

HB

277

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB277 (S1A)

Revision Date: _____
Title: Public employers defending and indemnifying public employees....within the scope of employment
Sponsor: Porter
Requestor: (H) Jud

Department Affected: Administration
BRU: Personnel/OEEO
Component: Personnel/OEEO
COMPONENT SERIAL NO. 56

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES	0	0	0	0	0	0

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Kevin O. Fitchie, Director
Division: Personnel/OEEO

Phone: 465-4429
Date: _____

Approved by Commissioner: Nancy Bear Usra
Agency: Department of Administration

Date: 1/28/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BIL. NO. CSHB 277 (STA)

Revision Date: _____
 Title: 'Public employees defending and indemnifying public employees . . . within scope of employment. . .'
 Sponsor: Porter
 Requestor: (H) Jud

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management

COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

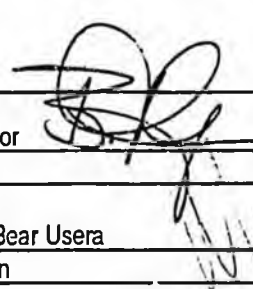
Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.



Prepared by: Brad Thompson, Director
 Division: Risk Management

Phone: 465-2180
 Date: _____

Approved by Commissioner: Nancy Bear Usura
 Agency: Department of Administration

Date: 1/28/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 277

Revision Date: _____ Dept. Affected: Administration
 Title: "Public employees defending and indemnifying BFLT Risk Management
public employees . . . within scope of employment.." Component: Risk Management
 Sponsor: Porter
 Requestor: (H) STA COMPONENT SERIAL NO. 71

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: zero

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.

Prepared by: Brad Thompson, Director Phone: 465-2180
 Division: Risk Management Date: _____

Approved by Commissioner: Nancy Bear Usura Date: 1/13/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 277

Revision Date: _____ Dept. Affected: Administration
 Title: "Public employees defending and indemnifying BRJ: Personnel/OEEO
public employees . . . within scope of employment." Component: Personnel/OEEO
 Sponsor: Porter
 Requestor: (H) STA COMPONENT SERIAL NO. 56

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: zero

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Kevin C. Ritchie, Director Phone: 465-4430
 Division: Personnel/OEEO Date: _____

Approved by Commissioner: Nancy Bear Usura Date: 1/13/94
 Agency: Administration

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8-LS0989X
Cramer
2/8/94

CS FOR HOUSE BILL NO. 277(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public employers defending and indemnifying public employees
2 and former public employees with respect to claims arising out of conduct that
3 is within the scope of employment."

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

5 * Section 1. AS 39 is amended by adding a new chapter to read:

6 CHAPTER 55. DEFENSE AND INDEMNIFICATION OF
7 PUBLIC EMPLOYEES.

8 Sec. 39.55.010. PUBLIC EMPLOYER'S DUTY TO PROVIDE DEFENSE.

9 (a) Except as otherwise provided in this chapter, a public employer shall provide legal
10 defense of civil claims against, and pay settlements and judgments including attorney
11 fees and costs entered against, a public employee when the claims, settlements, or
12 judgments are based on acts or omissions that occurred during the course and within
13 the scope of the employee's employment with the public employer.

14 (b) A public employer does not have an obligation to defend or indemnify if

the

2 (1) acts or omissions at issue were a result of gross negligence or
3 intentional or wilful misconduct on the part of the employee; however, a public
4 employer may not, based solely on an allegation of gross negligence or intentional or
5 wilful misconduct made by a party other than the public employer, withhold legal
6 defense in a civil action;

7 (2) claim or action involves a disciplinary, administrative, or criminal
8 matter brought against the employee or is an appeal from a disciplinary, administrative,
9 or criminal action;

10 (3) civil claim or action is based on conduct for which the employee
11 has been convicted of a criminal offense or terminated from employment by the public
12 employer; or

13 (4) public employee settled or compromised the claim or action before
14 requesting the public employer to provide legal defense or indemnification or while
15 a request for defense was pending.

16 (c) This chapter does not apply if a collective bargaining agreement that covers
17 the employee includes a provision for defense and indemnification, in which case the
18 terms of the collective bargaining agreement apply.

19 (d) A public employer does not have an obligation to pay an award for
20 punitive damages against an employee.

21 (e) A public employer may adopt an internal policy or enter into an agreement
22 with an employee that requires the employer to defend or indemnify the employee or
23 pay punitive damages in circumstances in which the employer would not otherwise
24 have an obligation to do so.

25 (f) Defense or indemnification provided to a public employee under this
26 chapter does not constitute a waiver, limitation, or expansion of sovereign immunity
27 or of other immunity.

28 (g) A public employer that is obligated to provide legal defense under this
29 chapter shall, through its designated legal counsel, provide legal services to the
30 employee. The public employer has the right to determine which attorney shall
31 represent the employee.

1 (h) This chapter applies to a former employee to the same extent as a current
2 employee.

