

HB

245

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 7, 2003

FURTHER REFERRALS:

Date of Committee Action: 5/8/03

The FINANCE Committee considered:

HB 245

HOUSE BILL NO. 245

SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

"An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date."

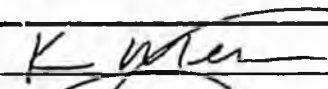


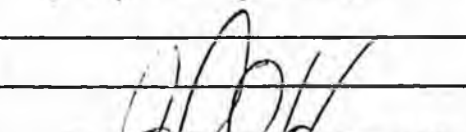
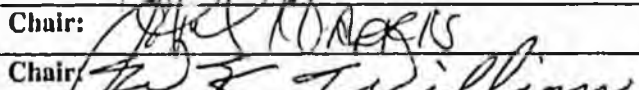
Recommends it be replaced with HCS or CS for HB 245 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	#1			✓
DNR	#2			✓
DOA	#3		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Mayo	✓			
	Foster	X			
	Whitaker	✓		✓	
Chair: 	Harris	✓			
Chair: 	Williams	✓			

A

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 245
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: "An Act relating to certain suits and claims by BRU Civil
members of the military services . . ." Component: Special Litigation
 Sponsor: Rules Committee
 Requester: Governor Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Supreme Court, in a recent decision, ruled that the State of Alaska may be sued and could be held liable for tort claims by injured members of the Alaska National Guard and a member of the Indiana National Guard for injuries that were incurred during the members' service with the national guard. The Alaska Supreme Court did not adopt the federal rule (known as the *Feres* doctrine) that bars tort claims by military service personnel for injuries arising out of activities that were incident to their service in the federal military or the national guard. While the Alaska Supreme Court did not address tort claims by members of the United States military or other parts of the Alaska organized militia, its ruling could be applied to permit such claims against the State of Alaska. This bill will essentially adopt the federal *Feres* doctrine, and would provide the state and state military personnel with the same protection from tort lawsuits that the federal government and federal military personnel are provided under the *Feres* doctrine. It

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 1/27/03 3:13 PM
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 1/27/2003
 Agency: Department of Law

FISCAL NOTE #1

**STATE OF ALASKA
2003 LEGISLATIVE SESSION**

BILL NO. HB 245

ANALYSIS CONTINUATION

will also make clear that the state can be liable to third parties only for the conduct of militia members on active state service acting in the line of duty under orders of the governor, and not for the conduct of "borrowed" federal employees. Similarly, the bill clarifies that state workers' compensation benefits would only be due for injuries or death of organized militia members ordered into active state service by the governor.

Passage of this legislation will have no fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 245
 (1st) Publish Date: 4/4/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Tort Immunity BRU: Statewide Fire Suppression
 Component: Fire Suppression
 Sponsor: Rules
 Requester: Governor Component No. 437

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Tort immunity legislation will require no operating or capital expenditures. It has the potential of saving the state a significant but undeterminable amount in litigation costs and damages resulting from natural disasters such as wildfire.

Prepared by: Dean Brown Phone 269-8476
 Division: Forestry Date/Time 4/3/2003
 Approved by: Tom Irwin, Commissioner Date 4/3/2003
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 245
 (H) Publish Date: 4/8/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to certain claims and suits..... BRU Risk Management
 Component Risk Management
 Sponsor _____
 Requester _____ Component No. 71

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The state's self insurance program for tort liability exposures will be favorably affected by this bill.

The limitation of civil actions arising out of certain claims & suits by members of the military services or regarding acts or omissions of the organized militia, or arising out of certain search & rescue, civil defense, homeland security, and fire management & fire fighting activities will reduce state liability exposure and thereby decrease future defense costs.

Projected costs for a low frequency yet potentially high severity risk is not possible, therefore the fiscal impact is indeterminate. In future years, Risk Management's liability premium assessments will reflect the reductions actually realized as our premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone _____
 Division Risk Management Date/Time 2/14/03 7:46 AM
 Approved by: Mike Miller, Commissioner Date 2/14/2003
 Agency Administration



Alaska State Legislature

REPRESENTATIVE JOHN HARRIS

District 35 - Valdez, Cordova, Whittier, Glennallen, Delta Junction, Tatitlek, Kenny Lake, Paxson, Gakona, Chenega Bay

SPONSOR STATEMENT HOUSE CONCURRENT RESOLUTION 21 *Relating to establishing the Alaska Energy Policy Task Force*

The purpose of this resolution is to establish a task force composed of non-legislative members to develop a long-term energy plan for Alaska.

The task force will be composed of:

- The chair of the Regulatory Commission of Alaska
- One member of the AIDEA Board of Directors
- The Commissioner of Revenue
- Two members chosen by the Governor
- Two members selected by the President of the Senate
- Two members selected by the Speaker of the House

It is intended that the task force be composed of non-legislative members and that a utility will not have more than one representative. If utility members are selected, at least one must be from a Railbelt electrical utility and at least one member must be from a non-Railbelt electrical utility.

The task force, once selected, is charged with developing a long-term energy plan for the Railbelt area first and submit a report to the legislature by December 31, 2003. Their second task is to develop a long-term energy plan for the non-Railbelt parts of the state and submit a report by March 31, 2004.

