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Official Business

Alaska State Legislature
Senate

Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Members
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

March 19, 1986

TO: Steve White
Senator Faiks' Office

FROM: Trudie Alford
Senator DeVries' Office

SUBJECT: SB 332 Eliminating Municipal
immunity from liability in certain
actions involving private property

This confirms our phone conversation this morning when you told me that Senator Faiks wants the subject bill held until she requests that it be scheduled for hearing.

The letter with attachment, which I mentioned to you, postmarked 3/12/86, from Vince Muerlott is enclosed.

Encl: Cy of ltr

POSTMARKED

3 12-86

Dear Senator: DE VRIES

We urge you to defeat Senate Bill 332: "An act eliminating Municipal immunity from liability in certain actions involving private property".

This Bill would ammend the current Alaska Statute 09.65.070(d), which provides municipalities immunity from certain suits brought against them and their agents, officers, and employees.

If passed, this Bill would allow action for damages against municipalities and their inspectors for the following:

1. Failure to inspect for violations of applicable codes, ordinances, statutes, and regulations.
2. Failure to detect such violations in the course of inspections.
3. Failure to abate such violations or other hazards to health or safety discovered on property inspected.

We see this Bill as an attempt to transfer responsibility for safe conscientious work by the private sector to municipalities. This Bill would open the door for lawsuits against municipalities for many kinds of deficiencies that they cannot effectively detect or abate, once found.

If the immunity is removed (as required by Senate Bill 332), most communities may be forced to abolish regulatory divisions that now currently exist to protect life, health, and safety.

The regulatory divisions now employed by municipalities do not have the resources or manpower to adequately police all construction and service activities to the extent that Senate Bill 332 would require. Placing liability on regulatory divisions for work done by private contractors and citizens does not make sense.

The passage of Senate Bill 332 will most likely result in either of two scenarios:

- A. Unmanageable increases in personnel and red tape procedures by regulatory divisions in attempt to avoid any violations that would give rise to hazards.
- B. The termination of regulation enforcement divisions to avoid excessive liability that municipalities and their enforcment agents would be subjected to.

Perhaps a few examples can illustrate our point more fully.

EXAMPLE #1:

A contractor performs work under a permit on a house but never calls for a required inspection. His work has a code violation that later causes an occupant ("Joe") death. "Joe" and his wife had earlier been told by the appropriate regulatory division that the inspection would be made if such work were to be done under the permit.

RESULT #1: The contractor is at fault for the code violation and for not calling for the required inspection. With Senate Bill 332 in force you can bet that the Attorney seeking damages due to the death of "Joe" will now consider the municipality liable.

EXAMPLE #2:

A competent conscientious inspector misses a code violation during an extensive inspection because a small portion of the work was partially concealed. This violation later causes a serious fire.

RESULT #2: The contractor is at fault for the code violation but the inspector could possibly have caught the violation. Again the municipality will most likely be held liable.

EXAMPLE #3:

An inspector finds a potentially dangerous code violation during an inspection and issues a correction notice to the contractor. The contractor is reminded of the correction required 2-weeks later, but one week after that the violation causes a costly building failure.

RESULT #3: The contractor is at fault for the violation and dragging his feet on the correction. However, the municipality could be held liable for the failure to abate the violation even though they tried. An attorney could easily argue after the fact that the municipality did not act quickly and decisively enough.

The examples listed may show that with Senate Bill 332 in effect regulatory divisions may be required to adopt "gestapo type" tactics to hunt down and ensure immediate correction of violations or disband altogether in order to avoid excessive liability.

We have found that the current statutes encourage reasonable inspection efforts to discover and correct health and safety hazards. We ask that you review this Bill carefully and see that Senate Bill 332 will not be in the best interest of the Municipalities or the General Public.

Thank you for your time.

Sincerely,

SIGNATURE

NAME & ADDRESS

<i>Vince Mearlotti</i>	VINCE MEARLOTT	584 E. SLATER DR, FBKS, 99701
<i>Jeanne Marks</i>	3282 Adams	FBKS AK 99709 JEANNE MARKS
<i>Nancy DeLeon</i>	1023 Dilmore Street,	Fairbanks, Alaska 99701 NANCY DeLeon
<i>Cathy Hale</i>	1028 Dogwood #504	Fairbanks AK 99709 Cathy Hale
<i>Mary P. Sirock</i>	311 Wedgwood #38C	Fairbanks AK 99701 Mary Sirock
<i>Ann Molwitz</i>	PO Box 83058,	Fairbanks, AK 99708
<i>Carol Linkswiler</i>	Carol Linkswiler,	PO Box 82038, College, AK 99708
<i>Jeanie Watts</i>	Jeanie Watts,	444 McKinley View Dr., Fairbanks AK 99701
<i>Pat Mullen</i>	James M. Mullen,	410 Dunkel St., Fbks, AK 99701
<i>Kaye Schenborn</i>	KAYE Schenborn,	307 INA ST, FBKS 99701
<i>Eric J. Mohrman</i>	Eric J. Mohrman,	PO Box 83688, Fbks, AK 99708
<i>Charles P. Seannet</i>	Charles P. Seannet	582 Slater Dr, Fbks, AK 99701
<i>Jerry A. Burgess</i>	JERRY A. Burgess	705 SLATER DR. FBKS, AK 99701
<i>Larry R. Long</i>	LARRY R. LONG	326 BARANOF FBKS AK 99701
<i>Clement M. Closter</i>	CLEMENT M. CLOSTER	1163 LINDA LOUI LANE FAIRBANKS ALASKA 99712

