HB

446

FISCAL NOTE

No. 1
Bill Version: HB 446
(H) Publish Date: 2/9/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:
Title: "An Act requiring home rule municipalities to bring action for certain injunctive relief relating to nuisances."
Sponsor: Representative Rokeberg
Requester: Representative Rokeberg

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services
COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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						
CHANGE IN REVENUES						

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 (FY96) 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 amends AS 09.50.180 to provide that a home rule municipality shall bring an action to enjoin a nuisance, as defined under AS 09.50.170 - 09.50.240 (lewd houses), if the nuisance is located in the home rule municipality. Currently, only the state or a citizen are allowed to bring such an action. The bill has the effect of giving local government authority to act in an area that is of local concern. There will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: 2/4/96

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 2/4/96

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COMMITTEE COPY

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/8/96 FURTHER:

DATE TURNED INTO OFFICE: 3/27/96

The Judiciary Committee considered HOUSE BILL NO. 446 am

"An Act allowing home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[X] same title
[ ] technical title
[ ] new: SCR*_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS-	NR	DNP	AM
Lyda Green	✓	Fg Allen	X		
Rick Halbert	✓	Ric Cadas	X		
CHAIR: Judiciary Committee	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
at Law (Civil Div)	2/1/96	✓	

[ ] **APPROPRIATION** -- no fiscal note

*Include fiscal notes accompanying Governor's bill

I. GENERAL CONSIDERATION

This section is potentially open-ended Johansen v. State, 491 P.2d 759 (Alaska 1971).

Stated limitations on imprisonment. — Imprisonment for civil coercive contempt must be strictly limited in its application lest it intrude upon those constitutionally guaranteed liberties which the courts are sworn to protect. In re Elder, 764 P.2d 319 (Alaska 1988).

Distinction between criminal and civil contempt is generally phrased in terms of whether the character and purpose of the contempt is "remedial" or "punitive." L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Where the contempt power is invoked to punish the alleged contemnor for "past, willful flouting of the court's authority" pursuant to AS 09.50.010(3), contempt is criminal but where the contempt proceeding is instituted to "coerce future conduct" pursuant to this section, the contempt is civil. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Willfulness is a prerequisite to imprisonment for civil contempt, but only in the sense that the act ordered must be within the power of the defendant to perform. State, Dep't of Revenue v. Oliver, 676 P.2d 1178 (Alaska 1984).

Inability to comply with an order to produce allegedly misappropriated funds is established as a matter of law where the undisputed evidence shows only that the funds or property ordered produced are in the hands of third parties over whom the alleged contemnor has no legal control or that such funds or property have been converted into some form of asset which the court refuses to accept upon immediate tender. In re Elder, 764 P.2d 319 (Alaska 1988).

Coercive confinement of recalcitrant grand jury witness must end when grand jury is discharged even after it is apparent that the witness has no further opportunity to purge himself of contempt. D.H. v. State, 517 P.2d 1391 (Alaska 1973).

Jury trial not available where confinement is remedial and not punitive. — See Cooper v. Cooper, 536 P.2d 1111 (Alaska 1975).

Appellate review of contempt order. — Court of appeals had jurisdiction to review a contempt order which arose out of a custody contest which the state attorney general participated in, but was not a criminal prosecution where defendant had a related appeal pending in the court and the imprisonment which arose out of the contempt had a clear effect on his sentence. Martin v. State, 787 P.2d 1209 (Alaska Ct. App. 1990).

II. NONSUPPORT

Contempt for nonsupport has criminal aspects. — Although contempt for nonsupport has traditionally been characterized as a civil action, certain aspects of that action, in particular, the threat of incarceration, more closely approximate penal proceedings. Olson v. Zahrese, 528 P.2d 837 (Alaska 1974).

Right to attorney. — Indigent in a contempt for nonsupport proceeding has a right to a court appointed attorney. Olson v. Zahrese, 528 P.2d 837 (Alaska 1974).

The burden of proof of inability to comply with the court order, which is the central issue in contempt proceedings for nonpayment of child support, is with the defendant. Olson v. Zahrese, 528 P.2d 837 (Alaska 1974).

Ability to comply with support order. — The principal question in civil contempt proceedings involving child support orders is not whether the defendant once had the ability to comply with the support order but whether he presently has the ability to comply. Rufaul v. Rufaul, 650 P.2d 389 (Alaska 1982).

Motion for a directed verdict finding husband in contempt for failure to pay alimony and support pursuant to divorce decree was improperly granted where there was substantial evidence that the husband was in bad financial straits and for mindful purpose could have reached different conclusions on the issue of his ability to pay. Rufaul v. Rufaul, 650 P.2d 389 (Alaska 1982).

Discussion of sentencing procedures in nonsupport cases. — See notes to AS 09.50.010. Diggs v. Diggs, 661 P.2d 1051 (Alaska 1983).

Nonsupport order vacated. — Superior court's order requiring defendant in nonsupport proceeding to serve 90 days with 45 days suspended on certain conditions was vacated where the court did not announce at the outset of the proceeding that it intended to impose a criminal sanction if the defendant was found guilty of contempt and the preponderance of the evidence burdens of proof were used by the superior court in its instructions to the jury rather than the criminal standard of beyond a reasonable doubt. Diggs v. Diggs, 661 P.2d 1051 (Alaska 1983).

Sec. 09.50.060. Prosecution on nonappearance. If the defendant does not appear on the day ordered by the court, the court may order the undertaking to be prosecuted. If the undertaking is prosecuted, the measure of damages is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding. (§ 10.06 ch 101 SLA 1962)

Secs. 09.50.070, 09.50.080. Property subject to escheat; enforcement of rights by state. [Repealed, § 14 ch 133 SLA 1986.]

Sec. 09.50.090. Transmittal of personal property to state. [Repealed, § 6 ch 78 SLA 1972.]

Secs. 09.50.100 — 09.50.160. Escheat actions, claims, and reports. [Repealed, § 14 ch 133 SLA 1986.]

Article 2. Abatement of Lewd Houses.

Cross references. — For provisions governing nuisances in general, see AS 09.45.230 — 09.45.250.

Collateral references. — 24 Am. Jur. 2d, Disorderly Houses, §§ 23-36.

