

HB

245

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED ON

MAY 19 2003

SENATE FINANCE
COMMITTEE

DATE: 5/18/03

FURTHER:

DATE TURNED
IN TO OFFICE: 19 May 2003

Finance Committee considered CS FOR HOUSE BILL NO. 245(JUD)(efd fid)

HB 245 SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

"An Act relating to certain suits and claims by members of the military services; relating to certain suits and claims regarding acts or omissions of the organized militia; relating to workers' compensation and death benefits for members of the organized militia; relating to liability arising out of certain search and rescue, civil defense, fire management, and fire fighting activities."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Law	1/27/03		✓	#1
DNR	2/3/03		✓	#2
Admin	2/14/03	*		#3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Kevin Taylor</i>		✓		
<i>Ann Holt</i>		✓		
<i>Thomas J. Alford</i>		✓		
<i>Bob Cende</i>				
<i>Ben Stevens</i>				
COCHAIR: <i>Linda Green</i>				
COCHAIR: <i>Brony W...</i>				

MAY 19 2003

SENATE FINANCE

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.

MAY 19 2003

SENATE FINANCE
COMMITTEE

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
Sponsor: Rules Component: Fire Suppression
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 Phone 269-8476
Division: Forestry Date/Time 4/3/2003
Approved by: Tom Irwin, Commissioner Date 4/3/2003
Agency: Natural Resources

FISCAL NOTE

REPORTED OUT

MAY 19 2003

SENATE FINANCE
COMMITTEE

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

SENATE FINANCE COMMITTEE
5/19/2003 COMMITTEE ACTION

Bill Number	HB 245		
Amendment			
Motion	to Report		
<u>Motion by</u>	Taylor		
<u>Objection by</u> <u>Removed</u>	Taylor		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			✓
Senator Olson			✓
Senator Stevens	✓		
Senator Taylor			✓
Senator Bunde	✓		
Co-Chair Green	✓		
Co-Chair Wilken	✓		
<u>Tally</u>			
Yea	4		
Nay	3		
Absent			
<u>MOTION</u>	PASSED		

Failed

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-GH1025V

Ford

5/18/03

SENATE CS FOR CS FOR HOUSE BILL NO. 245()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain suits and claims by members of the military services;
2 relating to certain suits and claims regarding acts or omissions of the organized militia;
3 relating to workers' compensation and death benefits for members of the organized
4 militia; relating to liability arising out of certain search and rescue, civil defense, fire
5 management, and fire fighting activities."

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

7 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 PURPOSE. The purpose of secs. 3 - 6 of this Act is to

10 (1) provide the State of Alaska and state military and other personnel, through
11 the immunity provided in this Act, with the same protection from civil actions for damages
12 that the federal government and federal military personnel are provided under federal case law
13 and statute, except for gross negligence or reckless or intentional misconduct:

1 (2) ensure that military service decisions are based on the judgment and needs
2 of the militia rather than on concerns for possible tort exposure;

3 (3) recognize that injured military service members or their families are
4 entitled to various federal military and veterans' benefits for injuries or death occurring in the
5 course of the member's military service for the Alaska National Guard while not on state
6 active duty;

7 (4) recognize that the federal government and not the State of Alaska is
8 responsible for providing benefits to injured military service members or their families for
9 injuries or death occurring in the course of the member's military service for the Alaska
10 National Guard while not on state active duty; and

11 (5) recognize that the federal government and not the State of Alaska is
12 responsible for property damage, injuries, or death, resulting from the acts or omissions of
13 members of the Alaska National Guard who are under the command of the federal
14 government.

15 * **Sec. 2.** AS 18.60 is amended by adding a new section to read:

16 **Sec. 18.60.125. Civil immunity.** A person may not bring a civil action for
17 damages against the state, a political subdivision of the state, or the officers, agents, or
18 employees of the state or a political subdivision of the state for a death, personal
19 injury, or property damage that results from an act or omission in performing or failing
20 to perform activities or duties authorized under AS 18.60.120 - 18.60.175. This
21 section does not apply to a civil action for damages as a result of gross negligence or
22 reckless or intentional misconduct.

