

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 5, 2015

8:08 a.m.

MEMBERS PRESENT

Representative Cathy Tilton, Chair
Representative Paul Seaton, Vice Chair
Representative Shelley Hughes
Representative Benjamin Nageak
Representative Lora Reinbold
Representative Harriet Drummond

MEMBERS ABSENT

Representative Dan Ortiz

COMMITTEE CALENDAR

HOUSE BILL NO. 75

"An Act relating to the regulation of marijuana by municipalities; and providing for an effective date."

- MOVED CSHB 75(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 47

"An Act requiring each municipality with a population that decreased by more than 25 percent between 2000 and 2010 that participates in the defined benefit retirement plan of the Public Employees' Retirement System of Alaska to contribute to the system an amount calculated by applying a rate of 22 percent of the total of all base salaries paid by the municipality to employees of the municipality who are active members of the system during a payroll period; reducing the rate of interest payable by a municipality with a population that decreased by more than 25 percent between 2000 and 2010 that is delinquent in transmitting employee and employer contributions to the defined benefit retirement plan of the Public Employees' Retirement System of Alaska; giving retrospective effect to the substantive provisions of the Act; and providing for an effective date."

- MOVED CSHB 47(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 104

"An Act relating to immunity for a fire department and employees or members of a fire department."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 75

SHORT TITLE: MUNI REGULATION OF MARIJUANA; ADV. BOARDS

SPONSOR(s): COMMUNITY & REGIONAL AFFAIRS

01/23/15	(H)	READ THE FIRST TIME - REFERRALS
01/23/15	(H)	CRA, JUD
02/21/15	(H)	CRA AT 10:00 AM BARNES 124
02/21/15	(H)	-- MEETING CANCELED --
02/24/15	(H)	CRA AT 8:00 AM BARNES 124
02/24/15	(H)	Heard & Held
02/24/15	(H)	MINUTE(CRA)
03/03/15	(H)	CRA AT 8:00 AM BARNES 124
03/03/15	(H)	Moved CSHB 75(CRA) Out of Committee
03/03/15	(H)	MINUTE(CRA)
03/05/15	(H)	CRA AT 8:00 AM BARNES 124

BILL: HB 47

SHORT TITLE: PERS CONTRIBUTIONS BY MUNICIPALITIES

SPONSOR(s): FOSTER

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	CRA, L&C
02/10/15	(H)	CRA AT 8:00 AM BARNES 124
02/10/15	(H)	Heard & Held
02/10/15	(H)	MINUTE(CRA)
02/17/15	(H)	CRA AT 8:00 AM BARNES 124
02/17/15	(H)	-- MEETING CANCELED --
02/21/15	(H)	CRA AT 10:00 AM BARNES 124
02/21/15	(H)	-- MEETING CANCELED --
02/26/15	(H)	CRA AT 8:00 AM BARNES 124
02/26/15	(H)	Heard & Held
02/26/15	(H)	MINUTE(CRA)
03/05/15	(H)	CRA AT 8:00 AM BARNES 124

BILL: HB 104

SHORT TITLE: IMMUNITY FOR FIRE DEPT. & MEMBERS

SPONSOR(s): TILTON

02/11/15	(H)	READ THE FIRST TIME - REFERRALS
02/11/15	(H)	CRA, JUD
03/05/15	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

PAUL LABOLLE, Staff
Representative Neal Foster
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 47, answered questions.

DAN BELLERIVE, Staff
Representative Tilton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor, Representative Tilton, presented HB 104.

JILL DOLAN, Assistant Borough Attorney
Fairbanks North Star Borough
Fairbanks, Alaska

POSITION STATEMENT: Testified on HB 104 and answered questions.

DAVID GIBBS, Director
Emergency Operations
Fairbanks North Star Borough
Fairbanks, Alaska

POSITION STATEMENT: During discussion of HB 104, answered questions.

JEFF TUCKER, Second Vice President
Alaska Fire Chief's Association
Kenai, Alaska

POSITION STATEMENT: Testified in support HB 104.

MITCH FLYNN, Fire Chief
Steese Fire Department
Fairbanks, Alaska

POSITION STATEMENT: Testified in support HB 104.

DOUG SCHRAGE, Fire Chief
University of Alaska Fairbanks Fire Department
Fairbanks, Alaska

POSITION STATEMENT: Testified in support HB 104.

VIRGINIA MCMICHAEL, Fire Chief
Chugiak Fire Department
Chugiak, Alaska

POSITION STATEMENT: Testified in support HB 104.