66 C.J.S., Nuisances, §§ 69, 77, 102, 169.

Sec. 09.50.170. Abatement of places used for certain acts. (a) A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for one of the following activities is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the activity is conducted, permitted, carried on, continued, or exists, and its furniture, fixtures, and other contents, constitute a nuisance and may be enjoined and abated

(1) prostitution,

(2) an illegal activity involving a place of prostitution, or

(3) an illegal activity involving

(A) alcoholic beverages,

(B) a controlled substance,

(C) an imitation controlled substance, or

(D) gambling or promoting gambling

(b) In this section, "illegal activity involving alcoholic beverages," "illegal activity involving a controlled substance," "illegal activity involving gambling or promoting gambling," "illegal activity involving an imitation controlled substance," "illegal activity involving a place of prostitution," and "prostitution" have the meanings given in AS 34.03.360. (§ 20.01 ch 101 SLA 1962, am §§ 8, 9 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 28, 1994, in present subsection (a), in the introductory language, substituted "one of the following activities" for "the purpose of lewdness, assignation, or prostitution or any other immoral act," substituted "activity" for "lewdness, assignation, or prostitution," made minor stylistic changes, and added paragraphs (11)-(13), and added subsection (b).

NOTES TO DECISIONS

Bawdyhouse as nuisance. — A bawdyhouse is a nuisance *per se*, and it is also a public nuisance. Snyder v. Keller, 4 Alaska 447 (1912).

A bawdyhouse is not a "house" within the meaning of the 4th amendment of the United States Constitution. United States v. Ashworth, 7 Alaska 84 (1923).

Legislative intent. — The intention of the legislature, as disclosed by this article, was to suppress houses of lewdness and prostitution and to prevent persons from maintaining or conducting such houses either at the place where they were being maintained or at any other place throughout the judicial division, also to abate the nuisance then existing by closing up the same for the period of one year. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Injunction against maintaining nuisance and for abatement of building. — From a consideration of this article it is apparent that it has a twofold application, namely, a personal injunction against setting up, maintaining, or conducting a nuisance of the character described, the injunction operating in future, and the abatement of the building where the prescribed nuisance is being carried on. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Court has no discretion but to issue injunction and order abatement. — Where the evidence is clear that a house was maintained as a nuisance, there is no discretion in the court under this article but to issue the injunction, and also to order the abatement of the nuisance. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Testimony as to reputation of house. — Testimony that house had a reputation as a house of prostitution is not sufficient. United States v. Rex Hotel, 8 Alaska 21 (1928).

Sec. 09.50.175. Admissibility of evidence to prove nuisance. In an action brought under AS 09.50.170 — 09.50.240 to prove the existence of a nuisance, the court may consider

(1) evidence of reputation within a community;

(2) evidence derived from records of the courts of the state or of the United States that relate to previous complaints concerning alleged violations of, and to arrests for or convictions of violations of, laws based on activity set out in AS 09.50.170. (§ 10 ch 121 SLA 1994)

Sec. 09.50.180. Injunction. When there is reason to believe that a nuisance as defined in AS 09.50.170 — 09.50.240 exists, the attorney general shall, or a citizen may, bring an action to perpetually enjoin the nuisance, the person maintaining it, and the owner, lessee, or agent of the building or ground upon which the nuisance exists. (§ 20.02 ch 101 SLA 1962)

Cross references. — For court rule on injunctions generally, see Civ. R. 65.

NOTES TO DECISIONS

Legislative enjoining of nuisance violating criminal statute. — It is within the authority of the legislature to enlarge the powers of an equity court by empowering it to enjoin the maintenance of a nuisance, although the maintenance thereof may be a violation of a criminal statute. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Sec. 09.50.190. Dismissal. If the complaint is filed by a citizen, the action may be dismissed only upon approval of the attorney general and affidavit of the complainant and the complainant's attorney giving the reasons why the suit should be dismissed. The court may refuse to dismiss the suit and may direct the attorney general to prosecute the action. (§ 20.03 ch 101 SLA 1962)

Sec. 09.50.200. Contempt proceeding. If an injunction granted under the provisions of AS 09.50.170 — 09.50.240 is violated, the court may summarily try and punish the offender. A party found guilty of contempt under the provisions of AS 09.50.170 — 09.50.240 is punishable by a fine of not more than $1,000, or by imprisonment for not less than three months nor more than six months, or by both. (§ 20.04 ch 101 SLA 1962)

Cross references. — For contempt procedure, see Civ. R. 90.

Sec. 09.50.210. Order of abatement. (a) If the court finds and enters judgment that a nuisance exists, the court shall enter an order of abatement. The order of abatement must direct

(1) termination of the lease or rental agreement, if any, on the premises subject to the order of abatement, if the tenant who occupies under the lease or rental agreement has been given notice of the proceedings under AS 09.50.170 — 09.50.240;

(2) the removal from the building or place of the fixtures, furniture, and movable property used in the nuisance and their sale in the manner provided for the sale of chattels under execution;

(3) the closing of the building or place against its use for any purpose for a period of one year unless sooner released.

(b) A person who breaks and enters or uses a building, structure, or other place directed to be closed by an order entered under (a)(3) of this section is guilty of contempt and shall be punished for contempt as provided in AS 09.50.200. (§ 20.05 ch 101 SLA 1962; am § 11 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, added the subsection and paragraph designations, added paragraph (a)(1), inserted "by an order entered under (a)(3) of this section" in subsection (b), and made minor stylistic changes.

Sec. 09.50.220. Proceeds of sale. (a) The proceeds of the sale of the contents shall be applied as follows:

(1) to the payment of fees and costs of the removal and sale;

(2) to payment of the allowances and costs of closing and keeping closed the buildings or places;

(3) to the payment of plaintiff's costs;

(4) to the payment of any balance remaining to the owner of the property sold.

(b) If the proceeds do not fully discharge all the costs, fees, and allowances, the premises may also be sold under execution issued upon the order of the court and the proceeds of the sale applied in like manner. However, the building or realty in which the nuisance is conducted or real estate on which it stands may not be subject to a lien, judgment, or costs unless the owner, or an agent or representative of the owner, has been duly served with process in the action and been given an opportunity to show good faith and to immediately abate the nuisance. (§ 20.06 ch 101 SLA 1962)

Sec. 09.50.230. Release of premises to owner. (a) The court may order premises abated under AS 09.50.210 delivered to the owner and cancel the order of abatement if the owner of the premises

(1) has not been guilty of a contempt in the proceedings;

(2) appears and pays all costs, fees, and allowances that are a lien on the premises; and

(3) files a bond with sureties approved by the court in an amount determined by the court to the effect that the owner will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one year thereafter.

(b) The lease of the property does not release it from a judgment, lien, penalty, or liability to which it may be subject by law.

