

SB

120

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/2/03

REPORTED OUT
APR 11 2003
SENATE FINANCE
COMMITTEE

FURTHER:

DATE TURNED
IN TO OFFICE: 4/11/03

Finance Committee considered

SENATE BILL NO. 120

SB 120 CLAIMS BY STATE-EMPLOYED SEAMEN

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

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# |
|------------|---------|--------|------|-----|
| L DWD | 3/31/03 | 71.0 | | 2 |
| ADMIN | 3/16/03 | | ✓ | 1. |
| | | | | |
| | | | | |
| | | | | |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | Do PASS | Do NOT PASS | No REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| <i>Adrian L. Taylor</i> | | ✓ | | |
| <i>[Signature]</i> | | | ✓ | |
| <i>[Signature]</i> | | | ✓ | |
| <i>[Signature]</i> | ✓ | | | |
| <i>Ben Stevens</i> | ✓ | | | |
| COCHAIR: <i>Gary Hughes</i> | ✓ | | | |
| COCHAIR: <i>Lyle Green</i> | ✓ | | | |

FISCAL NOTE

REPORTED OUT

B-R 11 2003

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 120
(S) Publish Date: 3/6/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to state immunity for certain BRU Risk Management
actions by state employed seaman.... 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 | 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
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)

Very significant cost savings will be realized in future years as the AMHS and the few other maritime employees injury claims transition into the state average employee injury rate and cost. The state funds its claim costs on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency. If Risk Management (RM) was provided continuing funds for each FY (held in reserve until all outstanding liabilities from that period are paid - as an insurance carrier operates), then RM could immediately reduce premium assessments — reflecting the cost savings anticipated. Future year premium assessments will reflect the cost reductions actually realized by this legislation as premiums are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director Phone _____
Division Risk Management Date/Time 3/6/03 10:57 AM
Approved by: _____ Date 3/6/2003
Agency Administration

COMMITTEE COF

APR 11 2003

SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 120
(S) Publish Date: 4/2/03

Revision: 3/31/03 11:02 AM Department: Labor and Workforce Development
Title: Claims by State-Employed Seamen BRU: Workers' Compensation
Sponsor: Rules Committee Component: Workers' Compensation
Requester: House L&C Component Number: 344

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 | 55.6 | 74.1 | 74.1 | 74.1 | 74.1 | 74.1 |
| Travel | 3.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| Contractual | 4.6 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 |
| Supplies | 7.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 71.0 | 87.0 | 87.0 | 87.0 | 87.0 | 87.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| 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 | | | | | | |
| 1157 Workers Safety Account | 71.0 | 87.0 | 87.0 | 87.0 | 87.0 | 87.0 |
| TOTAL | 71.0 | 87.0 | 87.0 | 87.0 | 87.0 | 87.0 |

Estimate of any current year (FY2003) cost: None

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

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-time | 1 | 1 | 1 | 1 | 1 | 1 |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This Bill would require work-related injuries or illnesses of state employed seamen to be covered under the State of Alaska's Workers' Compensation Act. This coverage is currently being provided through federal jurisdiction under the Jones Act and Admiralty Law. In the first year, funding is only needed for nine months due to recruitment for the position and the time it takes for a case to reach the hearing process.

Prepared by: Paul Grossl, Director Phone: 465-2790
Division: Workers' Compensation Date/Time: 3/31/03 11:02 AM
Approved by: Greg O'Claray, Commissioner Date: 03/31/03
Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