3 Sec. 39.55.020. EMPLOYEE'S DUTIES WHEN REQUESTING DEFENSE
4 AND INDEMNIFICATION. (a) A public employer's obligation to defend and
5 indemnify an employee under this chapter arises only if

6 (1) the employee notifies the public employer in writing, in the manner
7 required by the employer, within 10 days after receipt of a claim, demand, or suit,
8 unless there is good cause for the employee's failure to provide timely or proper notice
9 and the employer has not been materially prejudiced; and

10 (2) the employee makes a good faith effort to cooperate in the defense
11 and resolution of the claim or action.

12 (b) An employee for whom a public employer has provided legal defense
13 under this chapter or who has a request for the provision of legal defense pending may
14 not settle the claim brought against the employee unless the public employer approves
15 the settlement.

16 (c) An employer who has provided legal defense and indemnification may
17 settle a claim or action without the consent of the employee so long as the settlement
18 resolves all the outstanding claims against the employee.

19 Sec. 39.55.030. EMPLOYEE'S RIGHTS WHEN EMPLOYER REFUSES TO
20 PROVIDE LEGAL DEFENSE. (a) If a public employer refuses to provide legal
21 defense for an employee, the employer shall provide the employee with written notice
22 of this decision. The notice must include a copy of this chapter.

23 (b) An employee whose employer refuses to provide legal defense under this
24 chapter may file an action for declaratory relief in superior court if the employee wants
25 the employer to provide legal defense. The employee must file the action for
26 declaratory relief within 30 days after the employee received a written notice of refusal
27 to defend from the employer.

28 (c) If an employee who has been denied legal defense settles the claim or
29 action without filing a declaratory relief action under (b) of this section, the employee
30 waives any right to defense or indemnification. If the employee files a declaratory
31 relief action under (b) of this section, the employee may settle the claim for a

reasonable amount without the employer's consent.

2 (d) If an employee prevails in a declaratory relief action against the employer,
3 the employee may bring an action for indemnification no later than one year after the
4 final judgment in the declaratory relief action or final judgment or dismissal of the
5 underlying action, whichever is later.

6 Sec. 39.55.040. DEFENSE WITH RESERVATION OF RIGHTS; DENIAL OF
7 INDEMNIFICATION; EMPLOYEE LIABILITY FOR EXPENSES. (a) A public
8 employer may undertake the defense of an employee under this chapter while
9 contesting the obligation to indemnify the employee, either partially or fully. A public
10 employer that offers a defense with a reservation of rights to an employee, may
11 provide legal defense and place limitations on its agreement to indemnify an employee
12 pending the outcome of the case.

13 (b) If an employer denies indemnification or offers a defense with a
14 reservation of rights to an employee, the employer shall provide written notice to the
15 employee. The notice must include the reason for the denial or reservation of rights
16 and a copy of this chapter.

17 (c) If a final judgment is entered against an employee in a claim or action in
18 which the employer provided a legal defense and the employer agrees to only partially
19 indemnify the employee or denies indemnification entirely, the employee may bring
20 an action for indemnification against the employer not later than one year after the
21 entry of the final judgment against the employee.

22 (d) A public employer who has defended an employee may bring an action
23 against the employee for expenses incurred in the defense if the trier of fact found that
24 the employee's conduct was not within the course or scope of employment. The action
25 for expenses under this subsection must be brought not later than one year after the
26 execution of a written agreement settling the underlying claim or action or entry of
27 final judgment in the action.

28 Sec. 39.55.100. DEFINITIONS. In this chapter,

29 (1) "employee" or "public employee" means a person who performs a
30 service for wages or other remuneration under a direct contract of hire, written or oral,
31 express or implied, for a public employer and includes a member of a board or

1 commission established by the employer; "employee" or "public employee" does not
2 include an independent contractor;

3 (2) "employer" or "public employer" means the state, a public or
4 quasi public corporation or authority established by state law, and a political
5 subdivision of the state including a municipality and a public or quasi-public
6 corporation established by a municipality; however, "employer" or "public employer"
7 does not include the University of Alaska, a municipal school district, or a rural
8 educational attendance area;

9 (3) "settlement" means the execution of a written agreement settling the
10 claim or action that gave rise to the employer's obligation to defend or indemnify the
11 public employee.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 26, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-9-94

The JUDICIARY Committee considered:

HB 277

HOUSE BILL NO. 277

INDEMNIFICATION OF PUBLIC EMPLOYEES

"An Act relating to public employers defending and indemnifying public employees with respect to claims arising out of conduct that is within the scope of employment."