(c) A cancellation of the order of abatement does not affect a termination of a lease or rental agreement made under AS 09.50.210(a)(1). (§ 20.07 ch 101 SLA 1962; am § 12 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, in subsection (a), added the subsection and paragraph designations, added the introductory language preceding "if," and made related and other minor stylistic changes, in paragraph (a)(3), substituted "an amount" for "the full value of the property as" and deleted ", the court may order the premises to be delivered to the owner and cancel the order of abatement" at the end, added the subsection (b) designation, and added subsection (c).

Sec. 09.50.240. Fine for contempt as lien on premises. A fine imposed as punishment for contempt against the owner is a lien upon the premises to the extent of the interest of that person in the premises and is enforceable and collectible by execution issued by the order of the court. (§ 20.08 ch 101 SLA 1962)

Article 3. Claims Against State.

NOTES TO DECISIONS

Cited in University of Alaska v. Geistauts, 666 P.2d 426 (Alaska 1983).

Collateral references. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 87-89, 99-126.

81A C.J.S., States §§ 174 — 180, 194-202, 207-211.

Applicability of estoppel doctrine against state. 1 A.L.R.2d 114.

Contributory negligence as defense to action by state. 1 A.L.R.2d 927.

Defense of breach of contract as within consent by state to suit on contract. 1 A.L.R.2d 964.

Denial of recovery for damage to property by negligence of governmental agents on basis of immunity of state from suit without its consent. 2 A.L.R.2d 894.

Declaratory relief with respect to unemployment compensation as suit against state. 14 A.L.R.2d 835.

Liability for speed of fire purposely and lawfully kindled. 24 A.L.R.2d 291.

Recovery of interest on claim against governmental unit in absence of provision in contract or express statutory provision. 28 A.L.R.2d 928.

Immunity of state or governmental unit or agency from liability for damages in tort in operating hospital. 29 A.L.R.2d 203, 16 A.L.R.4th 858.

Tort liability for injury or damage resulting from insecticide and vermin eradication operations. 29 A.L.R.2d 1057.

Tort liability in connection with destruction of weeds. 30 A.L.R.2d 1210.

Governmental or proprietary nature of function. 40 A.L.R.2d 927.

Liability for injury to property inflicted by wild animal. 87 A.L.R.2d 288.

Maintainability of action where state owns an undivided interest in property. 89 A.L.R.2d 917.

Liability for vehicle accident occurring because of accumulation of water on streets. 91 A.L.R.2d 425.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability. 98 A.L.R.2d 1017.

Liability of state, or its agency or board, for costs in civil action to which it is a party. 22 A.L.R.3d 1319.

Liability of state for damages to successful plaintiff or relator in mandamus. 23 A.L.R.3d 903, 34 A.L.R.4th 487.

"Motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicle. 27 A.L.R.3d 915.

...ence removal operations as within the scope of governmental immunity from tort liability, 92 ALR2d 706.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 ALR3d 182.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 85 ALR3d 930.

Sovereign immunity doctrine as precluding suit against sister state for tort committed within forum state, 81 ALR3d 1239.

State or municipal liability for invasion of privacy, 87 ALR3d 145.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment, 96 ALR3d 1261.

Governmental tort liability for injuries caused by negligently released individual, 6 ALR4th 1155.

Actual notice or knowledge by governmental body or officer of injury or accident resulting in injury as constituting required claim or notice of claim for injury, modern status, 7 ALR4th 1063.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity, 7 ALR4th 1129.

Construction and application, under state law, of doctrine of "executive privilege", 10 ALR4th 388.

Liability, in motor vehicle related cases, of governmental entity for injury, death or property damage resulting from defect or obstruction in shoulder of street or highway, 19 ALR4th 832.

Estoppel of state or local government ten matters, 21 ALR4th 873.

Legislative immunity of state officials from federal civil suit for injunctive relief brought pursuant to 42 USCS § 1983, 57 ALR Fed. 804.

Sec. 09.50.250. Actionable claims against the state. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 46.30.520 — 46.30.695 may not bring an action under this section except as set out in AS 46.30.685. However, an action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid, or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(4) arises out of the use of an ignition interlock device certified under AS 44.05.020(c) (§ 26(d) ch 101 SLA 1962, am § 1 ch 30 SLA 1985, am § 5 ch 106 SLA 1986, am § 1 ch 57 SLA 1989, am § 1 ch 119 SLA 1992).

Cross references. — For presentation of claims against state, see AS 44.77.010; for state as party, see AS 44.80.010; for counterclaims against state, see Civ. R. 13(d).

Effect of amendments. — The 1992 amendment, effective September 20, 1992, deleted "in the superior court" from the end of the first sentence.

Opinions of attorney general. — By its waiver of immunity in this section, it must be concluded that the state may be sued for negligent torts which arise under the Jones Act. It is true that under the Alaska Workmen's Compensation Act, employers, including the state (AS 23.30.265), are excluded from admiralty liability. However, this exclusive liability provision cannot act as a limitation on suits against the state under the federal maritime law once the state has unqualifiedly waived its immunity for negligent torts. 1963 Op. Att'y Gen., No. 28.

Hence, all employees on the Alaska ferry system who meet the classification of seamen or members of the crew within the scope of the Jones Act have an exclusive federal remedy within the terms of the Jones Act to the exclusion of the Alaska Workmen's Compensation Act, except as to those injuries that occur in a situation of only local concern or fall within the "twilight zone" between local and federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

By waiving its immunity under this section, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the Workmen's Compensation Act. So much of AS 23.30.055 as limits the liability of employers in admiralty must be considered an invalid infringement on the federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

If it is the desire of the state to limit its tort liability to the Workmen's Compensation Act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity contained in this section. 1963 Op. Att'y Gen., No. 28.

NOTES TO DECISIONS

I. General Consideration.
II. Liability.
  A. Generally.
  B. Specific Examples.

I. GENERAL CONSIDERATION.

History of sovereign immunity doctrine. — See State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. Zia, Inc., 558 P.2d 1282 (Alaska 1976).

The basic policy of the law should be that when there is negligence, the rule is liability, immunity is the exception. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The reason for preserving sovereign immunity for certain acts of the state is the necessity for judicial abstention in certain policy making areas that have been committed to other branches of government. Carlson v. State, 688 P.2d 963 (Alaska 1918).

The general policy underlying tort immunity is to limit judicial reexamination of decisions properly entrusted to other branches of government; courts must not intrude into realms of policy exceeding their institutional competence. Industrial Indem. Co. v. State, 669 P.2d 561 (Alaska 1983).

