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Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY DUNCAN

2

HOUSE BILL NO. 97

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to government liability for damage  
or injury resulting from hazardous recreational  
activities."

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

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\* Section 1. AS 09.50.250 is amended to read:

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Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
or corporation having a contract, quasi-contract, or tort claim  
against the state may bring an action against the state in the super-  
ior court. A person who may present the claim under AS 44.77 may not  
bring an action under this section except as set out in AS 44.77.-  
040(c). However, an [NO] action may not be brought under this section  
if the claim

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(1) is an action for tort, and is based upon an act or  
omission of an employee of the state, exercising due care, in the  
execution of a statute or regulation, whether or not the statute or  
regulation is valid; or is an action for tort, and based upon the  
exercise or performance or the failure to exercise or perform a dis-  
cretionary function or duty on the part of a state agency or an  
employee of the state, whether or not the discretion involved is  
abused;

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

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(3) arises out of assault, battery, false imprisonment,  
false arrest, malicious prosecution, abuse of process, libel, slander,

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1 misrepresentation, deceit, or interference with contract rights;

2 (4) is an action for property damage or personal injury  
3 arising out of the person's participation in a hazardous recreational  
4 activity conducted on property owned or leased by the state.

5 \* Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

6 (b) The provisions of (a)(4) of this section do not limit lia-  
7 bility that would otherwise exist for

8 (1) the failure of the state or an employee of the state to  
9 guard or warn of a dangerous condition or of another hazardous recre-  
10 ational activity known to the state or the employee that is not rea-  
11 sonably assumed by the participant as inherently a part of the hazar-  
12 dous recreational activity from which the damage or injury arose;

13 (2) damage or injury suffered in a case in which permission  
14 to participate in the hazardous recreational activity was granted for  
15 a specific fee;

16 (3) injury suffered to the extent proximately caused by the  
17 negligent failure of the state or an employee of the state to properly  
18 construct or maintain in good repair a structure, recreational equip-  
19 ment or machinery, or substantial work of improvement used in the  
20 hazardous recreational activity from which the damage or injury arose;

21 (4) damage or injury suffered in a case in which the state  
22 or an employee of the state recklessly or with gross negligence  
23 promoted the participation in a hazardous recreational activity; for  
24 purposes of this paragraph, promotional literature or a public  
25 announcement or advertisement that merely describes the available  
26 facilities and services on the property does not in itself constitute  
27 a reckless or grossly negligent promotion; or

28 (5) an act of gross negligence by the state or an employee  
29 of the state that is the proximate cause of the damage or injury.

1 (c) Nothing in (b) of this section creates a duty of care or  
2 basis of liability for personal injury or for damage to personal  
3 property.

4 (d) Nothing in this section limits the liability of an independ-  
5 ent concessionaire, or any person or organization other than the  
6 state, whether or not the person or organization has a contractual  
7 relationship with the state to use the property owned or leased by the  
8 state, for injury or damage suffered as a result of a hazardous recre-  
9 ational activity operated by the concessionaire, person or organiza-  
10 tion on property owned or leased by the state.

11 (e) In this section,

12 (1) "hazardous recreational activity" means a recreational  
13 activity that creates a substantial risk of injury to a participant,  
14 and includes activities such as

15 (A) water contact activities, except diving, in places  
16 where or at a time when lifeguards are not provided and reason-  
17 able warning has been given or the injured party should reason-  
18 ably have known that there was no lifeguard provided at the time;

19 (B) diving into water from other than a diving board  
20 or diving platform, or at a place or from a structure where  
21 diving is prohibited and reasonable warning has been given;

22 (C) animal riding, including equestrian competition,  
23 archery, bicycle racing or jumping, boating, cross-country and  
24 downhill skiing, hang gliding, kayaking, motorized vehicle  
25 racing, off-road motorcycling, off-road four-wheel driving,  
26 orienteering, pistol and rifle shooting, rock climbing, rocke-  
27 teering, rodeo, spelunking, sky diving, sport parachuting, sports  
28 in which it is reasonably foreseeable that there will be rough  
29 bodily contact with one or more participants, surfing,

1 trampolining, tree climbing, tree rope swinging, water skiing,  
2 white water rafting, and wind surfing;

3 (2) "participation in a hazardous recreational activity"  
4 includes assisting another to participate in the activity and being  
5 present at the site of the activity as a spectator who

6 (A) knew or reasonably should have known that the  
7 activity created a substantial risk of injury to the spectator;  
8 and

9 (B) was voluntarily in the place of risk or, having  
10 the ability to do so, failed to leave;

11 (3) "specific fee" does not include a fee or consideration  
12 charged for a general purpose such as a general park admission charge,  
13 a vehicle entry or parking fee, or an administrative or group use  
14 application or permit fee, as distinguished from a fee charged speci-  
15 fically for participation in the hazardous recreational activity from  
16 which the damage or injury arose.