23 * **Sec. 3.** AS 26.05.140 is amended by adding a new subsection to read:

24 (b) The state has not waived its sovereign immunity and is not liable for the
25 acts or omissions of members of the organized militia, unless those members were
26 ordered into active state service by the governor under AS 26.05.070 and the members
27 were acting in the line of duty of those orders. This subsection does not apply to a
28 civil action for damages as a result of gross negligence or reckless or intentional
29 misconduct.

30 * **Sec. 4.** AS 26.05 is amended by adding a new section to read:

31 **Sec. 26.05.145. Suits by members of the military services.** (a) A civil

1 action for damages may not be brought by or on behalf of a member of the military
2 services against the state or against any employee of the state or any member or
3 former member of the Alaska militia for wrongful death, personal injury, or other tort
4 claim or injury arising out of activities that were incident to the member's military
5 service.

6 (b) In this section, "military service" means service in the United States
7 military, the militia described in AS 26.05.010(b), or the national guard of another
8 state.

9 (c) This section does not apply to a civil action for damages as a result of
10 gross negligence or reckless or intentional misconduct.

11 * Sec. 5. AS 26.05.260(d) is amended to read:

12 (d) A member of the organized militia who, while performing duties under
13 AS 26.05.070, including transit to and from the member's home of record, suffers an
14 injury or disability in the line of duty is entitled to all compensation and benefits
15 available under AS 23.30 (Alaska Workers' Compensation Act). For a member of the
16 Alaska State Defense Force, compensation and benefits under this subsection are
17 provided as though the member were a state employee. **A member of the organized**
18 **militia who has not been ordered into active state service by the governor under**
19 **AS 26.05.070 is not entitled to compensation and benefits under AS 23.30 (Alaska**
20 **Workers' Compensation Act).**

21 * Sec. 6. AS 26.05.260(e) is amended to read:

22 (e) If a member of the organized militia dies as a result of an injury or
23 disability suffered in the line of duty while performing duties under AS 26.05.070,
24 including transit to and from the member's home of record, death benefits shall be paid
25 to the persons in the amounts specified in AS 23.30.215. For a member of the Alaska
26 State Defense Force, the death benefits under this subsection are provided as though
27 the member were a state employee. **A person is not entitled to death benefits as**
28 **specified in AS 23.30.215 for a member of the organized militia who dies as a**
29 **result of an injury or disability suffered in the line of duty but who had not been**
30 **ordered into active state service by the governor under AS 26.05.070.**

31 * Sec. 7. AS 26.20.140 is amended to read:

1 Sec. 26.20.140. Immunity of government, [AND] employees, and
2 authorized volunteers or other persons. (a) The [NEITHER THE] state, a [NOR
3 ANY] district of the state, and [NOR] the employees, agents, or representatives of the
4 state or district are not [, IS] liable for personal injury or property damage sustained
5 by any person appointed or acting as a [VOLUNTEER] civilian defense worker. This
6 provision does not affect the right of a person to receive benefits or compensation to
7 which the person might otherwise be entitled under the workers' compensation law or
8 a pension law or an Act of Congress.

9 (b) The [NEITHER THE] state, a [NOR] district [PERSONNEL] of the state,
10 an employee, agent, or representative [NOR, EXCEPT IN CASES OF WILFUL
11 MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH, THE EMPLOYEES,
12 AGENTS, OR REPRESENTATIVES] of the state or a district, or [NOR] a volunteer
13 or auxiliary civilian defense worker or member of an agency engaged in civilian
14 defense activity, complying with or reasonably attempting to comply with this chapter
15 [,] or an order or regulation adopted under this chapter, or under an ordinance relating
16 to blackout or other precautionary measures enacted by a district director of the state,
17 is not liable for the death of or injury to persons, or for damage to property, as a result
18 of the activity.

19 * Sec. 8. AS 26.20.140 is amended by adding new subsections to read:

20 (c) This section does not apply to a civil action for damages as a result of
21 gross negligence or reckless or intentional misconduct.