This section applies only to claims against the state. It provides no immunity for public officials. Aspen Exploration Corp. v. Sheffield, 739 P.2d 150 (Alaska 1987).

Critical language of this section is identical to that of federal act. — The critical language in Alaska's Tort Claims Act, which establishes the discretionary function or duty exception of the State of Alaska's waiver of immunity, is identical to that contained in the federal Tort Claims Act. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The federal analogue of this section is 28 U.S.C. § 2674. Adams v. State, 555 P.2d 235 (Alaska 1976).

This section is analogous to AS 09.65.070(d)(2). Urethane Specialties Inc. v. City of Valdez, 620 P.2d 683 (Alaska 1980).

This section is not of the jurisdictional nature. State v. Zia, Inc., 558 P.2d 1282 (Alaska 1976).

Right to sue state is conditional. — Under this section, which was promulgated by the legislature pursuant to Alaska Const., art. II, § 21, the right to

ove the state was made conditional upon compliance with certain provisions dealing with administrative remedies i.e., AS 44.77. State v. Zia, Inc., 556 P.2d 1257 (Alaska 1976).

With respect to cases which fall within this section, that statute establishes an administrative procedure which can be characterized as a condition precedent. State v. Zia, Inc., 556 P.2d 1257 (Alaska 1976).

Actions first against affected state agency. — Actions against the state first should be considered by the affected administrative agency. State v. Zia, Inc., 556 P.2d 1257 (Alaska 1976).

Section and AS 09.50.280 construed together. — This section and AS 09.50.280, being in pari materia are to be construed together. Stewart & Connelie Inc. v. State, 524 P.2d 1242 (Alaska 1974).

When right to prejudgment interest against state afforded. — Since this section and AS 09.50.280 were passed together and amended together by the same legislative act, it is clear that AS 09.50.280 was intended to afford a right to prejudgment interest against the state only where this section established a substantive cause of action. Stewart & Connelie Inc. v. State, 524 P.2d 1242 (Alaska 1974).

Actions against state delineated. — This section delineates the kinds of actions which may be brought against the State of Alaska. Brown v. Commissioner of Public, 561 P.2d 286 (Alaska 1977).

Causes of action authorized against state. — This section authorizes causes of action against the state sounding in tort, contract or quasi-contract exclusively. Stewart & Connelie Inc. v. State, 524 P.2d 1242 (Alaska 1974).

When the state fires an employee for an unconstitutional reason, this amounts to unfair dealing as a matter of law and gives rise to a contract claim which can be brought under this section. State v. Hafey, 557 P.2d 105 (Alaska 1976).

Section includes all civil claims. — This section and the other sections of this article were intended by the legislature to include all civil claims and should not be limited to only tort claims. Wright Truck & Tractor Serv., Inc. v. State, 545 P.2d 214 (Alaska 1976).

Separation of powers considerations. — There is no separation of powers problem in making service of a claim against the legislature in the executive Department of Administration a prerequisite to judicial review, no separation of powers problem is raised by the application of the claims procedure outlined in AS 44.77 and AS 09.50.250 — 09.50.300 to the legislative branch. State v. Dupere, 709 P.2d 493 (Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986). See note under catchline "Applicability of claims procedure to legislative branch," analysis line II B.

Waiver of immunity to contract claim actions. — By enacting this section, the legislature exercised its authority, pursuant to art. II, § 21, of the state constitution, to waive the state's immunity to suits asserting contract claims against it. State v. Hafey, 557 P.2d 105 (Alaska 1976).

University of Alaska falls within scope of section. — The University of Alaska constitutes a function and character such an arm or instrumentality of the state as to bring it within the scope of those statutes which govern the conditional waiver of sovereign immunity in this state. University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alaska 1975).

The corporate status of the University of Alaska under the Alaska Constitution does not militate against the conclusion of the supreme court that the University falls within the ambit of the language of this section through AS 09.50.300 which governs suits against the State of Alaska. University of Alaska v. National Aircraft Leasing Ltd., 536 P.2d 121 (Alaska 1975).

There is no municipal immunity in Alaska. State v. Jennings, 555 P.2d 248 (Alaska 1976).

A city does not enjoy even the limited protection afforded the state by this section. State v. Jennings, 555 P.2d 248 (Alaska 1976).

Degree of immunity unrelated to whether defendant bonded or insured. — The immunity reflected in paragraph (1) has never been held to be related to whether or not the defendant is bonded or insured. Integrated Resources Equity Corp. v. Fairbanks N. Star Borough, 709 P.2d 795 (Alaska 1985).

Human rights violations. — The general acceptance of state tort liability that the legislature established in paragraph (1) have no control over the specific consent to state liability under the Alaska human rights statute (AS 18.80). An action brought under the human rights statute is not subject to the same rules as one brought under this section. Johnson v. State Dept. of Fish & Game, 516 P.2d 690 (Alaska 1991).

Applied in Morrison v. State, 516 P.2d 402 (Alaska 1973); State, Dep't of Pub. Safety v. Brown, 396 P.2d 109 (Alaska 1990).

Quoted in Redman v. Department of Educ., 519 P.2d 760 (Alaska 1974); Molean v. State, 544 P.2d 205 (Alaska 1982); City of Ketzebue v. McLean, 702 P.2d 1309 (Alaska 1985); State v. Law Offices of Coleman & Iacopelli, 716 P.2d 1 (Alaska 1986); Gwalchek v. State, 763 P.2d 488 (Alaska 1988).

Stated in Happ v. State, 648 P.2d 110 (Alaska 1982); Hauman v. State, 768 P.2d 1097 (Alaska 1989).

Cited in Brown v. State, 526 P.2d 1368 (Alaska 1974); Delong v. United States, 621 F. Supp. 533 (D. Alaska 1984); Vest v. Schafer, 787 P.2d 688 (Alaska 1988).

II. LIABILITY.

A. Generally.

This section places a number of limitations on the state's liability. State v. Abbott, 498 P.2d 712 (Alaska 1972).

No lesser standard of care than private individuals. — This section contains no indication that the legislature intended that the state should be held to a lesser standard of care than private individuals. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. Lanam, 529 P.2d 188 (Alaska 1974).

To impose a lesser standard of care upon the state for highway maintenance would substantially diminish the risk spreading effects of this section and seriously undermine the sound policy considerations upon which it is based. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Risk spreading principle adopted. — The Alaska legislature, in enacting this section, adopted the risk spreading principle. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. Lanam, 529 P.2d 188 (Alaska 1974).