SENATE FINANCE COMMITTEE
4 / 11 / 2003 COMMITTEE ACTION

| | | | |
|--------------------------------|---------------------------|-------------|----------|
| Bill Number | SB 120 | | |
| Amendment | | | |
| Motion | OBJECT To Report bill but | | |
| Motion by | Bunde | | |
| Objection by | Taylor | | |
| Removed | ✓ | | |
| Second Objection by | | | |
| <u>Committee Member</u> | Y | Vote | N |
| Senator Bunde | | | |
| Senator Hoffman | | | |
| Senator Olson | | | |
| Senator Stevens | | | |
| Senator Taylor | | | |
| Co-Chair Green | | | |
| Co-Chair Wilken | | | |
| | | | |
| <u>Tally</u> | | | |
| Yea | | | |
| Nay | | | |
| Absent | | | |
| | | | |
| <u>MOTION</u> | WITHDRAWN | | |

Withdrawn

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 31, 2003

SUBJECT: State immunity against civil suits by state employees who are seamen (SB 120)

TO: Senator Con Bunde
Attn: Jane

FROM: Michael F. Ford *M-F*
Legislative Counsel

You have asked for my opinion on the opinion of Mr. Trueb, regarding potential legal obstacles to the enactment of SB 120. As explained in this memo, I do not believe that the arguments raised by Mr. Trueb would preclude the legislature from changing existing law as contemplated by SB 120.

The issue raised by SB 120 was addressed by the Alaska Supreme Court in State, Dept. of Public Safety v. Brown, 794 P.2d 108 (Alaska 1990). In that case the court held that the legislature had waived its sovereign immunity by adoption of AS 09.50.250, but that the legislature could amend AS 09.50.250 to make workers' compensation the exclusive remedy for an injured state employee who is a seaman. This is precisely what SB 120 does.

Turning to the arguments raised by Mr. Trueb each point will be addressed in turn.

1. The Alaska Constitution abolished sovereign immunity and sovereign immunity may only be reinstated by a constitutional amendment.

Answer: The view is in conflict with the opinion of the Alaska Supreme Court in Brown. In that case the court stated that "the legislature could make the exclusive remedy defense applicable to federal maritime claims by referring to the defense in the sovereign immunity waiver contained in" AS 09.50.250. The court makes no mention of any limitation on the legislature's power to amend the sovereign immunity provisions created by the legislature in AS 09.50.250.

2. Any attempt to institute sovereign immunity solely for Jones Act suits would offend the Alaska Bill of Rights.

Answer: This argument is again not supported by case law. Injured seaman who are state employees will have a remedy, that being the workers' compensation laws (AS

Senator Con Bunde
March 31, 2003
Page 2

23.30). If anything, SB 120 eliminates disparate treatment by requiring injured seamen who are state employees to be treated the same as all other state employees.

3. As a matter of federal constitutional law Alaska cannot apply its workers' compensation laws to seamen.

Answer: Again Brown, refutes this argument. The court cites to several cases from other states where the workers' compensation statutes are the exclusive remedy of injured workers, when the state has preserved its sovereign immunity.

4. Any amendment to close the door to the Alaska courts will not prohibit Jones Act suits from being filed in Washington Courts.

Answer: Assuming that the Washington Courts have jurisdiction in a particular case, the injured seaman would still be limited to benefits under the Alaska workers' compensation law, which is the intent of SB 120.

5. There is no empirical evidence that coverage under the workers' compensation system would save the State money.

Answer: The premise underlying workers' compensation is that employees trade a potential full recovery for certain partial compensation and avoid the expense and delay of litigation. This point was recognized by the Alaska Supreme Court in Brown v. State & Div. of Marine Highway Systems, 816 P.2d 1368 (Alaska 1991). This would seem to indicate that in general, the State would save money by requiring seamen who are State employees to use the workers' compensation system.

Please contact me if you have further questions.

MFF:mdr
03-051.mdr

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

April 1, 2003

The Honorable Con Bunde, Chair
The Honorable Ralph Seekins
The Honorable Bettye Davis
The Honorable Hollis French
The Honorable Gary Stevens
Senate Labor & Commerce Committee
Alaska State Legislature
State Capitol, Room 206
Juneau, AK 99801-1182

Re: SB 120

Dear Senators:

Thank you for the opportunity to respond to legal questions raised by Lanning Trueb of the law firm Beard Stacey Trueb & Jacobsen regarding SB 120, relating to the state's withdrawal of consent to suit and provision of workers' compensation instead of maritime law remedies for state-employed seamen. We have reviewed the arguments put forth by Mr. Trueb and do not believe that any of them present insurmountable obstacles to effectuating the purpose of this bill, which is to provide a uniform system of remedy for injury, illness, or death of state employees.