17 \* Sec. 3. AS 09.65.070(d) is amended to read:

18 (d) An [NO] action for damages may not be brought against a  
19 municipality or any of its agents, officers or employees if the claim

20 (1) is based on a failure of the municipality, or its  
21 agents, officers, or employees, when the municipality is neither owner  
22 nor lessee of the property involved,

23 (A) to inspect property for a violation of any sta-  
24 tute, regulation or ordinance, or a hazard to health or safety;

25 (B) to discover a violation of any statute, regula-  
26 tion, or ordinance, or a hazard to health or safety if an inspec-  
27 tion of property is made; or

28 (C) to abate a violation of any statute, regulation or  
29 ordinance, or a hazard to health or safety discovered on property

1 inspected;

2 (2) is based upon the exercise or performance or the fail-  
3 ure to exercise or perform a discretionary function or duty by a  
4 municipality or its agents, officers, or employees, whether or not the  
5 discretion involved is abused;

6 (3) is based upon the grant, issuance, refusal, suspension,  
7 delay or denial of a license, permit, appeal, approval, exception,  
8 variance, or other entitlement, or a rezoning;

9 (4) is based on the exercise or performance during the  
10 course of gratuitous extension of municipal services on an extraterritorial  
11 basis; [OR]

12 (5) is based upon the exercise or performance of a duty or  
13 function upon the request of, or by the terms of an agreement or  
14 contract with, the state to meet emergency public safety requirements;  
15 or

16 (6) is an action for property damage or personal injury  
17 arising out of the person's participation in a hazardous recreational  
18 activity conducted on property owned or leased by the municipality.

19 \* Sec. 4. 09.65.070(e) is repealed and reenacted to read:

20 (e) In this section

21 (1) "hazardous recreational activity" means hazardous  
22 recreational activity as defined in AS 09.50.250(e)(1);

23 (2) "municipality" means a home rule borough or city, a  
24 general law borough or city of any class, or a unified municipality  
25 under AS 29.68; the term includes a public corporation established by  
26 a municipality;

27 (3) "participation in a hazardous recreational activity"  
28 means participation as defined in AS 09.50.250(e)(2);

29 (4) "specific fee" means specific fee as defined in

1 AS 09.50.250(e)(3);

2 (5) "village" means an unincorporated community where at  
3 least 25 people reside as a social unit.

4 \* Sec. 5. AS 09.65.070 is amended by adding new subsections to read:

5 (f) The provisions of (d)(6) of this section do not limit lia-  
6 bility that would otherwise exist for

7 (1) the failure of a municipality or an agent, officer or  
8 employee of a municipality to guard or warn of a dangerous condition  
9 or of another hazardous recreational activity known to the municipal-  
10 ity or to the agent, officer, or employee of the municipality that is  
11 not reasonably assumed by the participant as inherently a part of the  
12 hazardous recreational activity from which the damage or injury arose;

13 (2) damage or injury suffered in a case in which permission  
14 to participate in the hazardous recreational activity was granted for  
15 a specific fee;

16 (3) injury suffered to the extent proximately caused by the  
17 negligent failure of a municipality or an agent, officer, or employee  
18 of a municipality to properly construct or maintain in good repair a  
19 structure, recreational equipment or machinery, or substantial work of  
20 improvement used in the hazardous recreational activity from which the  
21 damage or injury arose;

22 (4) damage or injury suffered in a case in which a municipi-  
23 pality or an agent, officer, or employee of a municipality recklessly  
24 or with gross negligence promoted the participation in a hazardous  
25 recreational activity; for purposes of this paragraph, promotional  
26 literature or a public announcement or advertisement that merely  
27 describes the available facilities and services on the property does  
28 not in itself constitute a reckless or grossly negligent promotion; or

29 (5) an act of gross negligence by a municipality or an

1 agent, officer, or employee of a municipality that is the proximate  
2 cause of the damage or injury.

3 (g) Nothing in (b) of this section creates a duty of care or  
4 basis of liability for personal injury or for damage to personal  
5 property.

6 (h) Nothing in this section limits the liability of an indepen-  
7 dent concessionaire, or any person or organization other than a muni-  
8 cipality, whether or not the person or organization has a contractual  
9 relationship with the municipality to use the property owned or leased  
10 by the municipality, for injury or damage suffered as a result of a  
11 hazardous recreational activity operated by the concessionaire,  
12 person, or organization on property owned or leased by the municipal-  
13 ity.