

Introduced: 2/21/64  
Referred: Local Govern-  
ment and Judiciary

1 IN THE HOUSE

BY THE LOCAL GOVERNMENT  
COMMITTEE BY REQUEST

2 HOUSE BILL NO. 338

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to claims by or against an  
7 incorporated borough, city, or other public  
8 corporation of like character."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 29 is amended by adding a new chapter to read:

11 CHAPTER 85. CLAIMS BY OR AGAINST MUNICIPAL CORPORATIONS.

12 ARTICLE 1. CLAIMS BY MUNICIPAL CORPORATIONS.

13 Sec. 29.85.010. CLAIMS BY INCORPORATED UNITS OF LOCAL  
14 GOVERNMENT. An action may be maintained by an incorporated  
15 borough, city, or other public corporation of like character  
16 in its corporate name, and upon a cause of action accruing to  
17 its corporate character

18 (1) upon a contract with the public corporation,

19 (2) upon a liability prescribed by law in favor of  
20 the public corporation,

21 (3) to recover a penalty or forfeiture given to  
22 the public corporation,

23 (4) to recover damages for an injury to the  
24 corporate rights or property of the public corporation.

25 ARTICLE 2. CLAIMS AGAINST MUNICIPAL CORPORATIONS.

26 Sec. 29.85.100. TORT CLAIMS AGAINST INCORPORATED UNITS  
27 OF LOCAL GOVERNMENT. (a) Within the limitations of secs.  
28 110 - 190 of this chapter, an incorporated general-law or  
29 home-rule borough, city, or other public corporation of like

1 character is liable for its torts and those of its officers,  
2 employees and agents acting within the scope of their employ-  
3 ment or duties.

4 (b) The liability imposed on units of local government  
5 by (a) of this section applies to torts arising out of either  
6 a governmental or proprietary function.

7 Sec. 29.85.110. EXCEPTIONS. (a) No action under sec.  
8 100 of this chapter may be maintained against a unit of local  
9 government for

10 (1) any claim for injury to or death of any person  
11 covered by the Alaska Workmen's Compensation Act;

12 (2) any claim relating to the assessment and col-  
13 lection of taxes;

14 (3) any claim based on snow or ice conditions on  
15 a highway or other public place, unless the condition is  
16 affirmatively caused by the negligent act of the unit of  
17 local government;

18 (4) any claim based upon an act or omission of an  
19 officer or employee, exercising due care, in the execution of  
20 a valid or invalid statute, charter, ordinance, resolution,  
21 or regulation;

22 (5) any claim based upon the performance, or the  
23 failure to exercise or perform, a discretionary function or  
24 duty, whether or not the discretion is abused;

25 (6) any claim against a unit of local government  
26 as to which it is immune from liability by the provisions of  
27 any other statute.

28 (b) As to any claim enumerated in (a) of this section,  
29 a unit of local government shall be liable only in accordance

1 with the applicable statute. If there is no applicable  
2 statute, a unit of local government shall be immune from  
3 liability.

4 Sec. 29.85.120. LIMITATION OF LIABILITY. (a) Lia-  
5 bility of a unit of local government on any claim within the  
6 scope of sec. 100 of this chapter shall not exceed

7 (1) \$25,000 when the claim is one for death by  
8 wrongful act or omission and \$50,000 to a claimant in any  
9 other case;

10 (2) \$300,000 for any number of claims arising out  
11 of a single occurrence.

12 (b) No award for damages on multiple claims arising out  
13 of a single occurrence may include punitive damages.

14 (c) If the amount awarded to or settled upon multiple  
15 claimants exceeds \$300,000, any party may apply to the court  
16 having jurisdiction of the cause to apportion to each claim-  
17 ant his proper share of the total amount permitted under (a)  
18 (1) of this section. The share apportioned each claimant  
19 shall be in the proportion that the ratio of the award or  
20 settlement made to him bears to the aggregate awards and  
21 settlements for all claims arising out of the occurrence.

22 (d) The limitation of liability imposed by (a)(1) of  
23 this section includes damages claimed for loss of service or  
24 loss of support arising out of the same tort.

25 Sec. 29.85.130. NOTICE OF CLAIM. (a) A person who  
26 claims damages from a unit of local government for a tort  
27 within the scope of sec. 100 of this chapter shall cause to  
28 be presented to the governing body of the unit of local  
29 government a written notice stating the time, place, and

1 circumstances of the alleged tort and the amount of compensa-  
2 tion or other relief demanded.

3 (b) The notice required in (a) of this section must be  
4 presented within 30 days after the occurrence of the alleged  
5 tort. Failure to state the amount of compensation or other  
6 relief demanded does not invalidate the notice, but in that  
7 case the claimant shall furnish full information regarding  
8 the nature and extent of injury and damages claimed within  
9 15 days after demand by the unit of local government. The  
10 time for giving notice does not include the time, not exceed-  
11 ing 90 days, during which a person injured is incapacitated  
12 by the injury from giving notice.