This section in establishing a procedure for suits against the state in tort, represented the adoption in Alaska of the policy of risk spreading the policy that asserts rather than the injured individual, should bear the cost of the state's negligence. Adams v. State, 555 P.2d 235 (Alaska 1976).

When losses caused by the negligence of the state are charged against the public treasury, they are in effect spread among all those who contribute financially to the support of the state and the resulting burden on each taxpayer is relatively slight. But when the entire burden falls on the injured party it may leave him destitute or grievously harmed. This would be unfair when the public as a whole benefits from the services performed by state employees. State v. Abbott, 498 P.2d 712 (Alaska 1972).

This section prohibits recovery for various intentional torts. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Discretionary immunity doctrine. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Discretionary function exception. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Although there are no Alaska cases interpreting the discretionary function exception to the waiver of sovereign immunity, the critical statutory language is identical to that contained in the Federal Tort Claims Act, 28 U.S.C. § 2680(a), and there exists an abundance of relevant federal case law. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The discretionary function exception applies and immunity therefore attaches, only where there is room for policy judgment and decision. Japan Air Lines Co. v. State, 628 P.2d 914 (Alaska 1981).

While the negligence standard satisfies the strong public policy favoring compensation of individuals injured by the tortious conduct of the state, it is an extremely flexible standard, and consequently will not inhibit the vigorous and effective performance by the state of its duties in the way that a more rigid standard might. Moreover, when the negligence standard is applied in conjunction with the policy oriented interpretation of the discretionary function exception, the danger of excessive judicial interference with important decisions committed to the coordinate branches of government is avoided. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Review of relevant federal and California state case law on the subject of the discretionary function exception. — See State v. Lanam, 529 P.2d 188 (Alaska 1974).

The supreme court has declined to use a mechanical or semantic test in determining whether a particular function or duty is discretionary. Adams v. State, 555 P.2d 235 (Alaska 1976).

Courts must weigh the policy considerations behind the labeling of a partic

ular function or duty as discretionary Adams v. State, 555 P.2d 235 (Alaska 1976).

Planning-operational test. — The adoption of planning-operational test, within analytical framework which is sensitive to the policies underlying discretionary function exception of this section was reaffirmed in State v. I Anson, 529 P.2d 188 (Alaska 1974).

Under the planning-operational test for applying the discretionary act exception in paragraph (1) of this section, decisions that rise to the level of planning or policy making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be discretionary acts and therefore are not immune from liability. Carlson v. State, 588 P.2d 260 (Alaska 1979); Johnson v. State, 636 P.2d 47 (Alaska 1981).

Decisions that rise to the level of planning or policy formulation will be considered discretionary acts which are immune from tort liability, whereas decisions that are merely operational in nature, thereby implementing policy decisions, will not be considered discretionary and therefore will not be shielded from liability. Japan Air Lines Co. v. State, 628 P.2d 914 (Alaska 1981).

The distinction between planning decisions and operational decisions does not depend merely on who made the decision. Rather the distinction is based on the type of decision that is being made, examined within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception. Carlson v. State, 588 P.2d 260 (Alaska 1979).

The proprietary-governmental distinction was abandoned by the supreme court with respect to suits involving the state or its agencies under this section through AS 09.50.250. University of Alaska v. National Aircraft Leasing Ltd., 546 P.2d 121 (Alaska 1975).

Duty of reasonable care in performance. — Once discretion is exercised to undertake an activity, a duty of reasonable care attaches in its performance. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Once the basic decision to maintain highways in a safe condition throughout the winter is reached the state should not be given discretion to do so negligently. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Once the state decided to erect a crab vessel for possession of undersized king crab, the state should not be given discretion to do so negligently. State v. Stanley, 506 P.2d 1284 (Alaska 1973).

Failure to exercise proper care does not rise to the level of governmental policy decisions to which the discretionary function immunity from suit applies. State v. Stanley, 506 P.2d 1284 (Alaska 1973).

The elements of a cause of action for negligence are: (1) A duty requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks; (2) a failure on his part to conform to the standard required; (3) a reasonable close causal connection between the conduct and the resulting injury (proximate cause); (4) actual loss or damage resulting to the interests of another. State v. Abbott, 498 P.2d 712 (Alaska 1972).

"But for" test. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

"Substantial factor" test. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Concurrent causation. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Proof of exposure to unreasonable risk of harm. — In order for a plaintiff to show that the state exposed him to an unreasonable risk of harm, he would have to demonstrate that the likelihood and gravity of the harm threatened outweighed the utility of the state's conduct and the burden on the state for removing the danger. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Officials entitled to immunity from libel claims. — The libel exception is not so limited that sovereign immunity exists only when libel is committed by high level government officials. McCutcheon v. State, 746 P.2d 461 (Alaska 1987).

Acting district attorney fell within the category of government officials entitled to common law immunity from defamation claims. McCutcheon v. State, 746 P.2d 461 (Alaska 1987).

Failure to avoid the superior court's jurisdiction over the state was procedural and harmless in nature, since the complaint could be amended to include the citation of the jurisdictional statute. A B C Indus., Inc. v. State, 681 P.2d 881 (Alaska 1978).

Suit not barred by false imprisonment exception. — Suit against the state, alleging that state employees were negligent in failing to properly inform a

judge of the dismissal of a complaint against plaintiff and that jail personnel were negligent in failing to allow plaintiff to make a phone call to obtain bail when he was arrested based on the dismissed complaint, was not barred by the false imprisonment exception to Alaska's government claims statute, but instead should have been treated in the same manner as any other negligence case against the state since it was negligent record keeping, rather than false imprisonment, which caused plaintiff's injuries. Zerbe v. State, 578 P.2d 597 (Alaska 1978), rehearing denied, 581 P.2d 645 (Alaska 1978), overruled on other grounds, Stephens v. State, Dept. of Revenue, 748 P.2d 308 (Alaska 1987).

Dismissals of state employees did not bar finding of state liability. — In a tort action where dismissals of all of the individual state employee defendants, with one exception, were by the express consent of the plaintiff and thus did not involve an adjudication on the merits as to their negligence or performance of discretionary functions, dismissal did not bar a finding of liability on the part of the State. State v. Stanley, 506 P.2d 1284 (1973).

Damages. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Attorney's fees. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Misinterpretation of law. — Governmental immunity applies to situations in which a state official misinterprets the law. Keith Mooers of Fairbanks, Inc. v. State, 691 P.2d 241 (Alaska 1984).

