

HB

120

Municipality
of
Anchorage



P.O. Box 190650
Anchorage, Alaska 99519-0650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

January 25, 1995

Representative Brian Porter
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: HB 120 Regarding Defense and Indemnification of
Public Employees and Former Public Employees with Respect
to Claims Arising Out of Conduct Within the Course and Scope
of Employment

Dear Representative Porter:

Last legislative session the Municipal Attorney's Office endorsed HB 277 relating to defense and indemnification of public employees for claims arising from actions taken in the course and scope of their duties. HB 277 from last session, like HB 120 in the first session of the 19th Legislature, would provide clarity regarding the relationship between the employer and the employee when actions of a public employee in the discharge of their duties result in litigation.

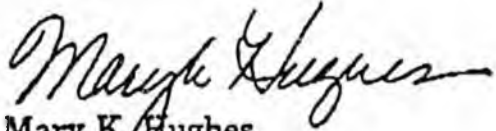
The Bill does not propose procedures which are different in nature to those which the Municipality of Anchorage currently pursues. The Bill does, however, provide the benefit of a clear statement of rights and responsibilities of both the employer and the employee in those circumstances where the discharge of duties by a public employee result in litigation. The Municipal Attorney's Office supports this concept.

The Municipal Attorney's Office has requested, and Mayor Mystrom has included, a legislative position statement asking for changes such as those set forth in HB 120 to be included in the Municipality of Anchorage's official legislative requests. I anticipate that the Anchorage Assembly will concur and the official municipal

Representative Porter
January 25, 1995
Page 2 of 2

endorsement will follow. For the present, on behalf of the Anchorage Municipal Attorney's office I urge passage of HB 120.

Sincerely,



Mary K. Hughes
Municipal Attorney

cc: Tim Rogers

cc: gramat\city\porter.sbe/kzm

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 6, 1995

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1924
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-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-8735

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

Re: HB 120 - Defense and
Indemnification of Public Employees

Dear Representative Porter:

This letter is in response to your staff's verbal request for a legal review of HB 120, a bill relating to defense and indemnification of current and former public employees by public employers. This bill is identical to last year's CSHB 277 (Jud), with the exception of the effective date provisions in sections 2 and 3 of HB 120.

The Department of Law finds no legal problems with the bill. We believe the bill will establish a workable, codified defense and indemnification policy for public employees who are not otherwise covered by legal defense and indemnification provisions in a collective bargaining agreement.

If you have any questions about specific aspects of the bill, please do not hesitate to contact me or Brad Thompson, the state's director of risk management.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: *Susan D. Cox*
Susan D. Cox
Assistant Attorney General

SDC:pch

cc: Brad Thompson

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 120

Revision Date: _____
 Title: "Public employers defending and indemnifying public employees... within scope of employment..."
 Sponsor: Porter
 Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 95) 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.)

This bill has no fiscal impact to the Division of Personnel.

Prepared by: Dianne Corso, Labor Relations Manager
 Division: Personnel/OEEO

Phone: 465-4403
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/27/95

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Revision Date: _____
 Title: "An Act relating to public employers defending and indemnifying public employees."
 Sponsor: Porter
 Requestor: _____

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	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
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$None

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: J. Brad Thompson, Director
 Division: Risk Management

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/27/95

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Alaska State Legislature

Representative Brian S. Porter



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SELECT COMMITTEE ON LEGISLATIVE ETHICS

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DEPARTMENT OF LAW
DEPARTMENT OF PUBLIC SAFETY
COURTS

SESSION:
STATE CAPITOL ROOM 118
JUNEAU, ALASKA 99801-1182
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FAX: (907) 485-3834

INTERIM:
718 W. 4TH AVE., SUITE 640
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

DISTRICT 20

Sponsor Statement

HB 120 Indemnification of Public Employees

House Bill 120 *Indemnification of Public Employees*, amends Alaska Statute Title 39 *Public Officers and Employees* by adding a new chapter. This chapter would require public employers, including municipalities, to provide legal defense and reimburse employees' losses for actions that occurred during the scope of their employment.

