

HB

245

HB 245: 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.
- Bars tort claims by third parties against the State for 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 and Homeland Security

- Bars tort claims against the government, employees, and authorized volunteers for damages sustained by a homeland security 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 - 11 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 12 and 13 of the bill.

STATE OF ALASKA

Frank H. Murkowski, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

April 3, 2003

Representative Lesil McGuire
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: "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"

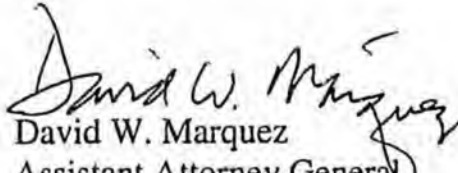
Dear Representative McGuire:

I am writing this letter to request that you schedule the above act, pending referral, for a hearing at your earliest convenience.

If you have any questions, please feel free to contact me.

Sincerely,

GREGG D. RENKES
Attorney General

By: 
David W. Marquez
Assistant Attorney General

DWM:lb

Cc: Mike Tibbles, Legislative Director, Office of the Governor
Deborah Behr, Legislation and Regulations Attorney, Department of Law

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

FRANK MURKOWSKI, GOVERNOR

P.O. BOX 10200
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April 8, 2003

The Honorable Lesil McGuire
Chair House Judiciary Committee
Alaska State House
State Capitol
Juneau, Alaska 99801-1182

Dear Representative McGuire:

This letter is to request that you schedule HB 245, 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 fire fighting, for a committee hearing as soon as possible.

Your favorable consideration of this request will be greatly appreciated.

Sincerely,



Kevin Jardell
Assistant Commissioner

Sectional Analysis of SB 171/HB 245

This legislation amends several statutory provisions and adds others in order to immunize the State and its employees against claims and lawsuits arising from various activities involving the Alaska National Guard and State Defense Force, homeland defense and security, search and rescue, civil defense, and fire-fighting.

Section 1 is a declaration of legislative intent to not waive the State's sovereign immunity as to claims related to the activities listed in the preceding paragraph.

Section 2 creates a new statutory provision, AS 18.60.125, which would immunize the State and its employees for claims or lawsuits arising from acts or omissions relating to search and rescue activities, including failure to initiate same. This section would afford the State of Alaska the same immunity from suit afforded for other law enforcement activities, such as criminal investigations.

Section 3 amends AS 26.05.140 to immunize the State and its employees of the organized militia, namely the Alaska State Defense Force and the Alaska National Guard, unless the acts or omissions from which a claim or lawsuit arises occurred while the member was under State active duty pursuant to Title 26. Specifically, this amendment would grant immunity for the acts or omissions of Guardsmen where the service performed was under Title 32 of the United States Code, including weekend drills and other types of inactive duty training, active duty and active duty for training, active guard and reserve duty and civilian technicians paid by the federal government. This amendment would not affect the rights to pursue a claim or lawsuit against the United States pursuant to the Federal Tort Claims Act for the act or omission.

Section 4 creates a new statutory provision, AS 26.05.145, to immunize the State and its employees for lawsuits brought by members of the military, including the Alaska State Defense Force, Alaska National Guard, the United States' military branches, and the national guard units of the other states, for death, personal injury or property damage arising out of or incident to the member's military service. This amendment has the effect of creating the same immunity for the State as that held by

the federal government under the *Feres* doctrine and overrides the decision of the Alaska Supreme Court in *Himsel v. State*, 36 P.3d 35 (Alaska 2001).

Section 5 amends AS 26.05.260(d) to include a sentence limiting state workers' compensation benefits to members of the organized militia who are called to active state service by the Governor under AS 26.05.070. This provision will not affect the rights of Alaska National Guard members to receive federal benefits under Title 32 of the U.S. Code.

Section 6 amends AS 26.05.260(e) to clarify that only the spouse and dependents of a member of the organized militia who dies as a result of injury during active state service under AS 26.05.070 will be entitled to death benefits under state workers' compensation law provided in AS 23.30.215. This provision will not affect the rights of survivors of Alaska National Guard members to receive federal benefits under Title 32 of the U.S. Code.

Sections 7-11 amend AS 26.20.140, the civil defense immunity statute, and extend it to immunize homeland security and disaster response activities as well as civil defense activities. Section 7 makes an exception only when malice or reckless indifference to the interests, rights, or safety of others is shown by clear and convincing evidence. Section 8 adds a new subsection defining "civilian defense or homeland security worker" for purposes of this immunity. Sections 9 and 10 amend AS 26.20.200, definitions in the civil defense chapter, to amend the definition of "civil defense" and to define "homeland security." Section 11 amends the disaster statutes, AS 26.20, to specify that the immunity provisions of AS 26.20.140 apply when entities or persons covered by that section perform duties under AS 26.23 relating to disasters, except as otherwise provided in the Emergency Management Assistance Compact adopted under AS 26.23.136.

Sections 12-13 add identical provisions to AS 41.15, which governs protection of forested land from fire and other destructive agents, and AS 41.17, Alaska's Forest Resources and Practices Act. The new sections provide immunity from civil actions for damages based on death, personal injury, or property damage resulting from acts or omissions arising out of performance of the State's

firefighting obligations in each chapter. Persons immunized include the state, its officers, employees, and agents; political subdivisions and their officers, employees and agents; authorized firefighting organizations; and others assisting in fire control or suppression at the request of state or federal authorities. This section overrides the decision of the Alaska Supreme Court in *Angnabooguk v. State*, 26 P.3d 447 (Alaska 2001), that, because the state legislature had not explicitly made all firefighting activities and decisions immune from suit, both the state and individual firefighters could be held liable for damage caused by a wildfire.

Section 14 provides that the Bill affects only causes of action accruing after the effective date and does not affect pre-existing causes of action.

Section 15 gives the Bill an immediate effective date.

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 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.

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
 (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						
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

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
 Division: Forestry
 Approved by: Tom Irwin, Commissioner
 Agency: Natural Resources

Phone 269-8476
 Date/Time 4/3/2003
 Date 4/3/2003

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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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