RECOMMENDATIONS:

be replaced with _____

CS HB 277 (JUD)

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) _____

(3) zero fiscal note Admin - Risk Mngmt + Admin - Personnel Admin; zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
<u>Let Frost</u>	<input checked="" type="checkbox"/>	<u>Chip Davidson</u>	<input checked="" type="checkbox"/>		
<u>Annette James</u>	<input checked="" type="checkbox"/>	<u>Steve Donkane</u>		<input checked="" type="checkbox"/>	
<u>Bryan Porter</u>	<input checked="" type="checkbox"/>				
<u>Paul Phillips</u>	<input checked="" type="checkbox"/>				
<u>Paul Porter</u>	<input checked="" type="checkbox"/>				

Bryan Porter

CHAIRMAN'S SIGNATURE

Alaska State Legislature

Representative Brian S. Porter



CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF PUBLIC SAFETY
COURTS

SESSION:
STATE CAPITOL, ROOM 1110
JUNEAU, ALASKA 99801-1162
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ANCHORAGE, AK 99501-2133
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DISTRICT 20

SPONSOR STATEMENT

HB 277 requires the state and municipalities to indemnify public employees who are sued for acts or omissions 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 willful 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 public 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." This bill will codify this policy and extend it to borough, municipal and city employees.

HB 277 is currently supported by the Alaska Peace Officers Association and The Association of Chiefs of Police.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 28, 1994

JAN 31 1994

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

■ Juneau-Annex
Phone: (907) 465-3603
Fax: (907) 465-2539

The Honorable Al Vezey
Alaska House of Representatives
State Capital, Room 102
Juneau, AK 99811

Re: HB 277, defense and
indemnification of public employees

Dear Representative Vezey:

The letter from your aide, Joe Ryan, to Deborah Behr for a legal opinion on certain provisions of HB 277 has been referred to me for response. Your questions are restated and answered in turn below:

1. How does this bill affect employee liability in general?

HB 277 does not affect the liability of public employees at all, in terms of when a public employee may be liable to a plaintiff. The bill merely codifies the circumstances in which the public employee may look to a public employer for indemnification of the employee's liability.

2. Will this bill alleviate the concerns of financial institutions of persons named in lawsuits?

This is not a legal question that is within our purview. Generally speaking, the bill does not differ from the state's existing practice of defending and indemnifying state employees in certain circumstances. In the past, the state's position on defense and indemnification has been relayed to financial institutions at the request of state employees involved in job-related litigation. Whether the bill will provide those institutions with greater comfort than a letter from the state on this issue is uncertain. Insofar as this bill may affect the current practice of municipalities with respect to their employees, it is possible that it could also affect the attitude of financial institutions toward municipal employees named in lawsuits.

ATTORNEY GENERAL'S OPINION

3. How will this bill impact the employee's liability concerning punitive damages?

The bill does not alter the circumstances in which a plaintiff might be entitled to an award of punitive damages from a public employee defendant. In the event a public employee is found liable for punitive damages, the bill provides that the employer is not obligated to indemnify the employee for those damages. Proposed AS 39.90.160(h)(1). However, the bill does allow a public employer to agree to pay punitive damages awards against an employee. Proposed AS 39.90.160(i).

We hope this responds to your concerns. If you have other questions or wish to discuss this bill, please feel free to contact me.

Very truly yours,
BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Susan D. Cox

Assistant Attorney General

SDC:pch

cc: Raga Elim, Legislative Liaison
Deborah Behr, Legislation/Regulations Attorney

STATE OF ALASKA

DEPARTMENT OF LAW

Received

JAN 14 1994

REP BRIAN PORTER

OFFICE OF THE ATTORNEY GENERAL

January 14, 1994

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
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P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

■ Juneau-Annex
Phone: (907) 465-3603
Fax: (907) 465-2539

The Honorable Brian Porter
House of Representatives, Room 118
State Capitol
Juneau, AK 99801-1182

Re: Defense and indemnification of
state employees

Dear Representative Porter:

Your aide, Eric Musser, has asked me to provide a statement of the state's policy regarding defense and indemnification of state employees when they are sued for civil damages. As I explained to Mr. Musser, there is no generally applicable defense and indemnification provision in state law and no written policy document on the subject. However, many of the state's collective bargaining agreements do include defense and indemnification clauses that apply to employees who are union members. For those not covered by a collective bargaining provision, the state has a longstanding practice of providing defense and indemnifying under certain circumstances, explained below.

As a general matter, the state provides defense to executive branch employees who are sued for damages, where the act or omission at issue is within the course and scope of state employment. In addition, the state indemnifies employees and pays settlements or adverse judgments against them so long as there is no finding that the act or omission was outside the course and scope of state employment or amounted to gross negligence or intentional misconduct. The state is statutorily immune from liability for punitive damages (see AS 09.50.280) and therefore does not generally indemnify employees for punitive damages awards made against them.

The effect of this practice is that the state usually provides legal defense for state employees when they are sued about a matter that relates to their jobs. The state routinely reserves rights with respect to indemnification where it is possible that the trier of fact may determine they acted outside the scope of their employment, were grossly negligent or engaged in intentional misconduct, or are liable for punitive damages. This means that,

in some cases, the extent of the state's indemnification is not determined until the case is over.