ACTION NARRATIVE

[8:08:24 AM](#)

CHAIR CATHY TILTON called the House Community and Regional Affairs Standing Committee meeting to order at 8:08 a.m. Representatives Hughes, Nageak, Reinbold, Drummond, Seaton, and Tilton were present at the call to order.

HB 75-MUNI REGULATION OF MARIJUANA; ADV. BOARDS

[8:09:05 AM](#)

CHAIR TILTON announced that the first order of business would be HOUSE BILL NO. 75, "An Act relating to the regulation of marijuana by municipalities; and providing for an effective date." [Before the committee is CSHB 75(CRA), reported from committee on March 3, 2015.]

[8:09:36 AM](#)

REPRESENTATIVE SEATON moved that the committee rescind its action in reporting CSHB 75, Version 29-LS0345\I, Nauman/Martin, 2/27/15, as amended, from committee. There being no objection, the committee rescinded its action in reporting CSHB 75, Version I, as amended, from committee.

[8:10:33 AM](#)

REPRESENTATIVE SEATON moved that the committee rescind its action in adopting Amendment 2, as amended. There being no objection, the committee rescinded its action in adopting Amendment 2, as amended.

[8:11:04 AM](#)

REPRESENTATIVE SEATON then moved that the committee rescind its action in adopting Conceptual Amendment 2 to Amendment 2.

REPRESENTATIVE HUGHES objected.

[8:11:25 AM](#)

REPRESENTATIVE HUGHES explained that the initiative already includes language that prohibits someone under the age of 21 from being in a marijuana establishment. In fact, the initiative language includes other types of establishments. She then indicated she is comfortable with [rescinding the committee's action in adopting Conceptual Amendment 2 to Amendment 2] and withdrew her objection.

There being no further objection, the adoption of Conceptual Amendment 2 to Amendment 2 was rescinded.

[8:12:16 AM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 2, as follows:

Page 11, line 2, following "by":
Insert "paying"

There being no objection, Amendment 2 was adopted.

[8:12:34 AM](#)

REPRESENTATIVE SEATON moved to report CSHB 75, Version 29-LS0345\I, Nauman/Martin, 2/27/15, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 75(CRA) was reported from the House Community and Regional Affairs Standing Committee.

HB 47-PERS CONTRIBUTIONS BY MUNICIPALITIES

[8:13:11 AM](#)

CHAIR TILTON announced that the next order of business would be HOUSE BILL NO. 47, "An Act requiring each municipality with a population that decreased by more than 25 percent between 2000 and 2010 that participates in the defined benefit retirement plan of the Public Employees' Retirement System of Alaska to contribute to the system an amount calculated by applying a rate of 22 percent of the total of all base salaries paid by the municipality to employees of the municipality who are active members of the system during a payroll period; reducing the rate of interest payable by a municipality with a population that decreased by more than 25 percent between 2000 and 2010 that is delinquent in transmitting employee and employer contributions to the defined benefit retirement plan of the Public Employees' Retirement System of Alaska; giving retrospective effect to the

substantive provisions of the Act; and providing for an effective date."

[8:13:40 AM](#)

REPRESENTATIVE SEATON moved to report HB 47 out of committee with individual recommendations.

REPRESENTATIVE HUGHES objected for discussion purposes.

[8:13:59 AM](#)

REPRESENTATIVE HUGHES expressed concern that the fiscal note is unknown. However, she acknowledged that the next committee of referral is the House Finance Committee, which can address the fiscal note.

[8:14:39 AM](#)

PAUL LABOLLE, Staff, Representative Neal Foster, Alaska State Legislature, pointed out that there is a zero fiscal note from the Department of Commerce, Community & Economic Development (DCCED). He then explained that there is no fiscal note as the legislation pertains to the retirement system as the statutes for fiscal notes for that are separate. He further explained that fiscal notes for departments are due in the first committee of referral while fiscal notes in relation to retirement systems are not due until the legislation reaches the House Rules Standing Committee.

[8:15:20 AM](#)

REPRESENTATIVE HUGHES withdrew her objection.

[8:15:28 AM](#)

REPRESENTATIVE SEATON restated and amended his motion to report HB 47 out of committee with individual recommendations and the accompanying [zero] fiscal note. There being no further objection, HB 47 was reported from the House Community and Regional Affairs Standing Committee.

[8:16:20 AM](#)

The committee took an at ease from 8:16 a.m. to 8:20 a.m.

HB 104-IMMUNITY FOR FIRE DEPT. & MEMBERS

[8:20:12 AM](#)

CHAIR TILTON announced that the final order of business would be HOUSE BILL NO. 104, "An Act relating to immunity for a fire department and employees or members of a fire department."