II. Specific Examples.

Applicability of claims procedure to legislative branch. — AS 44.77 applies to actions for breach of contract against the Alaska Legislature but the exhaustion of remedies requirement was waived with regard to a plaintiff who sought compensation for performing legislative consultation because AS 44.77 had not previously been construed to apply to non-executive branch claims; the plaintiff's one-year delay in filing the action was not unreasonable given the assumption that the one-year statute of limitations for contract actions was applicable, and the claimant had not ignored the administrative process entirely, but had requested payment from the Legislative Council and had sought reconsideration when that claim was denied. State v. Dupere, 708 P.2d 681 (Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986).

Parolee supervision. — The state has a duty to supervise parolees carefully, this duty extends to anyone foreseeably endangered, and this section, the sovereign immunity statute, will not shield the state from the consequences of its breach of that duty. Division of Corr. v. Neakok, 721 P.2d 1121 (Alaska 1986).

Decisions regarding intersection located near school. — Decisions whether or not to build one or more overpasses in the area of an intersection located several hundred feet from a school, whether or not to designate the subject intersection area as a school zone, and whether or not to undertake any other safety measures at the intersection in question or at other areas of a road not located adjacent to the school, were governmental decisions which have rightly been characterized as planning level decisions, and thus within the ambit of the statutorily created discretionary function exception to the state's tort liability. Jennings v. State, 566 P.2d 1304 (Alaska 1977).

The decision whether to build a road or railroad crossing is a planning decision involving a basic policy decision entrusted to a coordinate branch of government. However, once the state has made the decision to construct a road and crossing, discretionary function immunity does not protect it from possible negligence liability in the operational carrying out of the basic policy planning decision to build. Johnson v. State, 636 P.2d 47 (Alaska 1981).

The state is not an insurer of the safety of motorists. State v. I Anson, 529 P.2d 188 (Alaska 1974).

Maintenance of highways. — Title 19 provides that the Department of Highways is responsible for highway maintenance. But it fails to specify what standard shall be used to measure performance of that duty. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The scope of the state's duty to maintain highways should be defined by ordinary negligence principles. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. I Anson, 529 P.2d 188 (Alaska 1974).

Highway authorities have a duty to exercise reasonable care to keep the highway in a safe condition. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. I Anson, 529 P.2d 188 (Alaska 1974).

The appropriate standard of care required of the State of Alaska and its

agents was to use reasonable care to keep the highway in a safe condition for the reasonable prudent traveler. State v. I Anson, 529 P.2d 188 (Alaska 1974).

Duty of care the state owes to persons using its highways in general. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

The duty to maintain a highway safe for travel includes not only a duty to maintain the surface of the highway in a condition reasonably safe for travel but also a duty of warning the traveling public of any other condition which endangers travel, whether caused by a force of nature, such as snow or ice, or by the act of third persons, such as a ditch dug in the sidewalk or roadway or an obstruction placed upon it. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Where lower court found the state and its employees negligent in failing to exercise reasonable care to maintain the curve where the accident occurred, the supreme court concluded that the trial court was correct in holding that such maintenance was not within the discretionary function exception. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Installation of guardrail at highway site. — The question of whether or not to install a guardrail at a highway site is one of policy, and an affirmative decision to go ahead with the installation has to be made at the discretionary level in order to advance the chain of events to the operational stage. Industrial Indem. Co. v. State, 669 P.2d 561 (Alaska 1983).

Liability of state for negligent winter highway maintenance. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

In some circumstances the state will be held liable for dangerous highway conditions caused by ice and snow accumulations. State v. Abbott, 498 P.2d 712 (Alaska 1972).

To impose liability on the state for its negligent failure to maintain Alaska highways through the winter would not place an "impossible burden" on the state. State v. Abbott, 498 P.2d 712 (Alaska 1972).

In making a determination of negligence by the state in maintaining highways all of the following factors would be relevant: Whether the state had notice of the dangerous condition, the length of time the ice and snow had been on the highways, the availability of men and equipment, and the amount of traffic on the highway. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Marking and striping a portion of a highway do not involve broad basic policy decisions which come within the "planning" category of decisions which are expressly entrusted to a coordinate branch of government. State v. I Anson, 529 P.2d 188 (Alaska 1974).

No eroding of the separation of powers doctrine will result from a ruling that the functions of marking and striping a highway are not within the ambit of the discretionary function exception of Alaska's Tort Claims Act. State v. I Anson, 529 P.2d 188 (Alaska 1974).

Approving reconstruction plans for road and railroad crossing. — Design decision made by the state in approving reconstruction plans of a road and railroad crossing were operational decisions which merely implemented the basic policy formulation decision to build an overlapping road and crossing at that location. Johnson v. State, 636 P.2d 47 (Alaska 1981).

Temporary reduction of speed limit by trooper. — Where a state trooper temporarily reduced speed limits in response to road hazards and subsequently ticketed a truck driver for exceeding the reduced limit, even if the trooper exceeded his authority, his mistake fit within the discretionary function exception and both he and the state were immune from liability. Earth Movers of Fairbanks, Inc. v. State, 691 P.2d 281 (Alaska 1984).

The design of an airplane taxiway is not within the discretionary function exception, and therefore the state may be held liable for negligence in the design of such a taxiway. Japan Air Lines Co. v. State, 628 P.2d 914 (Alaska 1981).

Negligent design. — The state may be held liable for injuries which result from negligent design. Japan Air Lines Co. v. State, 628 P.2d 914 (Alaska 1981).

Traffic signs. — The decision whether or not to provide a traffic warning sign is operational and hence not immune. Johnson v. State, 636 P.2d 47 (Alaska 1981).

Installation of flashing lights rather than traffic signal. — Decision by Department of Transportation to install flashing red and yellow lights in lieu of a conventional traffic signal constituted a planning level decision entitling the state to immunity from liability based on that decision. Wainwright v. State, 642 P.2d 1355 (Alaska 1982).

Negligent performance of inspection. — Although the decision to inspect a site is a discretionary act, the negligent performance of that inspection is a ministerial function and thus not immune. Wallace v. State, 557 P.2d 1120 (Alaska 1976).

The state is liable for a failure to enforce safety regulations once it has undertaken an inspection and has discovered safety violations in the course of that investigation. Wallace v. State, 557 P.2d 1120 (Alaska 1976).

For case holding negligent performance of fire inspection of hotel operational or ministerial act, and not immune, see Adams v. State, 555 P.2d 235 (Alaska 1976).