13 (c) If the claim is one for death by wrongful action or  
14 omission, the notice may be presented by the personal repre-  
15 sentative, surviving spouse, or next of kin, or the consular  
16 officer of the foreign country of which the deceased was a  
17 citizen, within one year after the alleged injury or loss  
18 resulting in such death. However, if the person for whose  
19 death the claim is made has presented a notice that would  
20 have been sufficient had he lived, an action for wrongful  
21 death may be brought without any additional notice.

22 (d) No action may be maintained on a claim within the  
23 scope of sec. 100 of this chapter unless notice is given as  
24 required by this section.

25 Sec. 29.85.140. TIME LIMIT ON COMMENCING ACTION. No  
26 action may be maintained on a claim within the scope of sec.  
27 100 of this chapter unless the action is commenced within one  
28 year after the giving of notice as required by sec. 130 of  
29 this chapter.

1           Sec. 29.85.150. LIABILITY INSURANCE. (a) The govern-  
2           ing body of a unit of local government may procure insurance  
3           against liability of the unit of local government and of its  
4           officers, employees, and agents. The insurance procured may  
5           provide protection in excess of the limit of liability  
6           imposed by sec. 120 of this chapter.

7           (b) If the unit of local government has the authority  
8           to levy taxes, the premium costs for liability insurance may  
9           be levied in excess of any per capita, millage or percentile  
10          tax limitation imposed by statute or charter.

11          (c) The provisions of (a) and (b) of this section apply  
12          to insurance procured to protect against claims arising under  
13          sec. 100 of this chapter and also to claims arising under  
14          sec. 110 of this chapter. The procurement of insurance  
15          constitutes a waiver of the defense of governmental immunity  
16          to the extent of the liability stated in the policy but has  
17          no effect on the liability of the unit of local government  
18          beyond the coverage provided by the insurance.

19          Sec. 29.85.160. AUTHORITY TO INDEMNIFY. (a) The  
20          governing body of a unit of local government may defend, save  
21          harmless and indemnify any of its officers and employees,  
22          whether elective or appointive, against any tort claim,  
23          whether groundless or otherwise, arising out of an alleged  
24          act or omission occurring in the performance of duty.

25          (b) The provisions of (a) of this section do not apply  
26          in case of malfeasance in office or wilful or wanton neglect  
27          of duty.

28          Sec. 29.85.170. COMPROMISE OF CLAIMS. (a) The  
29          governing body of a unit of local government may compromise,

1 adjust, and settle tort claims against the unit of local  
2 government for damages under sec. 100 of this chapter and  
3 may, within the limits of procedural requirements imposed by  
4 law or charter, appropriate money for the payment of amounts  
5 agreed upon.

6 (b) If the amount of a settlement exceeds \$2,500, the  
7 settlement shall not be effective until approved by the court  
8 which has jurisdiction of the cause or would have jurisdic-  
9 tion of the cause if an action were commenced.

10 Sec. 29.85.180. PAYMENT OF JUDGMENTS. (a) When a  
11 judgment is entered against or a settlement is made by a  
12 unit of local government for a claim within the scope of sec.  
13 100 of this chapter, payment shall be made and the same  
14 remedies shall apply in case of nonpayment as in the case of  
15 other judgments or settlements against the unit of local  
16 government.

17 (b) If a unit of local government has the authority to  
18 levy taxes, and a judgment or settlement within (a) of this  
19 section is unpaid at the time of the annual property tax  
20 levy, the governing body of the unit of local government  
21 shall, if it finds that other funds are not available for  
22 payment of the judgment, levy a tax sufficient to pay the  
23 judgment or settlement with accrued interest. This tax may  
24 be levied in excess of any per capita, millage or percentile  
25 tax limitation imposed by statute or charter.

26 Sec. 29.85.190. RELATION TO HOME RULE CHARTERS. The  
27 provisions of this chapter are exclusive of and supersede all  
28 home rule charter provisions on the same subject in effect on  
29 the effective date of this chapter. No home rule charter

1 provision may be adopted on the same subject after the  
2 effective date of this chapter.

3 \* Sec. 2. AS 09.65.070 is amended to read:

4 Sec. 09.65.070. SUITS AGAINST INCORPORATED UNITS OF  
5 LOCAL GOVERNMENT [LOCAL GOVERNMENTS AND PUBLIC CORPORATIONS].

6 An action may be maintained against an incorporated borough,  
7 city, or other public corporation of like character [ A UNIT  
8 OF LOCAL GOVERNMENT OR PUBLIC CORPORATION] in its corporate  
9 character and within the scope of its authority, but tort  
10 actions against a unit of local government shall be governed  
11 by the provisions of AS 29.85.100 - 29.85.190 [OR FOR AN  
12 INJURY TO THE RIGHTS OF THE PLAINTIFF ARISING FROM SOME ACT  
13 OR OMISSION OF THE UNIT OF LOCAL GOVERNMENT OR PUBLIC CORPORA-  
14 TION].

15 \* Sec. 3. The provisions of this Act do not apply to any claim  
16 against a unit of local government arising before the effective  
17 date of this Act. These claims may be presented and enforced to  
18 the same extent and subject to the same procedure and restrictions  
19 as if this Act had not been enacted.  
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