As a preliminary matter, it is important to note that the approach taken by this bill was expressly suggested with approval by the Alaska Supreme Court in its decision in *State, Department of Public Safety v. Robert Brown* (Brown I), 794 P.2d 108 (Alaska 1990). The court found that the 1962 enactment of the state's tort claims act, AS 09.50.250, expanded the waiver of sovereign immunity to cover all tort claims against the state, including admiralty matters, without any limiting language referring to Alaska's workers' compensation law. *Brown I*, 794 P.2d at 109. The court expressly agreed with a 1963 opinion of the Attorney General:

By this waiver of immunity it must be concluded that the State may be sued for negligent torts which arise under the Jones Act. It is true that under the Alaska Workmen's Compensation Act, employers, including the State (AS 23.30.265), are excluded from admiralty liability.

...

However, this exclusive liability provision cannot act as a limitation on suits against the State under the Federal Maritime law once the State has unqualifiedly waived its immunity for negligent torts. ... By waiving its immunity, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the workmen's compensation act.

...

If it is the desire of the State to limit its tort liability to the workmen's compensation act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity section contained in AS 09.50.250.

Brown I, 794 P.2d at 110 (citations omitted, emphasis added). In addition, after reviewing three cases from other states in which the relationship between maritime remedies and sovereign immunity was examined, the court held: "These cases teach that the legislature could make the exclusive remedy defense [of the Alaska Workers' Compensation Act] applicable to federal maritime claims by referring to the defense in the sovereign immunity waiver" contained in AS 09.50.250. *Brown I*, 794 P.2d at 111. That is what SB 120 attempts to do.

The United States Supreme Court has repeatedly upheld the states' sovereign immunity against claims founded in federal law, particularly in the decade since *Brown I* was decided. In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72 (1996), the Court held¹ that Congress could not abrogate state sovereign immunity under Article I of the Constitution. Three years later the Court confirmed that Congress could not subject unconsenting states to private suits for damages in state courts pursuant to federal causes of action.¹ *Alden v. Maine*, 527 U.S. 706, 712 (1999) (affirming dismissal of employees' state court suit under Fair Labor Standards Act against State of Maine, without its consent). Most recently, in *Federal Maritime Commission (FMC) v. South Carolina*

¹ Years earlier, the Court had found that Congress did not abrogate the states' Eleventh Amendment immunity from suit in federal court in the Jones Act. *Welch v. Texas Dept. of Highways & Public Trans.*, 483 U.S. 468, 475 (1987).

State Ports Authority, 535 U.S. 743, 122 S.Ct. 1864 (2002), the Court found that sovereign immunity barred a federal agency from adjudicating a private party's complaint against a state-run port under a federal law. The Court rejected the argument that a "constitutional necessity of uniformity in the regulation of maritime commerce limits the States' sovereignty with respect to the Federal Government's authority to regulate that commerce." *FMC*, 122 S.Ct. at 1878. The Court noted that it had "already held that the States' sovereign immunity extends to cases concerning maritime commerce." *Id.*, citing *Ex parte New York*, 256 U.S. 490 (1921).