The special litigation section in the Department of Law is the entity that handles personal injury and property damage claims against the state and state employees, as well as some civil rights litigation against state employees. Our section, along with our client agency, the division of risk management, contributed to the bill drafting that resulted in HB 395 in 1992. We understand the last committee version of that bill was the model for the bill you filed in this legislature: HB 277. For the most part, we were and are satisfied with the bill's attempt to create a workable, codified defense and indemnification provision for public employers. However, Mr. Musser invited us to share our comments or suggestions on the bill as drafted, so we offer the following ideas for your consideration.

The first paragraph of the proposed AS 39.90.160 sets out the general obligation of public employers to defend and indemnify their employees, unless a collective bargaining agreement includes a provision on that subject. Proposed AS 39.90.160(a). To make it perfectly clear that this bill is not intended to affect union members whose collective bargaining agreements cover this subject, we believe it would be preferable to delete the introductory clause in (a) on page 1, line 7 and half of line 8, and add a separate statement to AS 39.90.160(b), which lists the circumstances in which the statutory defense and indemnification obligations do not apply. Such a change would be consistent with the legislative intent, as we understand it.

Proposed AS 39.90.160(b)(1) makes it incumbent on the public employee to timely notify the employer when served with a claim or lawsuit, in order to qualify for employer provided defense and indemnification. Specifically, the bill requires the employee to notify the employer in writing within 10 days, unless the employee has good cause for failing to provide timely or proper notice and the employer is not materially prejudiced. Although the 10-day period for notice to the employer is longer than currently allowed in some state collective bargaining agreements, it is acceptable. However, we believe the "good cause" exception to the notice requirement should be deleted (page two, lines 3 and 4). The exception guts the rule, and makes every late notice arguable.

Paragraphs (e) and (f) of proposed AS 39.90.160 cover the situation where an employer denies indemnification to an employee. They distinguish between situations in which the public employer is a co-defendant with the employee and situations in which the employer is not named as a co-defendant, or has been dismissed from the case. In the former situation, an employee who has been denied indemnification must file a cross-claim against the employer in the underlying action. Proposed AS 39.90.160(e). Where the employer is not a party to the suit, the employee must wait until the underlying case has ended, then file an action against the employer for indemnification within one year. Proposed AS 39.90.160(f).

The Honorable Brian Porter

January 14, 1994
Page 3

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These sections need to clarify what is meant by "denying" indemnification: do they only apply where the employer refuses to indemnify at all, or do they also cover the "reservation of rights" situation where an employer may conditionally agree to indemnify, pending the outcome of the case? If they apply only to outright denial of indemnification, we have no objection to the substance of (e) and (f) as written. However, if they cover the reservation of rights situation as well, we do not agree that employees should cross-claim against their employers during the underlying litigation. All would be best served by awaiting the outcome of the litigation to determine to what extent the employee is entitled to indemnification; if there is some dispute at that point, the employee should be able to file suit as provided in proposed AS 39.90.160(f).^{*} In summary, we recommend that (e) and (f) be clarified so as not to apply to a "reservation of rights" or partial denial of indemnification; alternatively, we suggest that (e) be deleted and (f) be revised to apply to all situations where indemnification is denied by an employer, regardless of whether the employer is a party to the underlying litigation or not.

There is one other suggestion, that is more of a housekeeping nature. In proposed AS 39.90.160(i), on page 3 at line 20, the bill talks about an employee "on whose behalf a public employer has undertaken representation." To be consistent throughout the bill, that phrase should be replaced with "for whom a public employer has provided legal defense."

Thank you for your consideration of these proposals. Please do not hesitate to contact me or Brad Thompson, director of risk management, if you would like to discuss this subject.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Susan D. Cox

Assistant Attorney General

SDC:pch

cc: Deborah Behr
Raga Elim

* Outright denial of indemnification by the state is very rare. However, there are many times in which reservation of rights is warranted.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 20, 1994

SUBJECT: Sectional Summary of Draft CSHB 277(STA). (Public employer obligation to defend and indemnify public employees)

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill is not considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 adds Sec. 39.90.160 to the title that applies to public officers and employees. Subsection (a) provides that a public employer shall provide legal defense and pay settlements and judgements for a public employee when the acts or omissions that form the basis for the claim or judgement occurred during the course of and within the scope of the public employee's employment.

Subsection (b) states that the requirements of the section apply unless a collective bargaining agreement that covers the public employee includes a provision for defense and indemnification.

Subsection (c) limits when a public employer's obligation to defend and indemnify arises and requires the public employee to provide notice and make a good faith effort to cooperate in the defense. The public employer is not required to defend and indemnify if the act or omission was the result of the employee's gross negligence or intentional or wilful misconduct.

Subsection (d) prohibits a public employer from withholding legal defense or indemnification based solely on someone else's allegations of gross negligence or intentional or wilful misconduct.

Subsections (e) - (g) address how the employer may refuse to provide legal defense and indemnification and the employee's remedies for the refusal.

Subsection (h) sets out circumstances in which the public employer does not have an obligation to provide legal defense and indemnification and subsection (i) permits the employer to commit itself to provide them under circumstances in which the employer would not have an obligation to do so.

Subsection (j) addresses what happens if a public employee settles a claim or action before requesting the public employer to defend and indemnify or after the employer has declined to do so.