22 (d) In this section, "civilian defense worker" means a worker engaged in a
23 civil defense activity in an official capacity or at the direction of the state, including

24 (1) an officer or employee of the state, a municipality or other political
25 subdivision of the state, or a governmental instrumentality of the state;

26 (2) a member of a board, commission, or task force created by statute
27 or by legislative, judicial, or administrative action by the state, a municipality or other
28 political subdivision of the state, or a governmental instrumentality of the state;

29 (3) a contractor to the state, a municipality or other political
30 subdivision of the state, or a governmental instrumentality of the state, or an officer or
31 employee of the contractor;

1 (4) an officer or a member of the state's organized militia on active
2 state service under AS 26.05.070;

3 (5) an officer or employee of another state; and

4 (6) a volunteer authorized by the state, a municipality or other political
5 subdivision of the state, or a federal agency to engage in a civil defense activity.

6 * **Sec. 9.** AS 26.20.200(1) is amended to read:

7 (1) "civil defense" means the protection and defense of the civilian
8 population by the organized efforts of the residents of the state other than those in the
9 military service, and includes without limitation, fire fighting, policing, rescue, air raid
10 warning, security, communications, medical service, vaccination and other actions
11 to protect public health, transportation, evacuation of persons, welfare aid, guard
12 duty, anti-espionage and anti-sabotage service, construction of temporary housing and
13 bomb proof shelters, [AND] any other service necessary for the protection of and aid
14 to the public not normally furnished by the military services, and training,
15 preparation, travel, and other activities necessary for the provision of the services
16 described in this paragraph;

17 * **Sec. 10.** AS 26.23.210 is amended by adding a new subsection to read:

18 (c) The provisions of AS 26.20.140, providing for immunity of government,
19 employees, and other authorized persons in certain circumstances, apply when the
20 entities or persons covered by AS 26.20.140 perform duties under AS 26.23.010 -
21 26.23.220, except as otherwise provided in AS 26.23.136 for entities or other persons
22 providing assistance to the state under a compact in a form substantially as contained
23 in AS 26.23.136.

24 * **Sec. 11.** AS 41.15 is amended by adding a new section to read:

25 **Sec. 41.15.045. Civil immunity.** (a) Notwithstanding other provisions of
26 law, a person may not bring a civil action for damages for death, personal injury, or
27 property damage that results from an act or omission in performing or failing to
28 perform activities or duties arising out of prevention, monitoring, control, or
29 suppression of fires authorized to be performed under AS 41.15.010 - 41.15.170
30 against

31 (1) the state or its officers, agents, and employees;

1 (2) a political subdivision of the state or its officers, agents, and
2 employees;

3 (3) any organization authorized to prevent, control, or suppress fires;
4 or

5 (4) others assisting in the control or suppression of fires at the request
6 of an officer or employee of the United States or the state.

7 (b) This section does not apply to a civil action for damages as a result of
8 gross negligence or reckless or intentional misconduct.

9 * Sec. 12. AS 41.17 is amended by adding a new section to read:

10 **Sec. 41.17.081. Civil immunity.** (a) Notwithstanding other provisions of
11 law, a person may not bring a civil action for damages for death, personal injury, or
12 property damage that results from an act or omission in performing or failing to
13 perform activities or duties arising out of prevention, monitoring, control, or
14 suppression of fires authorized to be performed under regulations adopted under
15 AS 41.17.080(a)(8) against

16 (1) the state or its officers, agents, and employees;

17 (2) a political subdivision of the state or its officers, agents, and
18 employees;

19 (3) any organization authorized to prevent, control, or suppress fires;
20 or

21 (4) others assisting in the control or suppression of fires at the request
22 of an officer or employee of the United States or the state.

23 (b) This section does not apply to a civil action for damages as a result of
24 gross negligence or reckless or intentional misconduct.

25 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **APPLICABILITY.** This Act applies to all claims and causes of action accruing on or
28 after the effective date of this Act.