[8:20:38 AM](#)

DAN BELLERIVE, Staff, Representative Tilton, Alaska State Legislature, paraphrased from the following written statement [original punctuation provided]:

House Bill 104 was brought up in our office as a companion to a bill in the other body.

This bill intends to fix an oversight that failed to include certain fire departments when providing legal protection.

Under current statute some immunities are given to municipal fire departments and their members, but no protection is provided for fire departments are under contract with the municipalities.

We feel that liability protections should not be exclusive to municipal fire departments and should be extended to all fire departments that have a contractual relationship with local government.

The inclusion of these departments is accomplished with the additional definition provided on lines eleven and twelve of the bill.

This amendment mirrors an amendment that was offered in the other body that was offered to create an exception from the legal immunity in cases where a fire department or its members' actions are intentionally wrong or performed with extreme disregard.

The language in this amendment is similar to that of the *Immunity for 911 systems*, where there is an exception for intentional acts of misconduct or gross negligence.

[8:21:59 AM](#)

REPRESENTATIVE SEATON asked if this extends to a private contractor that is providing fire suppression services for a business. He further asked if the proposed definition change means that the person offering fire services isn't liable for acts of negligence.

MR. BELLERIVE explained that HB 104 does provide protection for acts that are considered negligent, which he suggested could be fixed via an amendment. However, with regard to contractual services, Mr. Bellerive specified that the legislation strictly speaks to fire departments that are contracted to the government as opposed to a subscription service.

[8:23:16 AM](#)

JILL DOLAN, Assistant Borough Attorney, Fairbanks North Star Borough, noted her agreement with Mr. Bellerive's explanation. The current language of HB 104 does offer complete immunity to fire departments as well as their employees and members. However, existing statute provides immunity for municipal employees and members of municipal fire departments, but not for those fire departments with which the municipality contracts to provide services. Ms. Dolan further clarified that current statute offers municipal employees and members of the [municipal] fire department complete immunity, and thus they wouldn't have personal liability, even for acts of negligence. For the municipality itself, for its fire department, discretionary function immunity is offered in subsection (d) of the same statute. This legislation, she explained, extends the immunity for employees and members to the contracted fire departments for the municipalities. She pointed out that there is additional language extending immunity to the fire departments themselves. She said, "The fire department themselves, in the current draft of the bill, would extend to the acts of negligence that you inquired about, Representative Seaton."

[8:24:50 AM](#)

REPRESENTATIVE SEATON inquired as to how far the contractor relationship goes. He further inquired as to whether the proposed extension [of immunity] in HB 104 provides contractual immunity to the person providing the fire suppression services.

MS. DOLAN clarified that HB 104 wouldn't extend [immunity] to the subscription services. The legislation intends to extend

the immunity to those providing services on behalf of the municipality or village.

[8:26:26 AM](#)

REPRESENTATIVE HUGHES inquired as to whether a municipality can contract with a for-profit fire service.

MS. DOLAN specified that a municipality can contract with a for-profit entity. She clarified that an individual for-profit or nonprofit entity that did not contract with a municipality or village but rather provided a subscription service to residents would not be covered by HB 104. The legislation, she further clarified, extends immunities that are currently available to municipalities to their contractors. For example, the Fairbanks North Star Borough has fire service areas that contract various entities to provide fire services to its residents. The intention with HB 104 was to extend immunities available to the municipality to those contractors, which may be for-profit contractors.

[8:28:12 AM](#)

REPRESENTATIVE REINBOLD asked whether a group of users in an area where they are trying to reduce the use of fire fuels would be considered contractors and have immunity or not.

MS. DOLAN responded, "If they are in the execution of a function for which they're established and they're contracting with a municipality for that service, then they would be covered." In further response to Representative Reinbold, Ms. Dolan confirmed that without a contract, they would not be covered. This legislation wouldn't apply to a group performing services for the state.

[8:29:18 AM](#)

REPRESENTATIVE HUGHES inquired as to the current status of municipal fire departments and their employees in terms of complete immunity.

MS. DOLAN clarified that under existing statute employees and members of municipal fire departments are offered immunity. The municipality itself for the fire department, under subsection (d) of the statute, has discretionary function immunity from damages claimed. Municipal fire departments don't currently

enjoy complete immunity, rather just discretionary function immunity.

REPRESENTATIVE HUGHES surmised then that HB 104 would offer the fire department itself complete immunity.

MS. DOLAN replied yes, as currently drafted.

REPRESENTATIVE HUGHES further surmised then that under HB 104, municipal fire departments and contracted fire departments with municipalities as well as employees and volunteers with contracted and municipal fire departments would have complete immunity.

