misconduct or on an act of gross  
17 negligence.

18 \* **Sec. 3.** AS 29.10.200(37) is amended to read:

19 (37) AS 29.35.131 (**emergency services dispatch system and**  
20 enhanced 911 system);

21 \* **Sec. 4.** AS 29.35.131(a) is amended to read:

22 (a) A municipality may [,] by [RESOLUTION OR] ordinance [,] elect to  
23 provide **an emergency services dispatch system or** an enhanced 911 system at public  
24 safety answering points, may purchase or lease the enhanced 911 equipment or service  
25 required to establish or maintain an enhanced 911 system at public safety answering  
26 points from a local exchange telephone company, **competitive local exchange**  
27 **telephone company,** or other qualified vendor, and may impose an enhanced 911  
28 surcharge, in an amount to be determined by the municipality, on all local exchange  
29 access lines that provide telephone service to wireline telephones in the area to be  
30 served by the enhanced 911 system. A municipality that provides services under an  
31 enhanced 911 system may also by [RESOLUTION OR] ordinance impose an

1 enhanced 911 surcharge on each wireless telephone number that is billed to an address  
 2 within the enhanced 911 service area. **The** [FOR A MUNICIPALITY WITH A  
 3 POPULATION OF 100,000 OR MORE, AN] enhanced 911 surcharge **may be**  
 4 **imposed each** [MAY NOT EXCEED 50 CENTS PER] month for each wireless  
 5 telephone number or **each** [50 CENTS PER] month for each local exchange **billing**  
 6 **statement** [ACCESS LINE] for wireline telephones. [FOR A MUNICIPALITY  
 7 WITH FEWER THAN 100,000 PEOPLE, AN ENHANCED 911 SURCHARGE  
 8 MAY NOT EXCEED 75 CENTS PER MONTH FOR EACH WIRELESS  
 9 TELEPHONE NUMBER OR 75 CENTS PER MONTH FOR EACH LOCAL  
 10 EXCHANGE ACCESS LINE FOR WIRELINE TELEPHONES.] An enhanced  
 11 service area may be all of a city, all of a unified municipality, or all or part of the area  
 12 within a borough and may include the extraterritorial jurisdiction of a municipality in  
 13 accordance with AS 29.35.020. The governing body of a municipality shall review an  
 14 enhanced 911 surcharge annually to determine whether the current level of the  
 15 surcharge is adequate, excessive, or insufficient to meet anticipated enhanced 911  
 16 system needs. The municipality may [ONLY] use the enhanced 911 surcharge for the  
 17 enhanced 911 system **and for the actual labor and equipment used to provide**  
 18 **emergency services dispatch, but not for costs of providing the medical, police,**  
 19 **fire, rescue, or other emergency service, or for any other purpose.**

20 \* **Sec. 5.** AS 29.35.131(b) is amended to read:

21 (b) A local exchange telephone company, **or competitive local exchange**  
 22 **telephone company,** providing service in a municipality that has imposed an  
 23 enhanced 911 surcharge shall bill each month and collect the surcharge from  
 24 customers in the enhanced 911 service area. A wireless telephone company **or**  
 25 **wireless reseller** that provides telephone service to wireless telephone customers with  
 26 billing addresses within the enhanced 911 service area shall impose **the** [AN  
 27 ENHANCED 911] surcharge each month and collect the surcharge from customers in  
 28 the enhanced 911 service area. A **residential** local exchange telephone customer may  
 29 not be subject to more than one enhanced 911 surcharge on a local exchange **billing**  
 30 **statement** [ACCESS LINE] for a wireline telephone. A wireless telephone customer  
 31 may not be subject to more than one enhanced 911 surcharge for each wireless

1 telephone number. [A CUSTOMER THAT HAS MORE THAN 100 LOCAL  
2 EXCHANGE ACCESS LINES FROM A LOCAL EXCHANGE TELEPHONE  
3 COMPANY IN THE MUNICIPALITY IS LIABLE FOR THE ENHANCED 911  
4 SURCHARGE ONLY ON 100 LOCAL EXCHANGE ACCESS LINES.]

5 \* **Sec. 6.** AS 29.35.131(c) is amended to read:

6 (c) A local exchange telephone company, **a competitive local exchange**  
7 **telephone company, a wireless reseller,** or **a** wireless telephone company shall  
8 include the appropriate enhanced 911 surcharge, stated separately and included in the  
9 total amount owed, in the bills delivered to its customers. The Regulatory  
10 Commission of Alaska may not consider the enhanced 911 surcharge as revenue of the  
11 telephone company [AND HAS NO JURISDICTION OVER AN ENHANCED 911  
12 SYSTEM]. A customer is liable for payment of the enhanced 911 surcharge in the  
13 amounts billed by the telephone company until the amounts have been paid to the  
14 telephone company.

15 \* **Sec. 7.** AS 29.35.131 is amended by adding new subsections to read:

16 (i) A municipality may by ordinance elect to impose a point-of-purchase 911  
17 surcharge from prepaid wireless telephone accounts not to exceed one percent of the  
18 purchase value. The surcharge must apply to initial purchases and to subsequent  
19 purchases of air time. The retailer of the wireless account is responsible for remitting  
20 the surcharge to the municipality.

21 (j) To enable each municipality to qualify for grant funding, the governor is  
22 responsible for certifying the collection and use of all 911 surcharges.

23 \* **Sec. 8.** AS 29.35.133(a) is amended to read:

24 (a) The establishment, funding, use, operation, or maintenance of enhanced  
25 911 **or emergency services dispatch** systems and all activities associated with those  
26 actions are specifically found to be within the ambit of **AS 09.50.250(6)**  
27 [AS 09.50.250(1)] and AS 09.65.070(d)(6). Except for intentional acts of misconduct  
28 or gross negligence, a service supplier, local exchange telephone company,  
29 **competitive local exchange telephone company, wireless reseller,** or wireless  
30 telephone company and their employees and agents are also immune from tort liability  
31 that might otherwise be incurred in the course of installing, training, maintaining, or

1 providing enhanced 911 systems or transmitting or receiving calls on the system.

2 \* **Sec. 9.** AS 29.35.137 is amended by adding a new paragraph to read:

3 (12) "emergency services dispatch" means a service that provides  
4 continuous day and night dispatch of emergency medical, police, fire, or rescue  
5 services using enhanced 911 facilities.