Under the rationale of *Brown I* and the last decade of United States Supreme Court jurisprudence, state sovereign immunity is a legitimate defense to claims brought under the Jones Act or maritime law. Amendment of AS 09.50.250 is necessary to withdraw the state's consent to suit, assert sovereign immunity as to claims brought by or on behalf of state-employed seamen regarding injury, illness, or death, and provide workers' compensation benefits as an alternative remedy.²

We turn briefly to the legal arguments presented by Mr. Trueb's March 24, 2003, letter. First, the question has been raised whether passage of this bill might violate the equal protection provision in Article I, section 1 of the Alaska Constitution, because state-employed seamen would have different remedies than seamen in the private sector. We believe that the state's goal in providing a uniform system of no-fault workers' compensation benefits to all state employees has a rational basis that would satisfy equal protection. We note that, like other state employees, state-employed seamen have much in common with other state employees. State-employed seamen have many additional benefits, such as sick leave, employer contributions to health insurance, retirement, supplemental benefits, exemption from social security contributions, and other benefits, that private sector seamen do not have.

Furthermore, this would not be the only instance in which a federal remedial system did not apply to state employees. For example, Congress has specifically exempted employees of states from coverage of the Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. § 903(a)(2). In addition, while private sector railroad employees in Alaska are covered by the Federal Employers' Liability Act (FELA), and have the same right to sue their employers for damages as seamen do under the Jones Act, the employees of the Alaska Railroad have been expressly excluded from FELA since the railroad's transfer to state ownership. (Alaska Railroad employees are

² We note that these seamen include not only those employed aboard AMHS ferries, but also seasonal seamen who work aboard research and law enforcement vessels. This bill would establish one remedy and a degree of certainty of expectations for all seamen who are state employees.

covered by state workers' compensation law.) As far back as 1957, New York law provided that the state did not waive its immunity to suit; workers' compensation was held to be the exclusive remedy for state-employed seamen. *Maloney v. State of New York*, 144 N.E.2d 364, 367 (N.Y. App. 1957). The Texas Court of Appeals found the same true under Texas law in 1977. *Lyons v. Texas A & M University*, 545 S.W.2d 56, 58-59 (Tex. Civ. App. 1977) ("The State, however, is immune from suit without its consent. It could provide any remedy it wished and limit seamen to that remedy exclusively."³).

As a general matter, states cannot apply workers' compensation statutes to limit federal maritime law for all seamen. However, as discussed above, a state can withhold its consent to suit under federal law, and its sovereign immunity cannot be abrogated by Congress. *Alden*, 527 U.S. 706. In the maritime arena, the arguable need for uniformity is secondary to the state's sovereign immunity. *FMC*, 122 S.Ct. at 1878. If the state does not agree to subject itself to claims under federal maritime law regarding injuries, illness, or death of its own employees, it can provide workers' compensation as an alternative remedy. *Brown I*, 794 P.2d at 110, 111; *Lyons*, 545 S.W.2d at 58-59; *Maloney*, 144 N.E.2d at 367; see also *Gross v. Washington State Ferries*, 367 P.2d 600, 602-603 (Wash. 1961).

We disagree with Mr. Trueb's contention that the Alaska legislature has no authority to assert sovereign immunity by amending AS 09.50.250. Such an argument flies directly in the face of the Alaska Supreme Court's holding in *Brown I*. No case has determined that the Alaska Constitution's provision in Article II, section 21 that the legislature shall establish procedures for suits against the state is a self-effectuating waiver of all state sovereign immunity. Instead, many Alaska appellate cases have found that waiver of the state's immunity is done by statute, and AS 09.50.250 is the vehicle by which the legislature has carried out its constitutionally delegated duty to "establish procedures for suits against the state." See, e.g., *State v. Haley*, 687 P.2d 305, 318 (Alaska 1984); *Adams v. State*, 555 P.2d 235, 241, 244 (Alaska 1976). Most recently, in *Samissa Anchorage v. DHSS, State of Alaska*, 57 P.3d 676, 678-679 and n. 9 (Alaska 2002), the court reiterated the common understanding that the legislature can waive the state's sovereign immunity, and it has done just that in enacting AS 09.50.250.

