

Introduced: 2/21/73
Referred: Community &
Regional Affairs and Judiciary

1 IN THE HOUSE

BY RANDOLPH

2 HOUSE BILL NO. 249

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to actions against municipalities."

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

8 * Section 1. AS 29.73 is amended by adding a new section to read:

9 Sec. 29.73.060. ACTIONABLE CLAIMS AGAINST A MUNICIPALITY. No
10 person or corporation may bring an action against a municipality which
11 has established by ordinance procedures for filing claims against it
12 without complying with those procedures. An action brought against a
13 municipality after compliance with established claim procedures is
14 subject to the provisions of AS 09.50.250 - 09.50.300 and AS 44.77.-
15 040(c).

16 * Sec. 2. AS 09.50.250 is amended to read:

17 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE OR A MUNICI-
18 PALITY. A person or corporation having a contract, quasi-contract, or
19 tort claim against the state or a municipality may bring an action
20 against the state or municipality in the superior court. A person who
21 may present his claim under AS 44.77.010 - 44.77.060 or under claim
22 procedures provided by municipal code may not bring an action under
23 this section except as set out in AS 44.77.040(c). However, no action
24 may be brought under this section if the claim

25 (1) is an action for tort, and is based upon an act or
26 omission of an employee of the state or municipality, exercising due
27 care, in the execution of a statute, [OR] regulation, or ordinance,
28 whether or not the statute, [OR] regulation, or ordinance is valid;
29 or is an action for tort, and based upon the exercise or performance

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

4 (2) is for damages caused by the imposition or establish-
5 ment of a quarantine by the state or municipality;

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

9 * Sec. 3. AS 09.50.260 is amended to read:

10 Sec. 09.50.260. UNDERTAKING. At the time of filing the complaint
11 in an action against the state or a municipality, the plaintiff shall
12 file an undertaking in a sum fixed by the court. The undertaking shall
13 be conditioned upon payment by the plaintiff of costs incurred by the
14 state or municipality in the action if the plaintiff fails to prosecute
15 the action or fails to recover judgment.

16 * Sec. 4. AS 09.50.270 is amended to read:

17 Sec. 09.50.270. PAYMENT OF JUDGMENT AGAINST THE STATE OR A
18 MUNICIPALITY. No attachment or execution shall issue against the
19 state or a municipality. When a final judgment is rendered against
20 the state or a municipality in an action, the clerk of the court shall
21 immediately transmit a certified copy of the judgment to the Department
22 of Administration of the state or the administrative office of the
23 municipality which shall either approve payment of the judgment against
24 the state or municipality if a sufficient appropriation exists for
25 payment, or audit the amount and transmit a copy to the legislature
26 or governing body with the recommendation that an appropriation be made
27 for its payment.

28 * Sec. 5. AS 09.50.280 is amended to read:

29 Sec. 09.50.280. JUDGMENT FOR PLAINTIFF. If judgment is rendered

1 for the plaintiff, it shall be for the legal amount found due from the
2 state or municipality with legal interest from the date it became due
3 and without punitive damages.

4 * Sec. 6. AS 09.50.290 is amended to read:

5 Sec. 09.50.290. TRIAL BY COURT. Actions against the state or a
6 municipality under secs. 250 - 300 of this chapter shall be tried by
7 the court without a jury.

8 * Sec. 7. AS 09.50.300 is amended to read:

9 Sec. 09.50.300. COMPROMISE BY ATTORNEY GENERAL OR MUNICIPAL
10 ATTORNEY. The attorney general or, in appropriate cases, the municipal
11 attorney may, with the approval of the court, arbitrate, compromise,
12 or settle any action filed under secs. 250 - 300 of this chapter.

13 * Sec. 8. AS 09.65.070 is amended to read:

14 Sec. 09.65.070. SUITS AGAINST INCORPORATED UNITS OF LOCAL GOVERN-
15 MENT. An action may be maintained, subject to the provisions of
16 AS 09.50.250 - 09.50.300 and AS 44.77.040(c), against an incorporated
17 borough, city, or other public corporation of like character in its
18 corporate character and within the scope of its authority, or for an
19 injury to the rights of the plaintiff arising from some act or omission
20 of the unit of local government.

21 * Sec. 9. AS 44.77.040(c) is amended to read:

22 (c) If the claimant does not accept the decision of the Depart-
23 ment of Administration or a decision made under municipal claim proce-
24 dures, he may bring an action under AS 09.50.250 - 09.50.300 if he
25 brings it within 30 days after he receives notice of the decision [OF
26 THE DEPARTMENT]. A claimant may also bring an action under AS 09.50.-
27 250 - 09.50.300 at any time after one year has elapsed since the
28 presentation of his claim [UNDER SEC. 10 OF THIS CHAPTER], if no
29 decision has been made [BY THE DEPARTMENT].