MS. DOLAN confirmed that Representative Hughes is correct in terms of the current language of HB 104. However, she informed the committee that an amendment that would offer immunity with the exception of acts of intentional misconduct or gross negligence has been discussed in relation to the companion legislation. Ms. Dolan opined that such an amendment would resolve Representative Hughes' concern with regard to the complete immunity.

[8:31:53 AM](#)

REPRESENTATIVE HUGHES related her understanding that this legislation would impact about 10 fire departments that don't have the same immunity. She then asked whether those fire departments pay liability insurance and whether passage of HB 104 would result in a savings to those fire departments if they didn't have to have liability insurance.

MS. DOLAN said she couldn't answer that question and deferred to Chief Flynn, Steese Volunteer Fire Department.

[8:32:59 AM](#)

REPRESENTATIVE SEATON expressed interest in clarification as to the universe of people covered by HB 104, particularly since the legislation refers to a village without defining it as an established village. He posed a scenario in which a village contracts with an entity to provide suppression services and the same contractor provides services for an oil company or a corporation that had facilities. In such a scenario, he asked whether HB 104 would grant immunity whether the services for that contractor were being provided for that village itself or would it extend to the contractor providing services under

potentially a separate contractor to a business within the community or the region.

MS. DOLAN informed the committee that this section of law operating the immunity is titled "Suits Against Incorporated Units of Local Government." She then explained that in Representative Seaton's scenario, the definition of "fire department" in HB 104 would cover the village. She further explained that it was intended to be related to a contractual relationship, and thus was an extension of a governmental immunity and was not intended to cover the private functions the entity would perform. She offered to review it more closely to ensure there is no unintended consequence, but stated that wasn't the intent.

REPRESENTATIVE SEATON requested that the aforementioned be addressed.

[8:36:08 AM](#)

REPRESENTATIVE HUGHES related her appreciation for the volunteer firefighters around the state. She then inquired as to the training and qualifications of the contracted and volunteer nonprofit fire fighters as opposed to municipal firefighters.

MS. DOLAN deferred to others.

[8:38:13 AM](#)

DAVID GIBBS, Director, Emergency Operations, Fairbanks North Star Borough, informed the committee that training standards are established by the National Fire Protection Association and those standards are followed by all firefighters, whether volunteer or career department. Therefore, the training provided and conducted by volunteer fire departments is identical to that of the career departments. Mr. Gibbs noted that he also serves on the Alaska Fire Standards Council, which establishes qualifications for firefighter training. He related that the Alaska Fire Standards Council doesn't differentiate between career and volunteer departments.

[8:39:17 AM](#)

REPRESENTATIVE HUGHES remarked that although she was aware of the aforementioned, she felt it important for people to know. She then commented that Alaska has excellent firefighters.

8:39:45 AM

REPRESENTATIVE SEATON stated his interest in the appropriate witness to address whether the term "community" should be used rather than "village."

8:40:21 AM

CHAIR TILTON opened public testimony.

8:40:28 AM

JEFF TUCKER, Second Vice President, Alaska Fire Chief's Association, began by noting that he is a past fire chief of one of the departments that would be impacted by HB 104. Mr. Tucker opined that it's appropriate the legislature consider extending the immunities that are enjoyed by municipal departments to those departments who contract municipalities. He related that typically the ones impacted by HB 104 will be service areas that were formed to serve communities in the municipalities. Examples of such areas are the Fairbanks North Star Borough, the Chugiak and Girdwood Fire Departments. The [aforementioned] agencies provide municipal services as not-for-profit corporations, they may be volunteer departments or combination departments. Therefore, extending the immunity to them is important. With regard to the training of firefighters, he confirmed that it's the same for municipal, volunteer, and combination departments. In conclusion, he related support for HB 104 from the Alaska Fire Chief's Association. With regard to Representative Seaton's question, Mr. Tucker said he isn't aware of any villages that currently contract with a fire entity or corporation to provide fire services for the villages; however, he admitted that doesn't mean there are not such situations.

8:43:20 AM

MITCH FLYNN, Fire Chief, Steese Fire Department, testified in support of HB 104. The legislation, he opined, will protect the firefighters as well as the taxpayers, who could be held liable for the actions taken by the firefighters and a lawsuit that a [firefighter/department] couldn't pay. Mr. Flynn related support for HB 104 and pointed out the zero fiscal note. He then related that the insurance broker for the Steese Fire Department will realize a cost savings on the insurance premium for general liability.