SENATE FINANCE COMMITTEE
5/19/2003 COMMITTEE ACTION

Bill Number	HB 245		
Amendment	r		
Motion	Adopt CS "I"		
<u>Motion by</u>	Taylor		
<u>Objection by</u>	Wilken		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			✓
Senator Hoffman	✓		
Senator Olson	✓		
Senator Stevens			✓
Senator Taylor	✓		
Co-Chair Green			✓
Co-Chair Wilken			✓
<u>Tally</u>			
Yea	3		
Nay	4		
Absent			
<u>MOTION</u>	FAILED		

Sectional Analysis of CSHB 245(JUD)

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, 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

Provided by the Department of Law

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 7-10 amend AS 26.20.140, the civil defense immunity statute, to broaden the immunity to cover injury to property damage sustained by any civilian defense worker, including authorized volunteers and employees, and to specify that the immunity extends to employees of the state or district as well as the agents and representatives of the state or district. 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 worker" for purposes of this immunity. Section 9 amends AS 26.20.200 to add to the definition of "civil defense" security, vaccination and other actions to protect public health, training, preparation, travel, and other activities necessary for the provision of the services described in the definition. Section 10 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 11-12 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 13 provides that the Bill affects only causes of action accruing after the effective date and does not affect pre-existing causes of action.

Section 14 gives the Bill an immediate effective date.

SPONSOR STATEMENT

This bill relates to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia, and relating to liability arising out of certain search and rescue, civil defense, and fire management and firefighting activities.

The bill consists of four main parts:

Suits Arising from Search and Rescue Activities (Section 2 of the bill)

First, by statute, search and rescue activities are permissive functions of the commissioner of public safety. In practice, the Alaska State Troopers make decisions about when and where to conduct search and rescue activities, and how to allocate resources -- both state personnel and community volunteers -- to those activities. The expenses are borne by the state treasury.

This bill provides that a person may not bring a lawsuit for damages that arise out of such search and rescue activities, or the failure to initiate such search and rescue activities. Given Alaska's vast geographic area, harsh climatic conditions, and limited trooper resources, it is important to ensure that search and rescue decisions are not undermined by possible tort exposure. It is also important to ensure that the safety of local volunteers who conduct search and rescue operations under trooper supervision is not jeopardized by the possibility of a search and rescue decision being influenced by potential tort liability rather than being based on appropriate safety concerns.

Alaska Supreme Court decisions have provided that no actionable duty is owed by police agencies when they undertake, or fail to undertake, police investigations. Search and rescue operations are essentially another form of investigation. They should be conducted, or not

Provided by the Department of Law

conducted, on their own intrinsic merits, as judged by the participating officers. By prohibiting lawsuits arising out of search and rescue activities, this bill would treat those activities consistently with other police investigations.

Certain Suits and Claims by Members of Military Services Arising from Military Services and
Concerning the Organized Militia
(Sections 3 - 6 of the bill)

Second, the Alaska Supreme Court, in a recent decision, ruled that the State of Alaska may be sued and 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.

State national guard or militia operations may include air and sea rescue missions, civil defense activities, training exercises, and travel to military bases and locations in Alaska and in other states and countries. Given this state's vast land area, its harsh geographic and climatic conditions, and the inherent hazards of national guard and militia activities, the State of Alaska may be faced with significant financial exposure for injuries to national guard, militia, or other military service members. In addition, tort lawsuits by injured service members against the Alaska National Guard, the militia, or other service members would involve the courts in reviewing and second-guessing military decisions regarding the personnel, training, equipment,

orders, discipline, and operations of the national guard and militia. It is important to ensure that such decisions are based on the professional judgment and military needs of the Alaska National Guard and other parts of the Alaska organized militia rather than on concerns regarding possible tort liability.

This bill provides that a lawsuit for damages may not be brought by or on behalf of a member of the military services against the State of Alaska, the Alaska National Guard or other part of the Alaska organized militia, or any other member of the military services, for death, personal injury, or other injury of a member of the military services, including the United States military, the Alaska National Guard or other parts of the Alaska organized militia, or the national guard of another state, incurred during or arising out of activities that were part of the member's military service. It would essentially adopt the federal *Feres* doctrine that bars intra-military tort claims by service personnel for injuries arising out of activities incident to their military service. It 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.

Under this bill, injured military service members would still be entitled to various military or veteran's benefits for injuries incurred in the course of their military service. The availability of these military benefits is one of the reasons that the federal courts have barred personal injury claims by military personnel under the *Feres* doctrine.

