

**ALASKA STATE LEGISLATURE  
HOUSE RULES STANDING COMMITTEE**

April 21, 2005

4:07 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative John Coghill, Vice Chair  
Representative John Harris  
Representative Vic Kohring  
Representative Ethan Berkowitz  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Lesil McGuire

**COMMITTEE CALENDAR**

HOUSE BILL NO. 103

"An Act requiring an actionable claim against the state to be tried without a jury."

- MOVED CSHB 103(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 147

"An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 103

SHORT TITLE: CLAIMS AGAINST THE STATE

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/24/05	(H)	READ THE FIRST TIME - REFERRALS
01/24/05	(H)	STA, JUD, FIN
03/03/05	(H)	STA AT 8:00 AM CAPITOL 106
03/03/05	(H)	Moved Out of Committee
03/03/05	(H)	MINUTE(STA)

03/04/05 (H) STA RPT 1DNP 5NR  
 03/04/05 (H) DNP: GRUENBERG;  
 03/04/05 (H) NR: GARDNER, GATTO, RAMRAS, ELKINS,  
 SEATON  
 03/09/05 (H) JUD AT 1:00 PM CAPITOL 120  
 03/09/05 (H) Heard & Held  
 03/09/05 (H) MINUTE(JUD)  
 03/16/05 (H) JUD AT 1:00 PM CAPITOL 120  
 03/16/05 (H) Moved Out of Committee  
 03/16/05 (H) MINUTE(JUD)  
 03/17/05 (H) JUD RPT 1DP 3DNP 2NR  
 03/17/05 (H) DP: MCGUIRE;  
 03/17/05 (H) DNP: GARA, GRUENBERG, KOTT;  
 03/17/05 (H) NR: DAHLSTROM, ANDERSON  
 04/14/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 04/14/05 (H) Moved CSHB 103(FIN) Out of Committee  
 04/14/05 (H) MINUTE(FIN)  
 04/15/05 (H) FIN RPT CS(FIN) NT 2DP 1DNP 7NR  
 04/15/05 (H) DP: FOSTER, KELLY;  
 04/15/05 (H) DNP: CROFT;  
 04/15/05 (H) NR: HAWKER, MOSES, HOLM, STOLTZE,  
 WEYHRAUCH, MEYER, CHENAULT  
 04/21/05 (H) RLS AT 3:00 PM FAHRENKAMP 203

**WITNESS REGISTER**

HEATH HILYARD, Staff  
 to Representative Mike Kelly  
 Alaska State Legislature  
 Juneau, Alaska  
 POSITION STATEMENT: Explained the need for Version F of HB 103.

REPRESENTATIVE BRUCE WEYHRAUCH  
 Alaska State Legislature  
 Juneau, Alaska  
 POSITION STATEMENT: Explained his amendment to HB 103 in the  
 House Finance Committee.

**ACTION NARRATIVE**

**CHAIR NORMAN ROKEBERG** called the House Rules Standing Committee  
 meeting to order at [4:07:14 PM](#). Representatives Rokeberg,  
 Coghill, Harris, and Kohring were present at the call to order.  
 Representatives Berkowitz and Kerttula arrived as the meeting  
 was in progress.

HB 103-CLAIMS AGAINST THE STATE

4:08:51 PM

CHAIR ROKEBERG announced that the only order of business would be HOUSE BILL NO. 103, "An Act requiring an actionable claim against the state to be tried without a jury."

4:09:09 PM

REPRESENTATIVE COGHILL moved to adopt CSHB 103, Version 24-LS0403\F, Bullock, 4/19/05, as the working document.

REPRESENTATIVE BERKOWITZ objected for discussion purposes.

4:09:27 PM

HEATH HILYARD, Staff to Representative Mike Kelly, Alaska State Legislature, explained that an amendment offered in the House Finance Committee was, in essence, Version F. However, the structure of the amendment was technically incorrect, and therefore a more [technically] correct version [Version F] is being offered.

4:10:00 PM

REPRESENTATIVE BERKOWITZ asked if Mr. Hilyard had run [Version F] by Representative Weyhrauch.

MR. HILYARD replied no.

4:10:22 PM

MR. HILYARD related his understanding of the amendment Representative Weyhrauch offered and the sponsor accepted in the House Finance Committee. He explained that after conferring with the drafter, it was concluded that the structure of the amendment, which the language inserted : "The state may request a jury trial under this subsection.", wasn't technically correct.

4:11:29 PM

REPRESENTATIVE COGHILL surmised then that the language "Unless the state requests a jury trial," in subsection (b) is what Representative Weyhrauch wanted to insert.

MR. HILYARD stated that since Version F had been drafted he hadn't reviewed it with Representative Weyhrauch, although he believes it's consistent with Representative Weyhrauch's intent, given the nature of his testimony.

[4:12:07 PM](#)

REPRESENTATIVE KERTTULA pointed out that under CSHB 103(FIN) the language "The state may request a jury trial under this subsection." doesn't intimate that the state will receive the jury trial. However, Version F seems to intimate that the state will obtain a jury trial. Representative Kerttula asked if, on the record, there was any intent with that.