Finally, it is conceivable that some state-employed seamen could file suit in Washington to pursue Jones Act or other maritime law remedies if unsatisfied with workers' compensation. Under the holding of *Nevada v. Hall*, 440 U.S. 410 (1979), the

³ As the result of collective bargaining agreements with the unions representing AMHS vessel employees, the state provided workers' compensation to ferry workers from 1983 to 1991.

state does not have sovereign immunity within another state's courts.⁴ However, Washington law strictly limits personal jurisdiction to torts arising from the state's business or presence in Washington. *Grange Insurance Assoc. v. State*, 757 P.2d 933, 937 (Wash. 1988). Moreover, even if personal jurisdiction were established, Washington courts could decline to entertain suits against Alaska out of respect for the state, or comity. For example, in two accidents where the State of Oregon was sued in Washington, the Washington state courts declined to hear the cases, on the grounds of comity. *Williams v. State*, 885 P.2d 845, 851 (Wash. App. 1994); *Fernandez v. State*, 741 P.2d 1010, 1017 (Wash. App. 1987). Additional arguments regarding choice of law also favor dismissal of cases filed in Washington unless the plaintiff is a Washington resident and/or the tortious act occurred in Washington State. For these reasons, we would not anticipate many legitimate cases to be filed in Washington state courts.⁵

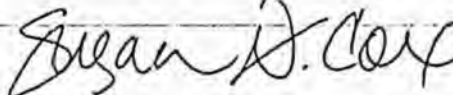
We recognize that this bill, if passed, may result in a legal challenge. However, we believe the bill has a solid legal foundation.

Please let us know if you have any questions or would like more information.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:



Susan D. Cox
Assistant Attorney General

⁴ The continued validity of this holding is being challenged in a case currently pending before the United States Supreme Court.

⁵ It is well-established that the state cannot be sued by a seaman in federal court in Washington or any other location. *Collins v. State of Alaska*, 823 F.2d 329 (9th Cir. 1987).

An analysis of AMHS crew claims costs compared to those provided under the Alaska Workers Comp Act (AWCA) for all other state employees.

The enclosed Excel workbook contains detailed breakouts of the actual incurred loss (cost to date plus anticipated expense) by each individual AMHS vessel for the past six fiscal years.

To objectively analyze the AMHS employee's injury experience to the state's overall employee injury rate, both frequency (number of claims) and severity (loss cost) are averaged and compared on a per 100 FTE (full time equivalent) basis.

Additional analysis was performed between AMHS and the five state agencies with the highest workers' compensation loss experience - to provide comparison to similar physically demanding jobs.

AMHS shows a five year average loss rate of 41 claims per 100 FTE's in comparison the state overall workers' compensation injury rate of 8, with the highest five agencies showing average loss experience of 10 claims per 100 FTE's.

On a cost per 100 FTE's analysis; AMHS actual claims experience during the last five years shows an average cost of \$197,065 compared to the top five state agencies averaged cost of \$64,145 during the same period.

The most significant difference is the award for the non-economic damages, not provided under workers compensation remedies and that life illnesses that are alleged to manifest during a voyage are covered under the Jones Act.

