

H B

3 9 5

(7)

Date Referred: January 14, 1992

FURTHER REFERRALS:

Labor & Commerce
Judiciary

Date of Committee Action: 3/4/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 395

HOUSE BILL NO. 395

INDEMNIFICATION OF PUBLIC EMPLOYEES

"An Act requiring public employers to indemnify public employees for injuries occurring within the scope of employment."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note C & RA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>David Phillips</i>	<input checked="" type="checkbox"/>	<i>Cheri Davis</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>Beth Davis</i>		<input checked="" type="checkbox"/>	

[Signature]
CHAIRMAN'S SIGNATURE

REPRESENTATIVE DAVE DONLEY

ALASKA STATE HOUSE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDDTOWN • WINDEMERE

4852 NEWCASTLE WAY
ANCHORAGE, ALASKA 99503
(907) 561-8234



SPONSOR STATEMENT

HB 395 requires the state and municipalities to indemnify public employees who are sued for injuries occurring during the performance and within the scope of the employee's job. The statute would not require employers to indemnify an employee for acts of intentional or wilful misconduct or to pay an award of punitive damages.

The bill is based on the current state policy for defense and indemnification of state employees. A copy of this policy is attached, along with a memorandum from the Attorney General's Office explaining the policy reasons why indemnification of state employees is a good idea. In addition to enumerating the benefits to the employer of indemnification, the Department of Law explanation points out the "widely felt" belief "that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee."

HB 395 is strongly supported by the Alaska Association of Chiefs of Police, the Alaska Peace Officers Association, the Alaska State Employees Association, and the AFL-CIO.

MEMORANDUM

State of Alaska

Department of Law

TO: Brad Thompson
Division of Risk Management
Department of Administration

DATE: June 17, 1988

FILE NO.:

TEL NO.: 465-3603

SUBJECT: State provided defense
of employees

RECEIVED
JUN 20 1988

FROM: Bill Mellow
Assistant Attorney General
Special Litigation-Juneau

You have requested a concise (10 lines or less) statement of the state's policy for defense and indemnification of state employees. A copy of that policy is attached but please note that this is only policy and is not legally binding except where the state has otherwise contractually bound itself.

Following is an explanation of the basis for evolution of a general belief that the state should defend and indemnify employees; There is no statutory law in Alaska requiring state defense and indemnification of employees, however, most public employees are protected by bargaining agreements which obligate the state to defend and indemnify for ordinary negligence. Additionally, common law rules developed by the courts have saddled employers with liability for negligence of employees. The common law rules are referred to as the doctrine of respondeat superior (the master answers for the servant) and require the employer to pay a third party for injuries caused by employees. The doctrine also grants common law indemnity in favor of the employer against the employee but, because many employees are judgment-proof, employers often simply absorb the expense without looking to the employee for reimbursement. Additionally, for the tactical reason that the employer needs the support of the employee in defense against the third party, there is a tactical justification for agreeing to indemnify. Finally, and strongest of all as a policy justification, it is widely felt that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee.

WGM:jal
Attachment

cc: Ronald W. Lorensen (w/enc.)

STATE POLICY FOR DEFENSE OF EMPLOYEES

Where the rights and obligations of employees and the state are not otherwise covered by bargaining agreements, it is the policy of the State of Alaska to provide legal defense and pay judgments against state employees sued for injuries occurring during the performance and within the scope of duty. Except where the Department of Law has specifically in writing obligated the state otherwise, the state will not defend or indemnify for acts of intentional and willful misconduct nor pay an award of punitive damages.

REPRESENTATIVE DAVE DONLEY

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M E M O R A N D U M

TO: Representative Jerry Mackie, Chair
House Community & Regional Affairs Committee

FROM: Representative Dave Donley *DD*

RE: HB 395 - Indemnity for Public Employees

DATE: February 14, 1992

I would greatly appreciate if HB 395 could be scheduled for a hearing at the earliest possible opportunity. The legislation requires public employers to indemnify employees who are sued for injuries occurring during the performance and within the scope of the employee's duty. An employer would not be obligated to indemnify an employee for acts of intentional or wilful misconduct.