Subsection (k) permits the public employer to provide a legal defense while contesting the employer's obligation to indemnify the employee.

Section (l) defines "employee," "employer," and "settlement" for the section.

TBC:gc
94-047.glc

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 13, 1993

SUBJECT: Sectional Summary of HB 277. (Defense and indemnification of public employees)

TO: Representative Brian Porter

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill is not considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 adds a new section to the title that applies to public officers and employees. Subsection (a) provides that a public employer shall provide legal defense and pay settlements and judgments for a public employee when the acts or omissions that form the basis for the claim or judgment occurred during the course of and within the scope of the public employee's employment. This requirement applies unless a collective bargaining agreement that covers the public employee includes a provision for defense and indemnification.

Subsection (b) limits when a public employer's obligation to defend and indemnify arises and requires the public employer to provide notice and make a good faith effort to cooperate in the defense. The public employer is not required to defend and indemnify if the act or omission was the result of the employee's gross negligence or intentional or wilful misconduct.

Subsections (d) - (f) address how the employer may refuse to provide legal defense and indemnification and the employee's remedies for the refusal.

Subsection (g) sets out circumstances in which the public employer does not have an obligation to provide legal defense and indemnification and subsection (h) permits the employer to commit itself to provide them under circumstances in which the employer would not have an obligation to do so.

Representative Brian J. ...ter

April 13, 1993

Page 2

Subsection (i) addresses what happens if a public employee settles a claim or action before requesting the public employer to defend and indemnify or after the employer has declined to do so.

Subsection (j) permits the public employer to provide a legal defense while contesting the employer's obligation to indemnify the employee.

Section (k) defines "employee" and "employer" for the section.

TC:pl

93-293.plm

CSHB 277 - INDEMNIFICATION

Mr. Chairman, thank you for the opportunity to again be here this morning to testify on House Bill 277, Defense and Indemnification of Public Employees.

As was previously stated, this bill seeks to codify what is widely believed to be existing policy.

You have before you a Committee Substitute, which address concerns raised during the previous hearing. Briefly, I'll review the changes.

1. Section 1(a) - changed so that it states a public employer shall provide for the legal defense of employees.

(b) is changed to state that a collective bargaining agreement which includes a defense and indemnification provision takes precedent over any other provision of the legislation.

(c) through (l) are re-alphabetized.

(f) On page 2, line 25, language was added to stipulate that if limitations on indemnification are placed on an employee, the employee's exclusive remedy is to bring action for indemnification under (g).

(g) On page 3, line 1, language was added to stipulate that if limitations on indemnification are placed on an employee, the employee's exclusive remedy is to bring action for indemnification against the employer.

(j) On page 3, line 29, language was changed from "on whose behalf a public employer has undertaken representation" to "for whom a public employer has provided legal defense".

(l) On page 4, line 22, the definition of "settlement" as it applies to this legislation was added.

These changes incorporate concerns addressed by Susan Cox, the risk management attorney from the Department of Law.

Association. This section shall not apply to appointed employees or to employees designated in subsections 2.24.021A 1-4.

B. Managerial/professional employees against whom disciplinary action other than dismissal is taken or proposed shall have the right to request a hearing before the borough disciplinary review board. The employees shall serve written demand for said hearing on the mayor or his or her designee not later than ten days following the employee's receipt of written notice of the disciplinary action. Failure to serve demand for a hearing within said time limit, or to appear at a hearing scheduled in response to such a demand, shall constitute a waiver by the affected employee of the right to said hearing. The mayor or his or her designee may, but is not required to, suspend imposition of the disciplinary action pending review by the board.

C. All managerial/professional and classified employees against whom dismissal action is proposed shall be suspended from a pay status on the date on which the affected employee receives written notice of the proposed dismissal action. Said employees shall have the right to request a hearing before the borough disciplinary review board. The affected employee shall serve written demand for said hearing on the mayor or his or her designee not later than ten days following the employee's receipt of written notice of the proposed dismissal action. Failure to serve demand for a hearing within said time limit, or to appear at a hearing scheduled in response to such a demand, shall constitute a waiver by the affected employee of the right to said hearing. If the employee demands a hearing as specified above he shall continue in a non-pay status until the board's decision is issued or the case is otherwise concluded. Dismissal shall become effective:

1. If the employee fails to timely demand a hearing, upon the expiration of the ten day time limit set forth above; or

2. If the employee timely demands a hearing, upon the date the employee waives the hearing by failing to attend or upon the date on which the board issues a decision affirming the dismissal action, whichever shall first occur.

D. The disciplinary review board shall consist of a managerial/professional employee of the borough appointed by the mayor, who works in a division of the borough administration different from the division in which the affected employee works; a private citizen appointed by the mayor, who is neither employed by nor under contract to the borough; and a member of the borough assembly appointed by the presiding officer. The board shall conduct a hearing on the matter as soon as reasonably practicable after service of demand for said hearing upon the mayor or his or her designee. The board shall provide the affected employee with at least ten days' notice of the date and

place of hearing and shall provide both the affected employee and a representative of borough management with an opportunity to exercise the following rights at the hearing:

1. To testify;
2. To present witnesses and other evidence;
3. To cross-examine witnesses;
4. To be represented by a person of his choice.