This bill also would clarify that members of the Alaska National Guard or other parts of the organized militia are entitled to only workers' compensation benefits for injuries, illness, or death related to active state service. Because members of the Alaska National Guard are entitled to

federal benefits when not on state active duty, this change will not affect receipt of those benefits.

Additionally, this bill would bar actions against the State of Alaska regarding activities of Alaska National Guard members when they are not on state active duty. This change is necessary because members of the Alaska National Guard who are not on state active duty, including those on federal active duty, active duty for training, inactive duty, active guard and reserve (AGR) duty, and civilian technicians, are under the command and control of the federal government. The change is necessary to address two Alaska Supreme Court decisions that held that the state could be responsible for the actions of national guard members who are not on state active duty, as being "borrowed" federal employees, and that considered those in AGR status to be state employees. The changes made by the bill would ensure that the state is not liable for acts or omissions of the federal government or federal employees.

Suits and Claims Arising from Civil Defense Activities
(Sections 7 - 10 of the bill)

Third, the bill would amend AS 26.20.140, a section in the civil defense chapter of the statutes that provides immunity for government and employees from liabilities arising out of civil defense activities. Presently, AS 26.20.140(a) provides that the state, any district established for civil defense purposes, and the agents or representatives of a state or district, may not be held liable for injury or property damage sustained by a volunteer civilian defense worker. The bill would amend AS 26.20.140(a) to broaden the immunity to cover injury or property damage sustained by any civilian defense worker, including authorized volunteers and employees, and to specify that the immunity extends to employees of the state or district as well as the agents and representatives of the state or district. In addition, existing AS 26.20.140(b) provides that the

state and any district established for civil defense purposes, their employees, agents, or representatives, authorized volunteer or auxiliary civil defense workers, and members of any other agency engaged in civilian defense activities, who are complying with or reasonably attempting to comply with AS 26.20 or an order or regulation issued under AS 26.20, are not liable for injury to persons or damage to property as a result of their activities. The bill would amend AS 26.20.140(b) to include any civil defense activities undertaken under the authority of AS 26.20, the civil defense statutes.

AS 26.20.140(b) presently provides an exception to the immunity in cases of wilful misconduct, gross negligence, or bad faith. The bill would amend that subsection to provide an exception only where malice or reckless indifference to the interests, rights, or safety of others is shown by clear and convincing evidence. The bill's amendment to AS 26.23.210 would make the immunity also apply when the entities and persons covered by AS 26.20.140 perform duties under AS 26.23.010 - 26.23.220, the Alaska Disaster Act.

The bill also would amend AS 26.20.140 to add a new subsection to specify that "civilian defense worker" means any worker engaged in a civil defense activity in an official capacity or at the direction of the state, including state and local officials, state and local contractors, officers and employees of other states, and volunteers.

The bill would amend the definitions section of the civil defense statutes, AS 26.20.200. The existing definition of "civil defense" in AS 26.20.200(1) would be amended to include security, vaccinations and other actions to protect public health and training, preparation, travel, and other activities necessary for the provision of civil defense services.

Suits Arising From Fire Management and Firefighting Activities
(Sections 11 and 12 of the bill)

By statute, the commissioner of natural resources (commissioner) is authorized to provide for fire management and firefighting activities throughout the state, including preventing, monitoring, suppressing, or controlling forest fires. The commissioner, through the division of forestry, provides for fire management and firefighting activities. The division of forestry's authority to prevent, monitor, suppress, or control forest fires is one aspect of its authority to manage state forest resources. The division of forestry is asked to respond to forest fires in various geographic areas and population zones in Alaska, which often occur simultaneously during the fire season. When responding to a given fire, authorities cannot forget other fires that may be burning simultaneously or that may soon occur. The division of forestry's fire prevention, monitoring, control, or suppression decisions are complicated decisions that involve an evolving, and primarily emergency, situation.

The Alaska Supreme Court, in tandem decisions issued in 2001, ruled that the State of Alaska may be sued and held liable for tort claims for losses due to fire suppression efforts. These decisions open the door to significant financial exposure to the state for losses due to fires. The Alaska Supreme Court departed from substantial precedent immunizing such activities.