8:44:50 AM

DOUG SCHRAGE, Fire Chief, University of Alaska Fairbanks Fire Department, related his support for HB 104. He then related that he is a member and past president of the Alaska Fire Chief's Association and currently sits on its Board of Directors. He explained that the University of Alaska Fairbanks (UAF) Fire Department is a student-based fire department that provides fire service to the Fairbanks North Star Borough on a contractual basis. Therefore, the UAF Fire Department would benefit from the immunity extended under HB 104. As is the case for many fire departments [in the state], UAF Fire Department is a one fire department, which means the department is staffed and equipped to handle one fire at a time. The UAF Fire Department, he explained, is also a workforce development program responsible for providing many of Alaska's municipal fire departments with experienced and trained firefighters. In the current fiscal environment, the concern with liability could be a factor in the future of the program. He reiterated his support for HB 104 and noted his agreement with the prior testimony.

[8:46:37 AM](#)

VIRGINIA MCMICHAEL, Fire Chief, Chugiak Fire Department, indicated that the Chugiak Fire Department would be impacted by HB 104 as it's a nonprofit agency that has been providing contract fire service to the Municipality of Anchorage for quite some time. Municipal tax funds are used to provide the service to the community and there are almost 100 volunteers who spend 100s of hours annually training and some 1,000s of hours responding. She then noted that many of Chugiak Fire Department's responders are career firefighters and medics in other departments throughout the state as well as retired career firefighters. In conclusion, Ms. McMichael related the Chugiak Fire Department's support for HB 104.

[8:48:04 AM](#)

CHAIR TILTON, upon determining no one else wished to testify, closed public testimony.

[8:48:20 AM](#)

REPRESENTATIVE SEATON, referring to page 1, line 10, of HB 104, expressed concern with the lack of a definition for "village." He then questioned whether the term "village" should be "community as recognized by the Department of Commerce,

Community & Economic Development" as fire is one of the five criteria for providing services on which communities are recognized. He noted that a lot of communities in the state are located in organized and unorganized boroughs that provide fire service.

CHAIR TILTON said she will look into that.

8:50:01 AM

CHAIR TILTON moved that the committee adopt Amendment 1, labelled 29-LS0550\A.1, Shutts, 2/27/15, which read:

Page 1, lines 7 - 8:

Delete "a fire department or"

Page 1, line 8, following "department.":

Insert "An action for tort or breach of a contractual duty based on the act or omission of an employee or member of a fire department in the execution of a function for which the department is established may not be maintained against a fire department unless the action alleges intentional misconduct or gross negligence."

Page 1, following line 12:

Insert a new bill section to read:

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

(d) **Notwithstanding (c) of this section, an** [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 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 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 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."

REPRESENTATIVE SEATON objected.

[8:50:14 AM](#)

MR. BELLERIVE explained that Amendment 1 mirrors an amendment offered to the companion legislation in the Senate. Amendment 1 provides an exception to legal immunity in cases in which a fire department or its member's actions are intentionally wrong or performed with extreme disregard. The language of Amendment 1, he further explained, is similar to that of the immunity for 911 systems in which there is an exception for intentional acts of misconduct or gross negligence.

[8:51:03 AM](#)

REPRESENTATIVE SEATON asked if Amendment 1 places the liability on the training activities at the University of Alaska Anchorage and the Chugach Fire Department.

MR. BELLERIVE replied no, in so far as the description from Legislative Legal Services.

[8:52:01 AM](#)

MR. BELLERIVE, in response to Representative Nageak, said he has a memorandum from Legislative Legal Services that outlines the purpose and functional changes of the legislation. In further response to Representative Nageak, Mr. Bellerive specified that

he didn't receive a memorandum for Amendment 1, but did receive an oral explanation as to the changes of the amendment. Mr. Bellerive confirmed that Amendment 1 had been vetted by Legislative Legal Services.

[8:52:59 AM](#)

The committee took a brief at ease.

[8:53:53 AM](#)

REPRESENTATIVE SEATON pointed out that the new Section 2 language proposed by Amendment 1 refers to municipality rather than village or community. He asked if that is an intentional change or not.

MR. BELLERIVE answered that it wasn't an intentional change but rather was made to clarify that changes in the legislation weren't intended to negate the protections afforded in subsection (d).

[8:55:26 AM](#)

REPRESENTATIVE SEATON further pointed out that the new Section 2 language of Amendment 1 refers to a municipality only while the general protection located on page 1, line 10, of HB 104 refers to a municipality or a village. Therefore, he requested clarification on the language.

[8:56:02 AM](#)

CHAIR TILTON announced that HB 104 and Amendment 1 [with Representative Seaton's objection] would be held over.

[8:57:09 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 8:57 a.m.