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FISCAL NOTE

No. 3

Bill Version: CSHB 395(JUD)

(H) Publish Date: 4-8-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...requiring public employers to indemnify public employees..." BRU: Legal Services  
 Component: Operations  
 Sponsor: Representative Donley  
 Requestor: Representative Donley 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:						

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 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.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHIER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR  
NORTHWOOD • ROMIG • ROO EVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376



CHAIRMAN  
JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

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

TO: Senator Drue Pearce, Labor and Commerce Chair

FROM: Representative Dave Donley *DB*

DATE: April 21, 1992

RE: Request to Schedule HB 395

I respectfully request that a Labor and Commerce hearing be scheduled for HB 395 at the earliest possible opportunity. HB 395 gives public employees the right to be indemnified for injuries occurring within the scope of employment, and clarifies the circumstances under which indemnification will be granted.

HB 395 codifies the current state policy for defense and indemnification of state employees, and as a result, will not have a fiscal impact on the state. 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. As the Department of Law points out, there is a "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."

As public employers, both the Administration and the Municipality of Anchorage support indemnifying public employees. And, at the request of these two entities, a number of procedural provisions were added to the CS to clarify the circumstances under which indemnification would be provided. For example, provisions were added to require employees to cooperate in their defense, to prohibit employees from settling claims after an employer has undertaken defense of the employee, and to set out the specific and exclusive remedies available to an employee if an employer does not provide defense or indemnification as required by law.

In addition to support from the Department of Law and the Municipality of Anchorage, HB 395 is strongly supported by the Alaska Association of Chiefs of Police and the Alaska Peace Officers Association.

Thank you for considering this request to schedule HB 395.

DD:lc



# MEMORANDUM

State of Alaska

Department of Law

TO: Brad Thompson  
Division of Risk Management  
Department of Administration

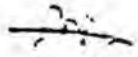
DATE: June 17, 1988

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.

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

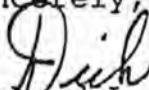
Dear Mr. Donley:

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

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# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(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-LS1682/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

# 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, President  
Alaska Association of Chiefs of Police  
4501 South Bragaw  
Anchorage, Alaska 99507

**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.