However, public employers would not be required to compensate an employees' actions that involve gross negligence, intentional or wilful misconduct. In addition, the employer would also be excused from defending or indemnifying when the case involves a disciplinary, administrative or a criminal matter brought against the employee.

The implementation of this legislation is already common practice and most municipalities now indemnify their employees for actions or omissions taken during the course and scope of their employment. Such indemnification is included within most, if not all, collective bargaining agreements. In fact, the Attorney General for the State of Alaska, Municipality of Anchorage, Association of Chiefs of Police and Anchorage Municipal League support this legislation.

In brief, House Bill 120 *Indemnification of Public Employees* provides the following:

- o codifies existing common practice
- o reasonable protection for employers
- o requires the employee to keep the employer informed and to cooperate in the legal defense
- o equal treatment of all types of employees

Employees of the University of Alaska, municipal school districts and REAA's are now provided this protection (AS 14.12.090).

**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

February 3, 1995

SUBJECT: Sectional Summary of HB 120 (Public employee legal defense and indemnification)

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 should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 adds a new chapter to the title that applies to public officers and employees.

Sec. 39.55.010 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.

Subsection (b) relieves the employer of the obligation to defend and indemnify if the employee acted with gross negligence or if the acts or omissions were the result of intentional or wilful misconduct. The employer is also excused from defending or indemnifying when the case involves a disciplinary, administrative or criminal matter brought against the employee or when the employee has been convicted of a criminal offense or terminated from employment because of the conduct. If the employee settles or compromises the claim or action before asking the public employer to provide a defense and indemnify the employee, the employer is also relieved of its obligations.

Under subsection (c), the requirement to provide a legal defense and indemnification applies unless a collective bargaining agreement that covers the public employee includes a provision for defense and indemnification.

Subsection (d) excuses the employer from paying punitive damages awarded against an employee.

Subsection (e) permits public employers to adopt policies requiring the employer to provide defense or indemnification or to pay punitive damages when the statute would not otherwise require the employer to do so.

Subsection (f) states that the provision of a defense or indemnification does not waive sovereign immunity.

Subsection (h) makes clear that former employees are entitled to the same treatment as current employees.

Sec. 39.55.020 requires the employee to notify the employer of the claim against the employee and make a good faith effort to cooperate in the defense and resolution of the claim or action. If the employer is providing or has been asked to provide a legal defense, subsection (b) prohibits the employee from settling the claim unless the employer approves. Subsection (c) permits the public employer to settle claims or actions without the employee's consent so long as the settlement resolves all the outstanding claims against the employee.

Sec. 39.55.030 sets out the employee's rights when the employer refuses to provide a legal defense. Under subsection (b), the employee may file an action for declaratory relief to secure legal defense from the employer. Subsection (c) addresses what happens if the employee settles the claim. Subsection (d) gives the employee one year after prevailing in a declaratory relief action against the employer or the entry of final judgment or dismissal in the underlying action to secure indemnification.

Sec. 39.55.040 addresses how the employer may provide a legal defense for an employee without promising to indemnify the employee if a judgment is entered against the employee.

Sec. 39.55.100 defines terms used in the chapter, including "employee," "employer," and "settlement."

Section 2 provides that the Act does not modify existing collective bargaining agreements.

Section 3 limits the Act to claims arising on or after the date on which it takes effect.

TC:klb

95-038 klb

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 120

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to public employers; defending and BRU: Legal Services
indemnifying public employees..." Component: Operations
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND 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	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill clarifies existing practice concerning the defense and indemnification of public employees involving civil claims against these employees arising out of conduct that is within the scope of employment. Because the bill spells out these existing practices in statute, there will not be a fiscal impact.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/7/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/95
 Agency: Department of Law

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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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POSITIONS

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TEMPORARY						

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 Division: Administrative Services Division Date: 2/7/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/95
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(Thousands of Dollars)

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TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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(Thousands of Dollars)

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TEMPORARY						

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 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/7/95
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