The board shall conduct the hearing as specified above and, after considering the evidence presented at said hearing, shall determine whether the disciplinary action imposed or proposed, or the severity thereof, is arbitrary, capricious or contrary to law. The board may affirm the disciplinary action, impose a lesser disciplinary action, or prohibit the imposition of discipline against the employee for incidents examined at the hearing. The affirmative vote of two members shall constitute the decision of the board which shall be in writing and shall be issued as soon as reasonably practicable following termination of the hearing. If an employee has been suspended from a pay status pending the hearing, said suspension shall continue until the board's decision is issued. If the board determines that dismissal would be arbitrary, capricious, or contrary to law, the employee shall be returned to a pay status and shall receive all pay to which he would have been entitled during the period of the suspension, unless the board directs otherwise.

E. The disciplinary review board shall deliver or mail its decision to the affected employee, and the decision of the board is final unless the affected employee appeals said decision to the Superior Court not later than thirty days after the date on which the decision was delivered or mailed to the employee. The Court shall review the matter on the record and shall determine whether the board abused its discretion. The case shall not be tried de novo. The Rules of Appellate Procedure of the State of Alaska shall apply to the case. (Ord. 85-137 § 5, 1985)

2.24.331 Safety.

A. It is the responsibility of all levels of borough management to ensure that prudent safety rules and precautions are developed, implemented and observed.

B. Failure of borough employees to comply with safety requirements and regulations shall be just cause for disciplinary action to include dismissal. (Ord. 84-102 § 2 (part), 1985)

2.24.341 Indemnification.

A. Indemnity. The borough shall indemnify any employee of the borough against any claim, demand, suit or judgment arising out of his employment by the borough if the borough employee, at the time of occurrence, was acting in good faith and within the scope of his duties.

B. Defense. The borough shall provide an employee with independent legal counsel:

1. When the employee requests and the assembly concurs:

2. When the borough mayor or borough attorney determines that there may be a conflict of interest between the borough and the employee.

The borough shall provide the employee with independent legal counsel when the liability of the employee involves claims or defenses not reasonably related to the claims or defenses of the borough. (Ord. 88-026 § 3, 1988)

2.24.351 Employee separations.

A. Resignation. To resign in good standing, an employee shall give the appointing authority or his designee not less than ten working days' notice prior to the action date of severance, unless the borough mayor or his designee agrees to permit a shorter period for extenuating circumstances. The employee notice of resignation shall be in writing and shall contain the reason for resignation. Failure to comply with this provision shall be entered in the employee's personnel file, and will be just cause for denying future reemployment.

B. No managerial/professional or classified employee shall be dismissed unless the provisions of Section 2.24.321 have been followed. Appointed employees and employees designated in Section 2.24.021A4 shall be dismissed in the manner described in Section 2.24.021 for each such employee. (Ord. 85-137 § 6, 1985; Ord. 84-102 § 2 (part), 1985)

2.24.361 Position descriptions.

The borough shall maintain a position classification (job description) for the various occupations authorized by the organization's staffing structure. This document will reflect the job title, representative functions of the position, minimum job requirements, and be coordinated with the borough's classification plan (Section 2.24.091).

A. Reclassification. Positions may be reclassified with authority of the borough mayor whenever the duties of the position have substantially and materially changed.

B. New Positions. The appointing authority (borough mayor) may create new positions, change the classification designations and salaries, provided such actions can be accomplished within the limitations of the current borough budget. (Ord. 84-102 § 2 (part), 1985)

2.24.371 Salary plan.

A. The borough shall publish a salary schedule each year in conjunction with the publication of the borough annual budget. Delays caused by extraordinary circumstances such as collective bargaining are excepted.

B. Normally, newly hired employees will be employed at the beginning rate of the appropriate salary range. However, in cases where unusual difficulty has been experienced in filling a vacancy, or when the applicant is exceptionally qualified, the borough mayor may direct the starting salary above the minimum. (Ord. 84-102 § 2 (part), 1985)

2.24.381 Payday.

Normally, borough employees shall be paid every other Friday of each month for the preceding two-week pay period. If these days fall on a holiday, the employees shall be paid on the last working day preceding the holiday. (Ord. 84-102 § 2 (part), 1985)

2.24.391 Overtime.

A. The borough's normal scheduled workweek encompasses forty hours' work within one week (Monday through Sunday). Employees, permanent or term-permanent, who are directed to work hours in excess of forty in one week shall be paid overtime calculated at a rate of one and one-half times the employee's base hourly rate for overtime worked during the period Monday through Saturday. Overtime worked on Sundays or holidays shall be compensated at a rate of double time (two times the employee's base hourly rate).

B. Temporary employees shall be compensated at a rate of one and one-half times their base hourly rate for all hours worked in excess of forty in one week.