The undersigned are in agreement with the letter attached urging you to defeat Senate Bill 332 or similar bill:

SIGNATURE

NAME/ADDRESS

<i>S. J. Shuttleworth</i>	STEVEN J. SHUTTLEWORTH 1701 2 nd Ave #19 FAIRBANKS AK
<i>J. H. Little</i>	JAMES H. LITTLE 104 MADRID DRIVE FAIRBANKS, AK
<i>Bill Hao</i>	BILL HAO, PO BOX 82310, FAIRBANKS AK 99708

Blank lined area for additional signatures and addresses.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU ALASKA 99811

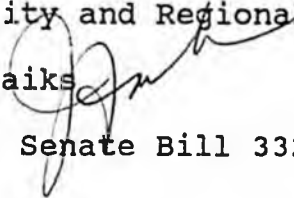
Senate

February 18, 1986

FEB 19 RECD

MEMORANDUM

TO: Senator Edna DeVries, Chairman
Senate Community and Regional Affairs Committee

FROM: Senator Jan Faiks 

SUBJECT: Scheduling of Senate Bill 332 and House Bill 380

Until further notice, please do not schedule for hearing Senate Bill 332, an Act eliminating municipal immunity from liability in certain actions involving private property.

However, I would appreciate your scheduling House Bill 380, an Act relating to public utility water and sewer service extensions. Representative Szymanski and I have worked together on this bill, and it addresses a problem which faces many of my constituents.

Thank you.

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

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* DELIVER TO: JFOM *
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* ORIGINAL *
* SENT: 01/31/86 TIME: 15:11 * 2 *
* FROM: LIOMAT *
* SUBJECT: FOMK112 *
* PRINT DATE: 01/31/86 TIME: 15:41 *
* *

*****FOMK112 - 1/31/86

TO: SENATOR DEVRIES
FR: ELSIE O'BRYAN
P O BOX 27
HOUSTON 99694
PH: 892-6869

*Send Elsie info
when I get it*

RE: SB 332

AS, YOU SUGGESTED I HAVE REVIEWED SB 332 AND FIND IT RATHER DIFFICULT TO UNDERSTAND THE INTENT. HOW DOES THE BILL ADDRESS LIABILITY OR LACK OF LIABILITY IN THE EVENT THE MUNICIPALITY DELIBERATELY DOES NOT INSPECT OR HAVE INSPECTIONS DONE ESPECIALLY CONSIDERING THE FAULTY INSPECTIONS COULD RESULT IN LIABILITY. WOULD THIS ENCOURAGE FAULTY CONSTRUCTION FOR FEAR OF BEING CHARGED FOR FAULTY INSPECTIONS?

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City and Borough of Sitka

304 LAKE STREET. SITKA, ALASKA. 99835

January 16, 1986

Alaska State Legislature
Richard Eliason, Senator
Pouch V
Juneau, Alaska 99811

Re: Senate Bill #332

Dear Dick,

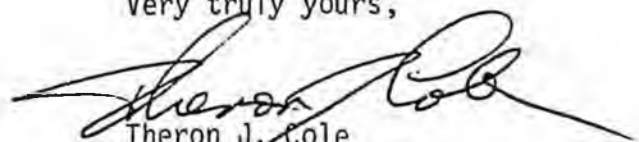
I have been provided with a copy of Senate Bill No. 332 eliminating municipal immunity from liability in certain actions involving private property. This bill causes me great concern. It is not only ill-conceived but ill-timed. At this time municipalities are having great difficulty in obtaining any type of liability insurance and even when it is available, it comes at great cost. Many municipalities are now uninsured.

This bill would, in effect, make the municipality an insurer for the contractor and the property owner in the construction of the building. It is and should be the responsibility of the owner and contractor to construct a safe building and they should be liable for any deficiencies in the construction of that building. The municipality in inspecting the building is merely performing a service for the public, the owner and contractor. To place liability upon the municipality for failure to discover deficiencies put there by the owner and contractor is not only unfair but would greatly increase risk of lawsuit to the municipality and would increase the cost of liability insurance to the municipality astronomically.

It should be noted that the probable effect of this bill will be to force municipalities out of the building inspection field since the one way to avoid liability altogether is not to inspect. Senate Bill 332, if passed, will probably lead to a wholesale repeal of all municipal building codes since those building codes include an inspection requirement. This situation will either lead to the State having to provide this service or to buildings being built without any inspection or standards whatsoever. This can hardly be a result to be desired by the State Legislation.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Very truly yours,


Theron J. Cole
Municipal Attorney



City and Borough of Sitka

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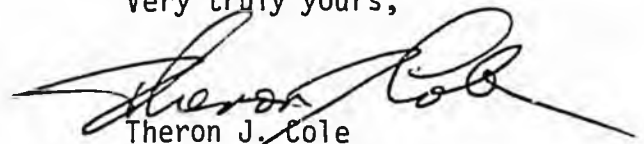
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Municipal Attorney