Decisions regarding forest management related to fire control and suppression should be prompted by sound forestry and firefighting principles, rather than concerns regarding possible tort liability. Litigation of such claims inherently disrupts the division of forestry's day-to-day operations and diverts substantial state resources to defend such lawsuits. At the same time such

litigation will not reduce the number of future fires, nor will it increase the resources available to fight such fires.

I urge your prompt and favorable action on this measure.

Sincerely,

/s/

Frank H. Murkowski
Governor

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.

Provided by the Department of Law

- 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

CSHB 245 (JUD)

- ◆ The State and local governments, unlike the private sector, have a moral responsibility to respond to emergency situations: search and rescue, civil defense, and firefighting activities. We do not want state and local government to make the decision NOT to respond to such emergencies. But we are faced with tight fiscal times. Passage of this bill encourages the state, local governments, and their employees, and volunteers to provide services to the people of Alaska in responding to emergency situations using the limited resources that have been provided to them and their best judgment during the emergency.
- ◆ Public policy involves weighing our ability to provide services to the public with our ability to pay for both the services and the costs of litigation. In flush times, perhaps we can afford both. We are no longer able to do so. Our priority must be that we provide the services to the people of Alaska. It is not unreasonable to limit our exposure to tort lawsuits under this scenario.
- ◆ This bill is vitally important to the individual man and woman who is actually searching for someone lost in remote areas of Alaska, or who is responding to natural disasters such as floods and earthquakes, or who is fighting fires and trying to save lives and property. Absent this bill, this individual not only has to cope with the grave responsibilities and demands of their emergency work, but must also then worry about being sued for damages and being taken off the line of duty to be caught up in court proceedings.

If there is concern about whether this bill is unfavorable to the emergency worker:

- ◆ Emergency responders are already covered under workers compensation under existing law. This bill does not change these benefits. Workers compensation allows an injured worker or volunteer to receive medical benefits, wage loss, and other benefits without having to file a lawsuit, hire a lawyer, or prove any negligence. It is "no fault". In return, if an injured worker or volunteer receives workers compensation, it is (and always has been) their exclusive remedy and they are barred by

existing law from recovering additional tort damages against their fellow employees or employer.

If there is concern that this bill is unfavorable to members of the military:

- ◆ The law had always been that members of the military could not sue their fellow members or their employers. This is known as the *Feres* doctrine. Only recently (2001) the Alaska Supreme Court changed to allowing such suits. Until that decision (*Himsel*), no members of the military ever had any belief that they could sue their fellow members or the state. So, the bill is not taking away a tort remedy that military members had used in the past or that they ever thought that they had.

Prepared by Gail Voigtlander, Assistant Attorney General, Office of the Attorney General for the State of Alaska.

SENATE COMMITTEE REPORT

DATE: 5/15/03

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/18/03

Judiciary Committee considered CS FOR HOUSE BILL NO. 245(JUD)(efd fld)

HB 245 SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

"An Act relating to certain suits and claims by members of the military services; relating to certain suits and claims regarding acts or omissions of the organized militia; relating to workers' compensation and death benefits for members of the organized militia; relating to liability arising out of certain search and rescue, civil defense, fire management, and fire fighting activities."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
ADM	2/14	*		3
DNR	4/3		X	2
LAW	11/27		X	1

APPROPRIATION - no fiscal note

French
Therriault
Ogan

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
		X		
			X	
			X	
CHAIR:	✓			

Seekins

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OFFICE OF THE GOVERNOR
JUNEAU

HB245
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April 3, 2003

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia, and relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities.

The bill consists of four main parts:

Suits Arising from Search and Rescue Activities
(Section 2 of the bill)

First, by statute, search and rescue activities are permissive functions of the commissioner of public safety. In practice, the Alaska State Troopers make decisions about when and where to conduct search and rescue activities, and how to allocate resources -- both state personnel and community volunteers -- to those activities. The expenses are borne by the state treasury.