C. No employee shall work overtime unless directed to do so by a supervisor empowered to give such direction.

D. For some positions, overtime work is considered a normal part of the job and does not justify overtime pay. Overtime compensation shall not be granted to:

1. Appointed employees;
2. Managerial/professional employees;
3. Persons occupying positions which qualify as supervisors under the criteria of the Fair Labor Standards Act, as interpreted by U.S. Department of Labor and the Alaska Department of Labor. (Ord. 86-017 § 15, 1986; Ord. 84-102 § 2 (part), 1985)

2.24.401 Holidays.

A. All borough employees, excluding temporaries, shall be entitled to the holidays listed below with pay. Full-time employees shall receive regular straight-time compensation; part-time employees shall be paid straight-time compensation in proportion to the number of hours regularly scheduled to work:

1. New Year's Day (January 1st);
2. Washington's Birthday (third Monday in February);
3. Memorial Day (last Monday in May);
4. Independence Day (July 4th);



January 24, 1994

TO: Representative Al Vezey, Chair
and
Members, House Committee on State Affairs

FROM: Kent E. Swisher, Executive Director

RE: HB 277 - Indemnification of public employees

It has been brought to my attention that your committee is considering **HB 277- Indemnification of public employees**, which would amend AS 39.90 to require public employers, including municipalities, to provide defense and indemnification of employees for actions or omissions that occurred during the course and within the scope of the employee's employment, except in cases of gross negligence or intentional or wilful misconduct. The bill allows for collective bargaining agreements to supersede state law with regard to defense and indemnification.

It is the understanding of the Alaska Municipal League that it is already common practice for municipalities to indemnify employees for actions/omissions taken during the course and scope of their employment and that such indemnification is included within most, if not all, collective bargaining agreements.

The League has no objection to the current draft of HB 277, or to the proposed Committee Substitute dated 1/20/94. It appears to codify existing common practice, to provide reasonable protection for employers by requiring the employee to keep the employer informed and to cooperate in the defense, and to provide equal treatment of all types of employees.

cc: Representative Brian Porter

LETTERS REGARDING HB 277



Anchorage Telephone Utility

Executive Offices

JAN 20 1994

January 20, 1994

Representative Brian Porter
Room 122
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Porter:

I want to express my appreciation to you for introducing H.B. 777. This legislation would allow public entities to indemnify employees from personnel liability resulting from honest and efficient accomplishment of their job responsibilities. ATU fully supports this bill and urges its speedy approval.

Our society is seeing increasing numbers of former employees arguing wrongful discharge cases in front of juries. Without regard to the merits of such cases, our system of justice places public employees in a precarious position. Plaintiffs in such actions can not gain punitive damages from a public entity; punitive damages may only be applied to a private entity. Given this, plaintiffs' attorneys will often name an individual as defendant in order to establish a party with punitive liability or, as may be the case, simply to provide leverage.

While individuals so named, more often than not, eventually are relieved of liability, their lives in the meantime can be dramatically impacted. An individual so named will have all credit suspended pending outcome of the case. Simply put, the individual is unable to buy a house, a car or even a large appliance through normal credit channels until the case is settled. In many instances, such cases take years to resolve.

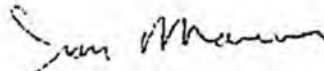
Representative Brian Porter
January 20, 1994
Page 2 of 2

Our concern in rectifying this unfair situation stems from our desire to have effective employees carrying out their responsibilities in a competent and efficient manner. Clearly, an employee who must consider his/her personal fortunes and those of his family each time he makes a decision will find his thinking swayed by this potential threat. We ask for this legislation to be passed so that our employees may work in an atmosphere free from the threat of personal reprisal.

Again, thank you for your efforts. If you need anything further from ATU regarding this legislation, please let me know.

Sincerely,

ANCHORAGE TELEPHONE UTILITY


James G. Morrison
General Manager

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0615

JAN 20 1994

January 18, 1994



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Representative Brian Porter
State Capitol
Juneau, AK 99801

Dear Representative Porter,

The Alaska Peace Officers Association supports House Bill 277. 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 and without malice.

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, 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. I encourage you and your colleagues to support House Bill 277.

Sincerely,

Michael A. Grimes, Statewide President
Alaska Peace Officers Association



Tom Fink, Mayor

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500



Service since 1921

Received

JAN 19 1994

F.B. BRIAN PORTER

January 18, 1994

Representative Brian Porter
House of Representatives
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Representative Porter,

I am writing this letter in support of House Bill 277, which would require public employers to indemnify public employees with respect to law suits and legal claims made against employees who are working within the scope and authority of their position. I can safely represent that the subject of indemnification is very important to all public employees.

Law enforcement over the years has identified indemnification as a top legislative priority. Our premise is simple. We believe that when a public employee is working at the behest of their employer, and they operate in good faith and within their proper authority, employees should be indemnified.