Provided by the Department of Administration

**AMHS CREW CLAIMS
FREQUENCY TO 100 FTE'S**

| FISCAL YEAR | 2002 | | | 2001 | | | 2000 | | | 1999 | | | 1998 | | | TOTALS |
|--|----------|--------|-----------|----------|----------|-----------|----------|----------|-----------|----------|----------|-----------|--------------------|----------|-----------|--------|
| | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | |
| SHP | | | | | | | | | | | | | | | | |
| AURORA | 24 | 64.7 | 37.1 | 26 | 64.7 | 40 | 35 | 64.7 | 54 | 24 | 64.7 | 84 | 21 | 62.9 | 33 | 180 |
| BARTLETT | 14 | 21.1 | 66.4 | 17 | 21.1 | 81 | 14 | 21.1 | 66 | 7 | 21.1 | 314 | 19 | 22.7 | 84 | 130 |
| KENNICOTT | 47 | 112.1 | 41.9 | 81 | 112.1 | 72 | 44 | 112.1 | 39 | 33 | 112.1 | 35 | not yet in service | | | 211 |
| COLUMBIA | 35 | 97.7 | 35.8 | 1 | 97.7 | 1 | 25 | 97.7 | 26 | 31 | 97.7 | 26 | 21 | 94.8 | 22 | 108 |
| LE CONTE | 31 | 62.8 | 49.4 | 28 | 62.8 | 45 | 20 | 62.8 | 32 | 13 | 62.6 | 51 | 10 | 55.1 | 18 | 121 |
| MALASPINA | 22 | 36.3 | 60.8 | 40 | 36.3 | 110 | 18 | 36.3 | 50 | 13 | 36.3 | 137 | 19 | 45.4 | 42 | 149 |
| MATANUSKA | 65 | 82.9 | 78.4 | 56 | 82.9 | 68 | 44 | 82.9 | 53 | 29 | 82.9 | 64 | 36 | 112.9 | 32 | 254 |
| TAKU | 48 | 111.7 | 43.0 | 46 | 111.7 | 41 | 25 | 111.7 | 22 | 28 | 111.7 | 20 | 30 | 110.3 | 27 | 171 |
| TUSTUMENA | 25 | 65.9 | 37.9 | 37 | 65.9 | 56 | 23 | 65.9 | 35 | 24 | 65.9 | 53 | 22 | 66.0 | 33 | 142 |
| OTHER AMHS | 31 | | | 19 | | | 3 | | | 13 | | | 7 | | | 60 |
| FISCAL YEAR TOTALS | 342 | 655.2 | 50.1 | 351 | 655.2 | 54 | 251 | 655 | 38 | 215 | 655 | 33 | 178 | 570.1 | 31.2 | 1160 |
| | | | | | | | | | | | | | | | | 0 |
| State W/C Claims & FTEs (not including AMHS) | 1298 | 15,516 | 8.4 | 1,382 | 14,271.8 | 9.7 | 1,060 | 14,182.0 | 7.5 | 1,102 | 14,210.0 | 7.8 | 1,198 | 13,785.0 | 8.7 | 4945 |

Note: Work Comp FTEs taken from CORA and adjusted for AMHS FTE count.

| | Claims | FTEs |
|---------------------|---------|-------|
| AMHS (5) YEAR TOTAL | 1,337.0 | 3,191 |

| | Claims | FTEs |
|----------------|--------|-------|
| 5 YEAR AVERAGE | 267.4 | 638.2 |

| | |
|---|----|
| AMHS CLAIMS per 100 FTEs - 5 Year Average | 41 |
|---|----|

| | |
|--------------------------------|---|
| STATE W/C CLAIMS PER 100 FTE's | 8 |
|--------------------------------|---|