The standards for indemnification set in HB 395 are those currently used, as a matter of policy, by the Department of Law when determining whether to indemnify public employees. By codifying existing practice, HB 395 eliminates the concerns that many public employees feel about whether their employers will support them in court if they are sued, yet does so in a way that protects public employers against paying for employee misconduct.

I introduced the bill at the request of the Alaska Association of Chiefs of Police. A copy of a letter I recently received from the Chiefs is attached. The bill is also strongly supported by the Alaska Police Officers Association.

Thank you in advance for your help and assistance in scheduling this bill for a hearing.

DD:lc

Alaska Association Chiefs of Police



Representative Dave Donley
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

February 13, 1992

Dear Representative Donley,

I would like to thank you for introducing House Bill 395, which would ensure Indemnification for public employees. You have our full support on this important piece of legislation.

In conjunction with the Alaska Peace Officers Association we have identified House Bill 395 as a top legislative priority. We believe that government employees should be defended and protected by their employer when lawsuits are filed against employees who were merely performing required work.

Government employees should be held responsible and accountable for their actions. We would never advocate that bad employees be protected, however, when employees take good faith actions at the behest of their employer, we feel that as a matter of law, employees should be indemnified. When employees are doing the work of government, within the scope of their authority and without malice, they should not be held personally liable when they are named as parties to lawsuits.

We have long been concerned about the chilling effect lawsuits have upon employees. Hopefully, House Bill 395 will become law and good employees will no longer have to be concerned that their personal assets are unfairly in jeopardy.

We would be happy to work with you in the passage of this bill. If you have any questions about our position, I can be reached at 786-8552.

Sincerely,

Duane S. Udland
Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Laurie Otto	From	Duane Udland
Co.		Co.	
Dept.		Phone #	786-8552
Fax #	541-1691	Fax #	786-8638

Alaska Association of Chiefs of Police



Alaska Peace Officers Association, Inc.



Federal Bureau of Investigation National Academy Associates



**Position Statement
from The Law Enforcement Coalition
Concerning Legislative Proposals
before the
Eighteenth Alaska Legislature
February 1992**

HOUSE BILL 395
INDEMNIFICATION OF GOVERNMENT EMPLOYEES

Indemnification for public employees is our number one priority.

We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, the department manager, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the State's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority, and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgments they make can result in the loss of their homes, their cars, or their savings.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

150 THIRD STREET
JUNEAU, ALASKA 99801-1291
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

March 3, 1992

POSITION PAPER

RE: HB 395

SPONSOR: Representative Donley

Program Effects of Bill:

HB 395 amends both Title 29, pertaining to municipal governments, and Title 39, pertaining to public officers and employees, by adding a virtually identical section to each title requiring a public employer (be it the state or a municipality) to provide legal defense and pay judgments entered against its employees for injuries occurring during the performance and within the scope of the employee's duty.

Comments:

Section 1, the amendment of Title 29, has no direct impact on the operation of this department, but the department points out that this is another mandate on municipalities. The mandate supercedes the discretionary authority over indemnification that municipalities now possess. The municipalities generally oppose state mandates that limit their authority.

Section 2, the amendment to Title 39, pertains to all state departments. The present administration policy is already to indemnify employees under the circumstances described in Section 2 of the bill. Therefore, the Department of Community and Regional Affairs is neutral on Section 2.

Ed Blatchford

Edgar Blatchford, Commissioner

FISCAL NOTE

BILL NO. HB 395

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: Indemnification of Public Employees
Sponsor: Representative Donley
Requestor: (H) CRA

Department Affected: Community and Regional Affairs
BRU: _____
Component: _____
COMPONENT SERIAL NO.

0	0	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0
CAPITAL						

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

FULL-TIME	*0	*0	*0	*0	*0	*0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Section 1 of the bill applies only to municipalities and, therefore, does not have a fiscal impact on the department.
* Section 2 of the bill applies to state departments generally but it is impossible to determine the possible impact. To date, no DCRA employees have been sued "for injuries occurring during the performance and within the scope of the employee's duty."

Prepared By: _____
Division: Administrative Services Division

Phone: 465-4708
Date: _____

Approved by Commissioner: Er. Bethel
Agency: Department of Community and Regional Affairs

Date: 3-3-92