This is not an argument for protection of bad employees. It is a request that, as a matter of law, employers protect employees who are doing the work of the government. Threatened or actual legal action has a very chilling effect on any employee. If personal assets or wealth are unfairly at risk, employees are discouraged from making decisions or taking action.

We are happy to work with you and the Legislature in the passage of this bill. If you have any questions, please contact me at 786-8552.

Sincerely,

Duane S. Udland, Deputy Chief
Anchorage Police Department
4501 South Bragaw
Anchorage, Alaska 99507

Alaska Association Chiefs of Police



January 17, 1994

Received

JAN 19 1994

REP BRIAN PORTER

Representative Brian Porter
House of Representatives
State Capital
Juneau, Alaska, 99811

Dear Representative Porter:

Two years ago the Alaska Association of Chiefs of Police, the Alaska Peace Officers Association, and the FBI National Academy Associates identified the indemnification of public employees as their number one legislative priority. This issue is even more timely and critical now. The following is the combined statement and position of the three professional law enforcement associations concerning indemnification.

"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, individual employees are listed as parties to the action also. 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 public employees in jeopardy.

The trend to hold public employees personally liable places employees in a position where their own personal assets are at risk. This means that all government employees are in danger, from the highest level policy maker to the level of worker where the policy is implemented. Even elected officials are vulnerable today.

We in law enforcement believe this is an undue burden upon the public employees of this State. It carries the 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 their good faith judgments can result in the loss of their homes, their cars, or their savings."

If we can be of any assistance in the passage of your bill please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ronald L. Otte". The signature is written in dark ink and is positioned above the typed name.

Ronald L. Otte
President

RLO/lp



Anchorage Telephone Utility

Executive Offices

January 17, 1994

Representative Brian Porter
Room 122
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Porter:

As one of many employees who would be effected by the passage of House Bill 277, I appreciate the opportunity of conveying to you how important I believe this legislation to be, and how strongly I support its passage.

As the Director of Human Resources for Anchorage Telephone Utility, I typically must make the final decision regarding employee terminations. Increasingly, that decision is based not only on "is this the appropriate action for the employee", but also "how likely are we to convince a jury that this is fair".

The number of these cases which go to jury trial is increasing, as is the frequency with which specific individuals are being named as defendants. Consequently, those who must make these critical employment decisions are becoming more and more cautious about their involvement, often to the detriment of the organizations for which they work.

This concern is not hypothetical. A recent experience at ATU was neither particularly unique nor particularly onerous, but it does serve as a good example of why this legislation is so timely and so important.

A number of months ago, a significant amount of money became unaccounted for in our Customer Service area. Following extensive investigation, it became apparent that specific procedures had not been followed, and the Supervisor of the Cash function was identified as responsible for the missing money. While careful not to suggest that this individual had taken the money, we felt that it was while under her responsibility and due to her failure to follow procedures that the cash disappeared. After the investigation and significant deliberations, I determined that termination was the appropriate action.

Representative Brian Porter
January 17, 1994
Page 2 of 3

A few months later, this former employee filed a wrongful termination suit against the Utility, and I was named as a co-defendant. There were no particular reasons given for me being included, other than an allegation that I may have defamed her by telling others that the employee had stolen the money. My own opinion as to the reason I was named is that a former employee cannot be awarded punitive damages when suing a public employer. However, punitive damages can be awarded against an individual. By naming me as co-defendant, this former employee was keeping the option of punitive damages available to the future jury.

The consequences of being named as defendant or even co-defendant in this type of suit are significant. Any financial or real estate transaction I might have attempted would have been thwarted by an honest answer to the standard question on an application: "Are you currently involved in any type of civil litigation?" Since wrongful termination cases can drag on for several years, that limitation could have been a significant and enduring problem.

Of greater concern would be the legal fees, which as defendant or even co-defendant, might have been my personal responsibility. With current estimates of approximately \$200,000 in defense costs in a typical wrongful termination, the implication is obvious.

And of greatest concern is the potential finding and award of the jury. With back pay, future pay, emotional and physical distress claims, and conceivably punitive damages, the personal consequence to one who must make a termination decision without some kind of indemnification can be devastating.

In the ATU example I used, the outcome has been positive. Although the case has not been resolved, following early depositions and some legal work by defense counsel, I was dropped as a defendant. However, every employment decision is clouded by the thought that next time I may not be as fortunate.

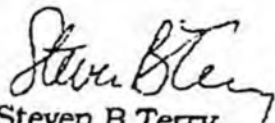
Ultimately, without the type of protection provided by House Bill 277, those who make employment decisions may determine that doing the "right" thing is not worth the risk, and workplace situations which should be addressed will instead be ignored. At that point, everyone loses.

Representative Brian Porter
January 17, 1994
Page 3 of 3

Public employers need individuals in decision making positions who will make careful and frequently difficult decisions. Those individuals need an employer who will stand by them and support them when those decisions are challenged. House Bill 277 provides just that type of support. I very much appreciate and endorse your support of this bill.

Sincerely,

ANCHORAGE TELEPHONE UTILITY



Steven B Terry
Director, Human Resources