This bill provides that a person may not bring a lawsuit for damages that arise out of such search and rescue activities, or the failure to initiate such search and rescue activities. Given Alaska's vast geographic area, harsh climatic conditions, and limited trooper resources, it is important to ensure that search and rescue decisions are not undermined by possible tort exposure. It is also important to ensure that the safety of local volunteers who conduct search and rescue operations under trooper supervision is not jeopardized by the possibility of a search and rescue decision being influenced by potential tort liability rather than being based on appropriate safety concerns.

Alaska Supreme Court decisions have provided that no actionable duty is owed by police agencies when they undertake, or fail to undertake, police

The Honorable Pete Kott

April 3, 2003

Page 2

investigation. Search and rescue operations are essentially another form of investigation. They should be conducted, or not conducted, on their own intrinsic merits, as judged by the participating officers. By prohibiting lawsuits arising out of search and rescue activities, this bill would treat those activities consistently with other police investigations.

Certain Suits and Claims by Members of Military Services Arising from Military Services and Concerning the Organized Militia
(Sections 3 - 6 of the bill)

Second, the Alaska Supreme Court, in a recent decision, ruled that the State of Alaska may be sued and 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.

State national guard or militia operations may include air and sea rescue missions, civil defense activities, training exercises, and travel to military bases and locations in Alaska and in other states and countries. Given this state's vast land area, its harsh geographic and climatic conditions, and the inherent hazards of national guard and militia activities, the State of Alaska may be faced with significant financial exposure for injuries to national guard, militia, or other military service members. In addition, tort lawsuits by injured service members against the Alaska National Guard, the militia, or other service members would involve the courts in reviewing and second-guessing military decisions regarding the personnel, training, equipment, orders, discipline, and operations of the national guard and militia. It is important to ensure that such decisions are based on the professional judgment and military needs of the Alaska National Guard and other parts of the Alaska organized militia rather than on concerns regarding possible tort liability.

This bill provides that a lawsuit for damages may not be brought by or on behalf of a member of the military services against the State of Alaska, the Alaska National Guard or other part of the Alaska organized militia, or any other member of the military services, for death, personal injury, or other injury of a member of the military services, including the United States military, the Alaska National Guard or other parts of the Alaska organized militia, or the national guard of another state, incurred during or arising out of activities that were part of the member's military service. It would essentially

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April 3, 2003

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adopt the federal *Feres* doctrine that bars intra-military tort claims by service personnel for injuries arising out of activities incident to their military service. It 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.

Under this bill, injured military service members would still be entitled to various military or veteran's benefits for injuries incurred in the course of their military service. The availability of these military benefits is one of the reasons that the federal courts have barred personal injury claims by military personnel under the *Feres* doctrine.

This bill also would clarify that members of the Alaska National Guard or other parts of the organized militia are entitled to only workers' compensation benefits for injuries, illness, or death related to active state service. Because members of the Alaska National Guard are entitled to federal benefits when not on state active duty, this change will not affect receipt of those benefits.

Additionally, this bill would bar actions against the State of Alaska regarding activities of Alaska National Guard members when they are not on state active duty. This change is necessary because members of the Alaska National Guard who are not on state active duty, including those on federal active duty, active duty for training, inactive duty, active guard and reserve (AGR) duty, and civilian technicians, are under the command and control of the federal government. The change is necessary to address two Alaska Supreme Court decisions that held that the state could be responsible for the actions of national guard members who are not on state active duty, as being "borrowed" federal employees, and that considered those in AGR status to be state employees. The changes made by the bill would ensure that the state is not liable for acts or omissions of the federal government or federal employees.

Suits and Claims Arising from Civil Defense and Homeland Security Activities
(Sections 7 - 11 of the bill)

Third, the bill would amend AS 26.20.140, a section in the civil defense chapter of the statutes that provides immunity for government and employees from liabilities arising out of civil defense activities. Presently, AS 26.20.140(a) provides that the state, any district established for civil defense purposes, and the agents or representatives of a state or district, may not be held liable for injury or property damage sustained by a volunteer civilian defense worker. The bill would amend AS 26.20.140(a) to broaden the immunity to cover injury or property damage sustained by any civilian defense or homeland security worker, including authorized volunteers and employees, and to specify that the immunity extends to employees of the state or district as well as the agents and representatives of the state or district. In addition, existing AS 26.20.140(b)

provides that the state and any district established for civil defense purposes, their employees, agents, or representatives, authorized volunteer or auxiliary civil defense workers, and members of any other agency engaged in civilian defense activities, who are complying with or reasonably attempting to comply with AS 26.20 or an order or regulation issued under AS 26.20, are not liable for injury to persons or damage to property as a result of their activities. The bill would amend AS 26.20.140(b) to provide immunity for homeland security activities as well as civil defense activities, and to include any homeland security or civil defense activities undertaken under the authority of AS 26.20, the civil defense statutes.