**ALL DEPT CLAIMS
FREQUENCY TO 100 FTE'S**

| DEPARTMENT | 2002 | | | 2001 | | | 2000 | | | 1999 | | | 1998 | | | 1997 | | | TOTALS |
|-----------------------------|-------------|--------------|------------|--------------|---------------|------------|--------------|---------------|------------|--------------|-----------------|------------|--------------|-----------------|------------|----------|---------|-----------|-------------|
| | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | |
| Governor's Office | 5 | 198 | 2.6 | 0 | 187 | 0.0 | 3 | 189 | 1.6 | 7 | 200 | 3.5 | 5 | 186 | 2.7 | 7 | 187 | 3.7 | 22 |
| Administration | 214 | 1466 | 14.6 | 260 | 1,404.0 | 18.5 | 211 | 1,536.0 | 13.7 | 180 | 1,334.0 | 13.5 | 132 | 1,289.0 | 14.9 | 182 | 1,155.0 | 15.8 | 1025 |
| Law | 20 | 478 | 4.2 | 16 | 454.0 | 3.5 | 8 | 453.0 | 1.8 | 11 | 447.0 | 2.5 | 17 | 441.0 | 3.9 | 15 | 439.0 | 3.4 | 87 |
| Revenue | 21 | 506 | 4.2 | 32 | 474.0 | 6.8 | 28 | 492.0 | 5.7 | 15 | 492.0 | 3.0 | 28 | 502.0 | 5.6 | 32 | 487.0 | 6.6 | 135 |
| Education | 28 | 451 | 6.2 | 15 | 398.0 | 3.8 | 17 | 510.0 | 3.3 | 20 | 497.0 | 4.0 | 25 | 491.0 | 5.1 | 34 | 506.0 | 6.7 | 111 |
| Health & Social Services | 168 | 2459 | 6.8 | 196 | 2,215.0 | 8.8 | 143 | 2,201.0 | 6.5 | 165 | 2,098.0 | 7.9 | 163 | 2,047.0 | 8.9 | 199 | 2,103.0 | 9.5 | 886 |
| Labor & Workforce Dev | 37 | 867 | 4.3 | 35 | 794.0 | 4.4 | 29 | 719.0 | 4.0 | 19 | 633.0 | 3.0 | 23 | 736.0 | 3.1 | 25 | 815.0 | 3.1 | 131 |
| Commerce & Economic Dev | 10 | 503 | 2.0 | 18 | 451.0 | 4.0 | 11 | 374.0 | 2.9 | 12 | 481.0 | 2.5 | 9 | 426.0 | 2.1 | 17 | 457.0 | 3.7 | 87 |
| Military & Veterans Affairs | 22 | 259 | 8.5 | 19 | 223.0 | 8.5 | 14 | 222.0 | 6.3 | 17 | 216.0 | 7.9 | 19 | 178.0 | 10.7 | 15 | 171.0 | 8.8 | 84 |
| Natural Resources | 112 | 714 | 15.7 | 135 | 657.0 | 20.5 | 87 | 675.0 | 12.9 | 95 | 610.0 | 10.4 | 132 | 609.0 | 21.7 | 158 | 937.0 | 16.9 | 607 |
| Fish & Game | 72 | 1,225 | 5.9 | 84 | 1,137.0 | 7.4 | 89 | 1,148.0 | 7.8 | 75 | 1,121.0 | 6.7 | 85 | 1,095.0 | 7.8 | 83 | 999.0 | 8.3 | 418 |
| Public Safety | 139 | 764 | 18.2 | 123 | 727.0 | 16.9 | 94 | 754.0 | 12.5 | 92 | 766.0 | 12.0 | 89 | 746.0 | 11.9 | 88 | 887.0 | 9.9 | 486 |
| Environmental Conservation | 12 | 491 | 2.4 | 13 | 467.0 | 2.8 | 11 | 480.0 | 2.3 | 19 | 491.0 | 3.9 | 17 | 473.0 | 3.6 | 16 | 508.0 | 3.2 | 78 |
| Corrections | 162 | 1473 | 11.0 | 154 | 1,388.0 | 11.3 | 100 | 1,366.0 | 7.3 | 136 | 1,362.0 | 10.0 | 139 | 1,358.0 | 10.2 | 125 | 1,350.0 | 9.3 | 654 |
| Transportation | 251 | 1,869 | 9.5 | 253 | 1,771.0 | 10.2 | 181 | 1,711.0 | 8.0 | 207 | 1,724.0 | 8.8 | 205 | 1,701.0 | 8.8 | 231 | 1,655.0 | 11.8 | 1077 |
| Legislative Affairs | 10 | 294 | 3.4 | 4 | 300.0 | 1.3 | 11 | 274.0 | 4.0 | 13 | 272.0 | 4.8 | 6 | 350.0 | 1.7 | 7 | 292.0 | 2.4 | 41 |
| Legislative Audit | 0 | 37 | 0.0 | 1 | 36.0 | 2.8 | 0 | 36.0 | 0.0 | 0 | 36.0 | 0.0 | 0 | 34.0 | 0.0 | 0 | 36.0 | 0.0 | 1 |
| Courts | 15 | 704 | 2.1 | 24 | 690.0 | 3.5 | 23 | 681.0 | 3.4 | 19 | 692.0 | 2.7 | 24 | 680.0 | 3.5 | 22 | 674.0 | 3.3 | 112 |
| FISCAL YEAR TOTALS | 1298 | 15516 | 8.4 | 1,382 | 14,272 | 9.7 | 1,060 | 14,182 | 7.5 | 1,102 | 14,210.0 | 7.8 | 1,198 | 13,785.0 | 8.7 | | | | 4742 |

