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3 9 5

(7)

Date Referred: March 6, 1992

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Date of Committee Action: 4/6/92

The JUDICIARY 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:

be replaced with CS HB 395 (Judiciary)  the same title  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 <sup>LAW</sup> Legal Svcs 2/15/92 & <sup>2-27-92</sup> Admin-Risk mgmt

zero fiscal note(s) C&RA 3-6-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>Larry Martin</i>		<input checked="" type="checkbox"/>	
<i>Daniel Wiley</i>	<input checked="" type="checkbox"/>	<i>Mark Finley</i>		<input checked="" type="checkbox"/>	
<i>J. Ellis</i>					
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

*Daniel Wiley*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

E NO. HB 395

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...requiring public employers to indemnify public employees..." BRU: Legal Services  
 Component: Operations  
 Sponsor: Representative Donlev  
 Requestor: Representative Donlev COMPONENT SERIAL NO. 

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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						
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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						

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Pegues*

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services / FDR Date: February 18, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 18, 1992

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 395

This bill amends AS 29.20 and AS 39.90 to provide that public employers shall indemnify public employees who are sued individually for injuring others while acting within the performance and the scope of their duties, unless an injury is the result of an intentional act or willful misconduct. The bill attempts to codify existing practice; however, we believe it is unclear in certain respects and could cause confusion.

For instance, the bill does not define "scope of duties," nor does it require an employee to give prompt notice to the employer when a claim is filed. Furthermore, the bill does not address conflicts of interest or which party would ultimately be responsible for directing a defense, the employer or the employee. The bill would not prohibit an employee from agreeing to a settlement or payment of a claim without the knowledge or agreement of the employer.

The bill also does not include gross negligence as an exemption to indemnification. The state currently does not indemnify acts of gross negligence for any of its employees, and this proviso is included in all of the state's collective bargaining agreements. The bill would therefore have the effect of indemnifying acts of gross negligence for employees not covered by collective bargaining agreements, primarily appointed officials, but it would not do so for employees covered by collective bargaining agreements. These apparent inconsistencies with existing practice could have an impact if they are not clarified.

However, we have not shown a fiscal impact because we cannot determine whether there will be any, and because the department's costs to defend personal injury claims are paid from the state's Risk Management accounts.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 395

Revision Date: \_\_\_\_\_ Department Affected: Administration  
 Title: An act requiring public employ-ers to indemnify public employees BRU: Division of Risk Management  
 Component: \_\_\_\_\_  
 Sponsor: Donley  
 Requestor: House Community & Reg'l Affairs COMPONENT SERIAL NO. 

0	0	7	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) State policy presently provides protection to State employees acting within the course and scope of their duties -- with the exclusion of intentional and willful or wanton acts of misconduct. Therefore there is no effect on Risk Management budget.

Prepared By: Donald J. Hitchcock Phone: 465-2180  
 Division: Risk Management Date: 2/27/92  
 Approved by Commissioner: Nancy Bear Userra  
 Agency: Department of Administration Date: 2/27/92

# FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 395

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						
<b>TOTAL OPERATING</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>	<b>*0</b>

**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

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

# 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.

(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>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</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 MIDTOWN • WINDEMERE

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



## M E M O R A N D U M

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

FROM: Representative Dave Donley *DB*

RE: HB 395 - Indemnity for Public Employees

DATE: February 14, 1992

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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	LALIE MITCHELL		
Co.	DUANE UDLAND		
Dept.	Phone # 786-8552		
Fax #	561-1691	Fax #	786-8638

# MEMORANDUM

State of Alaska

Department of Law

TO: Brad Thompson  
Division of Risk Management  
Department of Administration

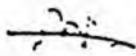
DATE: June 17, 1988

FILE NO.:

TEL. NO.: 465-3603

SUBJECT: State provided defense  
of employees

RECEIVED  
JUN 20 1988  
DEPARTMENT OF LAW

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.

**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.

# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-8650  
(907) 343-4545

TOM FINK,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

April 6, 1992

Representative Dave Donely  
Chair, House Judiciary Committee  
3311 C Street  
Suite 450  
Anchorage, Alaska 99503

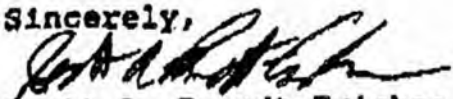
Subject: CSHB 395 Relating to Defense and Indemnification of  
Public Employees

Dear Representative Donely:

After reviewing the committee substitute for HB 395 dated April 5, 1992, and identified as draft no. 7-LS1602/J, the Municipality of Anchorage supports this draft committee substitute. From discussions with the Municipal Risk Management Department, Police Department and Legal Department, this committee substitute appears to be a workable compromise between the initial draft and a prior committee substitute.

This version of the bill would allow the Municipality of Anchorage flexibility to defend and indemnify its employees in appropriate circumstances, including punitive damage situations. Additionally, the substitute allows an employee a defined time period in which to assert and protect the employee's rights to defense or indemnity. The committee substitute appropriately limits the defense of those rights to declaratory actions, for enforcing the rights to defense; cross claims for enforcing rights to indemnity where the employer is named as a party, and an action brought within one year for enforcing indemnification where the employer is not named as a party. With these elements, the Municipality of Anchorage supports the bill.

Sincerely,

  
Scott A. Brandt-Erichsen  
Assistant Municipal Attorney

cc: Anne Williams, Executive Assistant, Municipal Manager's Office  
Duane Udland, Deputy Chief of Police  
Harry Sjoberg, Risk Manager

Municipality  
of  
Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 343-4545

TOM FINK,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

March 3, 1992

Representative Dave Donley  
Chair House Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 395 Regarding Indemnification of Public Employees

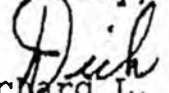
Dear Mr. Donley:

On behalf of the Municipal Attorney's Office in Anchorage and the Municipality of Anchorage, I strongly endorse HB 395.

Treatment of indemnification of municipal officers and employees, particularly indemnification for punitive damages, is an issue we face in a number of cases handled by our office. Passage of HB 395 would provide clear authorization allowing municipalities to establish and enforce consistent procedures for addressing claims where employee indemnification is at issue.

I appreciate your efforts in drafting HB, 395 and urge your continued diligence as it moves through the process. Thank you for your attention to this issue.

Sincerely,

  
Richard L. McVeigh,  
Municipal Attorney

cc: Speaker of the House  
Governor's Office

m1\lfr\donnelly\indem.sbe/rh

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary 1991-92 - HB 395

House C&RA 3/4/92