Operation and maintenance of seaplane dock. — A decision concerning the manner in which a seaplane dock should be operated and maintained is clearly an operational decision, as such, it does not fall within the discretionary function exception to government tort liability. Plancich v. State, 691 P.2d 955 (Alaska 1985).

A city and the state were not immune from liability under AS 09.65.070(d)(2) and this section in an action alleging negligent breach of duty to keep a seaplane dock available to members of the public who wished to take seaplane. Plancich v. State, 691 P.2d 955 (Alaska 1985).

Negligent failure to institute dust control procedures. — The state was immune from tort liability under the discretionary function immunity exception to the Tort Claims Act in an action based on negligent failure to institute dust control procedures on the Dalton Highway. Freeman v. State, 705 P.2d 918 (Alaska 1985).

Seizure of crab vessel for possession of undersized king crab. — See State v. Stanley, 506 P.2d 1280 (Alaska 1973).

An action to enjoin a state officer from enforcing a statute or regulation which is alleged to be unconstitutional is not an action against the state for the purpose of sovereign immunity. Etheridge v. Bradley, 480 P.2d 414 (Alaska 1971).

State regulation of hunting. — The discretionary function exception of subsection (1) made the state immune from tort claim for compensatory damages based on the state's failure to adopt subsistence brown bear hunting regulations. Morry v. State, Sup. Ct. Op. No. 4078 (File No. S-4688), — P.2d — (1994).

Personal injuries inflicted by bear. — The State of Alaska is not immune from liability for personal injuries inflicted by a bear, when the bear is attracted to the site of the attack by garbage that had accumulated on State-owned property. Carlson v. State, 598 P.2d 969 (Alaska 1979).

Personal injury of state employee on state ferry. — The express entry of Alaska into the common carriage of passengers on navigable United States and international waters, its express submission to coast guard regulations and jurisdiction, its consent to suit for personal injury (regardless of how limited), taken together, evidenced waiver of 11th amendment immunity for a suit in federal court for the recovery of personal injuries suffered by a state employee on a state ferry, based on unseaworthiness. Cole v. State, DOT & Pub. Facilities, 621 F. Supp. 3 (D. Alaska 1984).

Firing state employee for unconstitutional reason. — When the state fires an employee for an unconstitutional reason, this amounts to unfair dealing as a matter of law and gives rise to a contract claim which can be brought under this section. State v. Haley, 687 P.2d 305 (Alaska 1984).

Negligent prosecution of civil action. — Plaintiff's claim that this statute creates an irrational distinction, in that it bars suits against the state for malicious prosecution while allowing suits for negligent prosecution, fails, since Alaska declines to recognize the tort of negligent prosecution of a civil action. Stephens v. State, Dep't of Revenue, 748 P.2d 308 (Alaska 1987).

Constructive discharge and intentional infliction of emotional distress upheld. — See Cameron v. Beard, 864 P.2d 538 (Alaska 1993).

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER

INTERIM
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4668
FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT

HB- 446 "An Act allowing home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

HB 446 adds municipalities to the list of entities that are allowed to enjoin nuisances within their jurisdiction when real property is being used for certain illegal activities such as drugs, gambling, prostitution or other similar activities. The Municipality of Anchorage has requested this authority in order to prevent and suppress nuisances and provide a mechanism for civil abatement of the premises. This procedure may be the only way in which to make a dent in those areas of crime and also get a landlord's attention after repeated notices from the municipality.

Current law requires the Attorney General's office to enjoin property where these types of activities are taking place. However, the AG has either been unable because of lack of funding or unwilling to enforce this statute.

The existing statute enables a citizen to bring a civil action. However, the financial resources and time commitment prohibit all but a few citizens from taking such action.

According to the Municipality of Anchorage they lack the power to act on nuisance claims independent of the State of Alaska. In Anchorage the Municipal Attorney would be able to pursue actions on a number of situations right now.

This bill will allow Home Rules Municipalities to close down crack houses and prevent other objectionable uses. I urge your support of this important tool for local nuisance enforcement.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

February 20, 1996

The Honorable Norm Rokeberg
Alaska State Legislature
Capitol Building #110
Juneau, AK 99801

Dear Representative Rokeberg:

I am writing to express my support for passage of your proposed legislation, HB 446, which allows a home rule municipality to seek injunctive relief against nuisances within the municipality.

I have also enclosed a letter from the Attorney General to the Anchorage Municipal Attorney's office regarding this subject. The Department of Law suggests in the letter that legislation such as HB446 would be one of two options they recommend to address the problem.

Recognizing that state government does not have the resources to address this problem currently, DPS also supports empowering local governments with the authority to solve local problems. HB 446 appears to be a logical step in that direction.

Sincerely,

Del Smith
Deputy Commissioner

Enclosure

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500

Rick Mystrom
Major

Service since 1921

February 5, 1996

Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Re: House Bill 446—Civil Abatement

Dear Representative Rokeberg:

The Anchorage Police Department fully supports passage of House Bill 446, which would allow municipalities to present cases for abatement to civil court. The State of Alaska has neither the funds nor the personnel to adequately bring these actions. Therefore, we would recommend approval for enforcement on a local level.

Sincerely,

Duane S. Udland
Deputy Chief of Police

Anchorage · Stand tall North
Chamber of Commerce

Anchorage Chamber of Commerce
Criminal Justice System Reform
Resolution 95/96-5

WHEREAS the public is unsafe due to the Catch and Release of drug offenders who continue to operate after arrest, and

WHEREAS Civil Abatement is a useful tool in preventing illegal activities and is available only to the State and not local municipalities; and

WHEREAS juvenile offenders are becoming more dangerous and are exempt from public censure because of confidentiality laws, and

WHEREAS the sealing of the records of juvenile offenders obscures the fact after their 18th birthday that they have a criminal history; and

WHEREAS the State has sole jurisdiction over juvenile crime and municipalities are barred from addressing juvenile crime, and

WHEREAS the "best interest of the juvenile" standard conflicts with society's expectation of accountability to and protection of the public and

WHEREAS the Municipality of Anchorage has assumed costs of criminal justice services in excess of $5,535,00 those costs normally reserved to the state, and yet is burdened with inadequate numbers of correctional facilities and magistrates;

NOW THEREFORE BE IT RESOLVED that the Anchorage Chamber of Commerce does hereby support the Criminal Justice Proposals brought forward by the Municipality of Anchorage that propose more stringent conditions for bail for repeat drug offenders, allow municipalities to utilize Civil Abatement procedures, revise the confidentiality laws concerning juvenile offenders, give municipalities jurisdiction over less serious juvenile crimes, and provide for at least equal consideration of the best interest of the Public and the victims in bail and sentencing procedures for juveniles; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce supports the Municipality of Anchorage's initiative to call upon the state to recognize the importance of increasing the number of correctional facilities and magistrates serving Anchorage by raising their priority within the state budget; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce urges all of its members to actively support these proposals by encouraging their Senators and Representatives to support these measures.