MR. HILYARD said that he was relying on Representative Weyhrauch's amendment as well as his recollection of the nature of the discussion surrounding the amendment. He offered that the sponsor would be happy to allow the legislation to stand as originally amended [in the House Finance Committee]. However, upon conferring with the drafter, the drafter didn't believe the language was consistent with Representative Weyhrauch's intent.

CHAIR ROKEBERG pointed out that in CSHB 103(FIN) the use of "may" is permissive and indicates the court could refuse. However, Version F seems to mandate that upon a request [for a jury trial], it would be granted. Therefore, the question as to Representative Weyhrauch's intent remains.

[4:14:16 PM](#)

REPRESENTATIVE BERKOWITZ inquired as to the criteria the state would use to make the request [for a jury trial]. He related his understanding that this legislation is referred to as the Bethel jury legislation and is in response to the concern with Western Alaskan juries.

MR. HILYARD acknowledged that some do refer to HB 103 as the Bethel jury legislation, but pointed out that the sponsor doesn't refer to it as such. He noted that the committee packet should include a document entitled "Sample Jury Awards" from throughout the state, two of which are from Bethel. Mr. Hilyard noted that this list was prepared by the Attorney General's Office as a sample.

[4:15:08 PM](#)

REPRESENTATIVE BERKOWITZ inquired as to the sponsor's sense of what the correct jury verdict would've been in those cases. He asked if the cases [highlighted in the "Sample Jury Awards"] were sent up on appeal to the Alaska Supreme Court and the initial awards reduced.

MR. HILYARD related his understanding that in two of the cases the judgments were reversed on appeal and for one case, Lance Miller v. State, there are still post-trial motions pending.

REPRESENTATIVE BERKOWITZ said that he wasn't referring to when the verdict is reversed but rather when the award was reduced.

MR. HILYARD answered that he doesn't know, and noted that he has been relying on counsel from the Attorney General's Office.

[4:16:40 PM](#)

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, recalled that his amendment in the House Finance Committee was that the state may request a trial by jury.

CHAIR ROKEBERG said that the committee wanted to be sure of Representative Weyhrauch's intent and whether Version F is agreeable to him.

REPRESENTATIVE WEYHRAUCH related his opinion that the language in Version F essentially does the same thing as CSHB 103(FIN) because the state, and no one else, can request a jury trial if the state is a defendant. The intent behind this legislation was to keep large jury verdicts from occurring in Western Alaska. However, data showed that many of these verdicts were reversed on appeal/reduced or the state wasn't taking advantage of remitter, by which a judge can be asked for a decline. The purpose of the amendment proposed in the House Finance Committee was to allow a jury trial in some instances. In some ways, giving all the authority to the state seemed to address the concern. The deal, he explained, was that juries were being harmful to the state, and therefore if the state wants a jury trial, it could live by the consequences.

[4:19:09 PM](#)

REPRESENTATIVE KERTTULA asked whether a jury trial would be mandatory if the state requested it.

REPRESENTATIVE WEYHRAUCH explained that currently if a complaint is filed and an answer is filed, then a request for a trial by jury would have to occur within five to ten days. Under this legislation, the state could request a trial by jury, although the nonstate entity could not.

CHAIR ROKEBERG asked if Representative Weyhrauch believes Version F fairly reflects the intention of his amendment.

REPRESENTATIVE WEYHRAUCH commented that under Version F, it seems to present the corollary of [of his amendment].

[4:19:51 PM](#)

CHAIR ROKEBERG reiterated that the concern has been that the use of "may" is permissive and may allow the court to deny the state's request for a trial by jury.

REPRESENTATIVE WEYHRAUCH disagreed, and emphasized that if the state requested a trial by jury under his amendment, then the state received a trial by jury.

[4:20:50 PM](#)

REPRESENTATIVE BERKOWITZ withdrew his objection, and therefore Version F was adopted and placed before the committee.

[4:21:01 PM](#)

REPRESENTATIVE BERKOWITZ opined that HB 103 is an accusation against Western Alaska juries without any foundation. Representative Berkowitz questioned why the state would get to choose and the plaintiff wouldn't. He also questioned why one would desire taking away the jury's right to review cases. "It seems to me a bit of sovereign arrogance for us to pursue this course," he said. He concluded by urging the committee to reject this legislation soundly.

[4:21:44 PM](#)

REPRESENTATIVE KERTTULA pointed out nothing in the legislation specifies why the state would be allowed [the ability to request a trial by jury] versus other defendants. The main reason given for allowing the aforementioned was in regard to juries in Western Alaska.

[4:22:11 PM](#)

CHAIR ROKEBERG commented that he wasn't sure that the Western Alaska reasoning is entirely accurate.

REPRESENTATIVE KERTTULA agreed that might not be the case, but noted that was the reasoning provided.