AS 26.20.140(b) presently provides an exception to the immunity in cases of wilful misconduct, gross negligence, or bad faith. The bill would amend that subsection to provide an exception only where malice or reckless indifference to the interests, rights, or safety of others is shown by clear and convincing evidence. The bill's amendment to AS 26.23.210 would make the immunity also apply when the entities and persons covered by AS 26.20.140 perform duties under AS 26.23.010 - 26.23.220, the Alaska Disaster Act.

The bill also would amend AS 26.20.140 to add a new subsection to specify that "civilian defense or homeland security worker" means any worker engaged in a civil defense or homeland security activity in an official capacity or at the direction of the state, including federal, state and local officials, state and local contractors, officers and employees of other states, and volunteers.

The bill would amend the definitions section of the civil defense statutes, AS 26.20.200. The existing definition of "civil defense" in AS 26.20.200(1) would be amended to include security, vaccinations and other actions to protect public health and training, preparation, travel, and other activities necessary for the provision of civil defense services. A new paragraph (4) also would be added to the definitions statute to define "homeland security" to mean the detection, prevention, preemption, deterrence of, protection from, and response to, attacks targeted at state territory, population, or infrastructure. This definition is based on a definition of homeland security in the Iowa statutes.

Suits Arising From Fire Management and Firefighting Activities
(Sections 12 and 13 of the bill)

By statute, the commissioner of natural resources (commissioner) is authorized to provide for fire management and firefighting activities throughout the state, including preventing, monitoring, suppressing, or controlling forest fires. The commissioner, through the division of forestry, provides for fire management and firefighting activities. The division of forestry's authority to

The Honorable Pete Kott
April 3, 2003
Page 5

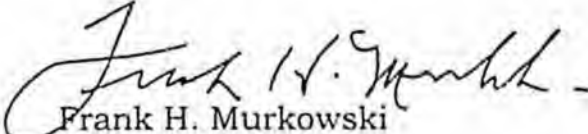
prevent, monitor, suppress, or control forest fires is one aspect of its authority to manage state forest resources. The division of forestry is asked to respond to forest fires in various geographic areas and population zones in Alaska, which often occur simultaneously during the fire season. When responding to a given fire, authorities cannot forget other fires that may be burning simultaneously or that may soon occur. The division of forestry's fire prevention, monitoring, control, or suppression decisions are complicated decisions that involve an evolving, and primarily emergency, situation.

The Alaska Supreme Court, in tandem decisions issued in 2001, ruled that the State of Alaska may be sued and held liable for tort claims for losses due to fire suppression efforts. These decisions open the door to significant financial exposure to the state for losses due to fires. The Alaska Supreme Court departed from substantial precedent immunizing such activities.

Decisions regarding forest management related to fire control and suppression should be prompted by sound forestry and firefighting principles, rather than concerns regarding possible tort liability. Litigation of such claims inherently disrupts the division of forestry's day-to-day operations and diverts substantial state resources to defend such lawsuits. At the same time such litigation will not reduce the number of future fires, nor will it increase the resources available to fight such fires.

I urge your prompt and favorable action on this measure.

Sincerely,


Frank H. Murkowski
Governor

SITE: Offnets

COMMITTEE: SFIN

DATE: 5/18/03

SUBJECT OF MEETING:

HB245

UPDATE #:



PLEASE SIGN IN

PLEASE PRINT:

DO YOU WANT

NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

**TO TESTIFY?
Y OR N**

✓ **Gail Voightlander**

Dean Brown

Div. of Forestry

Y

Y