

CS FOR HOUSE BILL NO. 461(STA) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Amended: 5/7/04

Offered: 5/1/04

Sponsor(s): REPRESENTATIVES HOLM, Lynn

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

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

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

1 **statement** [ACCESS LINE] for a wireline telephone. A wireless telephone customer
 2 may not be subject to more than one enhanced 911 surcharge for each wireless
 3 telephone number. [A CUSTOMER THAT HAS MORE THAN 100 LOCAL
 4 EXCHANGE ACCESS LINES FROM A LOCAL EXCHANGE TELEPHONE
 5 COMPANY IN THE MUNICIPALITY IS LIABLE FOR THE ENHANCED 911
 6 SURCHARGE ONLY ON 100 LOCAL EXCHANGE ACCESS LINES.]

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

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

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

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

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

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

26 (a) The establishment, funding, use, operation, or maintenance of enhanced
 27 911 **or emergency services dispatch** systems and all activities associated with those
 28 actions are specifically found to be within the ambit of **AS 09.50.250(6)**
 29 [AS 09.50.250(1)] and AS 09.65.070(d)(6). Except for intentional acts of misconduct
 30 or gross negligence, a service supplier, local exchange telephone company,
 31 **competitive local exchange telephone company, wireless reseller,** or wireless

1 telephone company and their employees and agents are also immune from tort liability
2 that might otherwise be incurred in the course of installing, training, maintaining, or
3 providing enhanced 911 systems or transmitting or receiving calls on the system.

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

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

8 * **Sec. 10.** AS 42.05 is amended by adding a new section to read:

9 **Sec. 42.05.295. Routing 911 calls.** Notwithstanding AS 42.05.711, to ensure
10 statewide access by all residents to 911 wireline services, traditional or enhanced, each
11 local exchange telephone company that provides wireline service to an area outside a
12 municipality must route all 911 calls originating from within its customer service base
13 through a toll free number to a regional public safety answering point identified by the
14 state. In this section, "municipality" has the meaning given in AS 29.35.137.