A comprehensive long-term energy plan is needed for the state to promote more economic development and technological advancement. A sustainable, affordable and reliable source of power will be required to enhance that growth. A thorough review of existing and long-term needs will assist our state and all electrical power consumers in meeting that goal.

CSHB 245(JUD): providing protection from tort lawsuits
in four areas of governmental activity

Search and Rescue

- Provides immunity from tort lawsuits for state and local government and their employees.
- There are approximately 400 search and rescues conducted each year in Alaska.
- The Alaska State Troopers coordinate search and rescue activities using state and community resources.
- This provision is found in Section 2 of the bill.

Intra-military Tort Claims

- Bars tort actions for damages against the state and its employees by service members - there is no change to their entitlement to state workers compensation when on state duty and federal benefits when on federal duty.
- Provides the State and its military personnel the same protection from tort lawsuits that the federal government and federal military personnel have under the *Feres* doctrine; consistent with the vast majority of states.
- These provisions are found in Sections 4 - 6 of the bill.
- acts of the organized militia unless the acts were in the line of duty while on active state service under AS 26.05.070.
- This provision is found in Section 3 of the bill.
- Both of these provisions recognize that the federal government, and not the state of Alaska, is responsible for injuries and claims while service members are under federal command and control.

Civil Defense

- Bars tort claims against the government, employees, and authorized volunteers for damages sustained by a civilian defense worker - does not affect the worker's or authorized volunteer's rights to state workers compensation.
- Bars third party tort claims against the government, employees, and authorized volunteers for damages unless malice or reckless indifference is shown by clear and convincing evidence.
- These provisions are found in Sections 7 - 10 of the bill.

Fire Management and Firefighting Activities

- Amends two statutory sections to bar tort claims by third parties against the state, local government, other firefighting groups and their employees.
- Every year the State Division of Forestry is called upon to respond to hundreds of fires throughout the State of Alaska.
- This change is necessary due to two Alaska Supreme Court cases holding that the State may be sued for firefighting activities.

- Litigation disrupts Forestry's day to day operations and diverts substantial state resources to defend lawsuits.
- This provision is consistent with federal and common law in other jurisdictions that immunizes these activities.
- This provision does not affect existing entitlement to workers compensation or the availability of federal or state disaster relief benefits.
- These provisions are found in Sections 11 and 12 of the bill.

Prepared by Office of the Attorney General, Gail T. Voigtlander, Assistant Attorney General

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 245
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to certain suits and claims by BRU Civil
members of the military services . . ." Component Special Litigation
 Sponsor Rules Committee
 Request: Governor Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

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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)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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1005 GF/Program Receipts						
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Other (Specify Type--Do not abbreviate)						
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POSITIONS

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Supreme Court, in a recent decision, ruled that the State of Alaska may be sued and could be held liable for tort claims by injured members of the Alaska National Guard and a member of the Indiana National Guard for injuries that were incurred during the members' service with the national guard. The Alaska Supreme Court did not adopt the federal rule (known as the *Feres* doctrine) that bars tort claims by military service personnel for injuries arising out of activities that were incident to their service in the federal military or the national guard. While the Alaska Supreme Court did not address tort claims by members of the United States military or other parts of the Alaska organized militia, its ruling could be applied to permit such claims against the State of Alaska. This bill will essentially adopt the federal *Feres* doctrine, and would provide the state and state military personnel with the same protection from tort lawsuits that the federal government and federal military personnel are provided under the *Feres* doctrine. It

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 1/27/03 3:13 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/27/2003
 Agency Department of Law

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 245

ANALYSIS CONTINUATION

will also make clear that the state can be liable to third parties only for the conduct of militia members on active state service acting in the line of duty under orders of the governor, and not for the conduct of "borrowed" federal employees. Similarly, the bill clarifies that state workers' compensation benefits would only be due for injuries or death of organized militia members ordered into active state service by the governor.

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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 245
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Tort Immunity BRU Statewide Fire Suppression
 Component Fire Suppression
 Sponsor Rules
 Requester Governor Component No. 437

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Part-time						
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ANALYSIS. (Attach a separate page if necessary)

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Prepared by: Dean Brown Phone 269-8476
 Division Forestry Date/Time 4/3/2003
 Approved by: Tom Irwin, Commissioner Date 4/3/2003
 Agency Natural Resources

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 245
 (H) Publish Date: 4/8/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to certain claims and BRU Risk Management
suits..... Component Risk Management
 Sponsor _____
 Requester _____ Component No. 71

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

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POSITIONS

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Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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Projected costs for a low frequency yet potentially high severity risk is not possible, therefore the fiscal impact is indeterminate. In future years, Risk Management's liability premium assessments will reflect the reductions actually realized as our premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone _____
 Division: Risk Management Date/Time 2/14/03 7:46 AM
 Approved by: Mike Miller, Commissioner Date 2/14/2003
 Agency: Administration

CSHB245 (VERSION-D)

Amendment 2 (conceptual) - Adopted.

On page 3, line 31 to line 1 of page 4: Delete "or homeland security"
Page 4, lines 8,9: delete both "or homeland security" occurrences.

(Jud)

~~Amendment 2 (conceptual)~~

All other references to "Homeland security" workers which would be effected by the deletions in section 7, should be removed from HB245.

Holm