Approved December 15, 1995

Sue Lunford, Chair

Carol Heyman, President

cc: LARRY
MARY
TIM

441 West 5th Avenue, Suite 300, Anchorage, Alaska 99501-2349 (907) 272-2401 FAX (907) 272-4117
Founded 1915

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: February 5, 1996

TO: Rep. Norm Rokeberg

FROM: Tim Rogers, Legislative Program Coordinator

SUBJECT: H. B. 446

AS 09.50.180 grants the State of Alaska attorney general the ability to perpetually enjoin the owner, lessee, or agent of a building which is being used for certain illegal activities such as prostitution, gambling, use of controlled substances, etc.

There are numerous cases within the Municipality of Anchorage in which this statute could be used to stop illegal activity. Several of these sites are often the scenes of violence and there is concern for the safety of the neighborhoods. The State attorney general's office has been unable to undertake any cases on behalf of the Municipality.

The existing statute also enables a citizen to bring civil action. However, the financial resources and time commitment prohibit all but a few citizens from taking such action.

The Municipality of Anchorage would like AS 09.50.180 amended to allow it to pursue these actions. This would enable the Municipality to use this important enforcement tool while relieving its citizens and/or the State of the associated burdens.

If additional information is needed, please advise. Thank you for your assistance.

OFFICE OF THE CITY ATTORNEY
CITY OF KETCHIKAN, ALASKA

Steven H. Schweppe
City Attorney
334 FRONT STREET
KETCHIKAN, ALASKA 99901
(907) 225-3111, EXT. 327
Facsimile (907) 247-3111

RECEIVED
FEB 6 1996
Ans'd.....

February 2, 1996

Senator Robin Taylor
Mailstop 3100
Juneau, Alaska 99801-1182

Representative William Williams
Mailstop 3100
Juneau, Alaska 99801-1182

Re: House Bill No. 446

Dear Sirs:

We have received a copy of House Bill No. 446 which is entitled: "An Act requiring home rule municipalities to bring actions for certain injunctive relief relating to nuisances." City Manager Karl Amylon and I have reviewed this proposed legislation and desire to inform you of our concern and opposition to it. As we understand it, the bill is designed to require home rule municipalities to pursue nuisances actions against persons maintaining houses of prostitution and places where illegal alcohol, gambling or controlled substances are provided. We do not understand why this mandate is applied only to home rule municipalities. If the problem is significant enough for the State to mandate municipal action then it is important enough to impose the mandate on all municipalities.

While no one opposes actions to enjoin these illegal activities, the proposed legislation does not significantly increase efforts to stop these activities. Rather, it simply shifts the burden of prosecuting nuisance actions from the State to the municipalities. It is an unfunded mandate similar to those imposed by the federal government on the states. Cities have the same difficulties as the State has in dealing with unfunded mandates. By mandating that home rule municipalities pursue such nuisance actions, the State is requiring home rule municipalities to place these litigation expenses at the top of their priorities.

In Ketchikan prostitution, illegal alcohol, gambling and controlled substances

offenses are prosecuted by the State. It is not an efficient use of resources to divide efforts to end these activities. Since the State already has the evidence of the crime it is in the best position to also prosecute the related nuisance action. Future developments concerning double jeopardy and forfeiture actions may require that the nuisance action be brought as part of the State's criminal case.

Since statehood, Alaska has placed a high value on home rule for municipalities. Unlike other states, home rule in Alaska is still a meaningful and important concept. Home rule gives authority and responsibility to the government which is closest and most responsible to the people. W are concerned that legislation such as House Bill No. 446 subverts this important principle. Over time effective home rule can be lost through repeated legislative mandates, all, or many, of which serve other useful public purposes.

House Bill No. 446 can be amended to serve a useful purpose while not undermining home rule. Instead of providing that home rule municipalities shall prosecute such actions, the bill could provide that home rule municipalities may bring such actions. This would clarify the ability of municipalities to pursue such actions while allowing local governments to prioritize them with other local needs. With such a change the bill could be expanded to include all municipalities regardless of their home rule status. If the State's concern is cost, the same discretionary authority could be given to the Attorney General.

We do not know the circumstances which gave rise to House Bill No. 446. Perhaps a legislator's constituents have been unable to get the State or a municipality to pursue such nuisances. If so, we suggest that they resolve this problem through the usual petitions to the city council and/or through municipal elections. Either of these alternatives can be as effective or more effective than the proposed legislation.

If you have any comments, questions, or additional information concerning this House Bill please feel free to contact me.

Yours very truly,

Steven H. Schweppe
City Attorney

cc: Karl R. Amylon

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

February 9, 1996

VIA FACSIMILE 465-2040
ORIGINAL SENT BY MAIL

Representative Norman Rokeberg
House of Representatives
Mail Stop 3101, Room 110
State Capitol
Juneau, AK 99801-1182

Re: House Bill No. 446

Dear Representative Rokeberg:

Thank you for sending a copy of Steve Schweppe's letter dated February 2, 1996. I appreciate Mr. Schweppe's concern that HB 446 may be interpreted to require a home rule municipality to take action when a public nuisance exists. Unlike the City of Ketchikan, these offenses in the Municipality of Anchorage are not prosecuted by the state. Under the current statute, the Municipality does not have the authority to pursue nuisance actions against persons maintaining houses of prostitution and places where illegal alcohol, gambling, or controlled substances are provided. The Municipality wants to have the ability to pursue these actions if it desires. The Municipality does not oppose an amendment to HB 446 which provides that home rule municipalities may bring such actions as opposed to current language which states a home rule municipality shall bring such actions. This amendment would provide a home rule municipality with the discretion to decide whether to pursue the abatement of these public nuisances. I have spoken with Mr. Schweppe. He does not oppose HB 446 with that amendment. If you have any questions, please feel free to contact me.

Sincerely,

Leslie K. Schumacher

Leslie K. Schumacher
Assistant Municipal Attorney

cc: Steven Schweppe
Senator Robin Taylor
Representative William Williams