[4:23:04 PM](#)

REPRESENTATIVE BERKOWITZ related his understanding that of the four sample jury awards, two verdicts had been reversed. Therefore, the question as to whether the amount was satisfactory was never addressed. He noted that he didn't know the outcome of the remaining two sample jury awards. Therefore, basing a large policy change on two cases, without considering the totality of evidence, seems to be fairly arbitrary, he opined. Representative Berkowitz related that the anecdotal evidence he has heard is that judge-tried cases tend to break in favor of the plaintiff more often. This, taking power away from jury and giving it to the judge only, seems particularly ironic when the conservative movement in America is screaming about the power of judges. Therefore, Representative Berkowitz didn't see any intellectual consistency with this or any practical need for it, or any evidence supporting a charge that juries are out of control anywhere.

[4:24:39 PM](#)

REPRESENTATIVE HARRIS asked if the Department of Law (DOL) requested that this legislation be brought forward.

MR. HILYARD specified that although DOL has been very involved with the preparation of the legislation, no specific request came from DOL. As has been stated by the sponsor, the primary motivation for the introduction of HB 103 was that it was the request of a retired attorney in Fairbanks and was related to the sponsor's personal disposition on the matter. Although DOL and the Alaska Court System have been willing to assist with the legislation, they have never offered a position on it.

[4:25:59 PM](#)

REPRESENTATIVE HARRIS asked if this legislation refers to any type of actionable item against the state.

MR. HILYARD related his understanding that this legislation only refers to civil torts. He pointed out that there is a

distinction in the Alaska Constitution in Article 1, Section 16, which provides for jury trials in civil cases. Furthermore, Article 2, Section 21, specifies, "The legislature shall establish procedures for suits against the State."

[4:27:01 PM](#)

MR. HILYARD explained that the process [proposed in HB 103] was the process by which actionable claims were handled prior to 1975, when a relatively arbitrary change was made by the legislature in response to a controversy with the University of Alaska.

[4:27:59 PM](#)

REPRESENTATIVE BERKOWITZ inquired as to how many actionable claims against the state would be impacted by this legislation.

MR. HILYARD related his understanding that on average somewhere between five to ten such cases go to trial. He noted that it's difficult to track these cases. He related his understanding that the Alaska Court System based its fiscal note on roughly five cases. According to DOL, there are approximately 75 applications [requesting actionable claims against the state], of which 10 percent or less go to trial.

REPRESENTATIVE BERKOWITZ inquired as to how many the state wins of the five to ten cases.

MR. HILYARD said that DOL or the Alaska Court System couldn't provide concrete information regarding the amount of the average jury award and how many cases [the state] actually wins because of the difficulty in gathering such data.

REPRESENTATIVE BERKOWITZ said that he found it incredible that DOL couldn't obtain such information on five to ten cases. He opined that the legislature doesn't know what it's doing nor the consequences of enacting HB 103.

[4:30:13 PM](#)

CHAIR ROKEBERG expressed the need for such statistics because the legislature will have to appropriate the judgment awards on an annualized basis. Chair Rokeberg noted that many of the committee members have other commitments at 4:30 p.m. and thus he expressed his interest in bringing the legislation to question.

[4:30:43 PM](#)

REPRESENTATIVE BERKOWITZ moved to table CSHB 103, Version F, until the aforementioned information was obtained.

CHAIR ROKEBERG objected.

A roll call vote was taken. Representatives Berkowitz and Kerttula voted in favor of tabling CSHB 103, Version F. Representatives Harris, Coghill, Kohring, and Rokeberg voted against it. Therefore, the motion failed by a vote of 2-4.

[4:31:37 PM](#)

REPRESENTATIVE COGHILL moved to report CSHB 103, Version 24-LS0403\F, Bullock, 4/19/05, out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR ROKEBERG objected, and requested that the sponsor provide the earlier requested information before this legislation is calendared.

MR. HILYARD said that he would do his best.

CHAIR ROKEBERG withdrew his objection.

[4:32:12 PM](#)

REPRESENTATIVE HARRIS objected, and opined that he would like to speak with the sponsor on this a bit more in depth before the legislation moves from committee. He commented that this could be a serious matter.

[4:32:54 PM](#)

CHAIR ROKEBERG said that he wasn't sure that the committee would have time to take up this legislation again.

REPRESENTATIVE HARRIS withdrew his objection, but indicated the need to speak with the sponsor before the legislation is calendared.

[4:33:36 PM](#)

REPRESENTATIVE BERKOWITZ objected.

[4:33:48 PM](#)

A roll call vote was taken. Representatives Harris, Coghill, Kohring, and Rokeberg voted in favor of reporting CSHB 103, Version 24-LS0403\F, Bullock, 4/19/05, from committee. Representatives Kerttula and Berkowitz voted against it. Therefore, CSHB 103(RLS) was reported out of the House Rules Standing Committee by a vote of 4-2.

[4:34:18 PM](#)

MR. HILYARD noted that he has been pursuing the requested information quite seriously, but has not been able to obtain it.

[4:34:42 PM](#)

REPRESENTATIVE BERKOWITZ said that he wasn't questioning whether Mr. Hilyard was trying to obtain the information, and suggested that perhaps DOL is setting him up.

#### **ADJOURNMENT**

There being no further business before the committee, the House Rules Standing Committee meeting was recessed at [4:35:00 PM](#). [This meeting reconvened on April 25, 2005.]