Note: Work Comp FTEs taken from CORA

100 FTEs do not include 100 FTEs from CORA

AMHS Claims Frequency
 compared to Top 5 State Dept W/C Claims Frequency per 100 FTEs

| FISCAL YEAR | 2002 | | | 2001 | | | 2000 | | | 1999 | | | 1998 | | | 1997 | | | TOTALS |
|---|------------|--------------|-------------|------------|--------------|-----------|------------|--------------|-----------|------------|----------------|-------------|--------------------|----------------|-------------|--------------------|----------------|-------------|-------------|
| | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | # Claims | FTEs | #/100FTEs | |
| | 24 | 64.7 | 37.1 | 28 | 64.7 | 40 | 35 | 64.7 | 54 | 24 | 64.7 | 37 | 21 | 62.9 | 33 | 11 | 42.7 | 26 | |
| | 14 | 21.1 | 66.4 | 17 | 21.1 | 81 | 14 | 21.1 | 66 | 7 | 21.1 | 33 | 19 | 22.7 | 84 | 15 | 62.3 | 24 | |
| | 47 | 112.1 | 41.9 | 81 | 112.1 | 72 | 44 | 112.1 | 39 | 33 | 112.1 | 29 | not yet in service | | | not yet in service | | | |
| | 35 | 97.7 | 35.8 | 1 | 97.7 | 1 | 25 | 97.7 | 26 | 31 | 97.7 | 32 | 21 | 94.8 | 22 | 35 | 122.9 | 28 | |
| | 31 | 62.8 | 49.4 | 28 | 62.8 | 45 | 20 | 62.8 | 32 | 13 | 62.8 | 21 | 10 | 55.1 | 18 | 19 | 62.9 | 30 | |
| | 22 | 36.3 | 60.6 | 40 | 36.3 | 110 | 18 | 36.3 | 50 | 13 | 36.3 | 36 | 19 | 45.4 | 42 | 38 | 123.2 | 31 | |
| | 65 | 82.9 | 78.4 | 56 | 82.9 | 68 | 44 | 82.9 | 53 | 29 | 82.9 | 35 | 36 | 112.9 | 32 | 25 | 69.8 | 36 | |
| | 48 | 111.7 | 43.0 | 46 | 111.7 | 41 | 25 | 111.7 | 22 | 28 | 111.7 | 25 | 30 | 110.3 | 27 | 35 | 111.6 | 31 | |
| | 25 | 65.9 | 37.9 | 37 | 65.9 | 56 | 23 | 65.9 | 35 | 24 | 65.9 | 36 | 22 | 66.0 | 33 | 21 | 62.4 | 34 | |
| | 31 | | | 19 | | | 3 | | | 13 | | | 7 | | | 8 | | | |
| FISCAL YEAR TOTALS | 342 | 655.2 | 50.1 | 351 | 655.2 | 54 | 251 | 655 | 38 | 215 | 655.2 | 32.0 | 178 | 570.1 | 31.2 | 199 | 657.8 | 30.3 | |
| State Dept DOT | 199 | 2629 | 8 | 256 | 2,433.0 | 11 | 184 | 2,377.0 | 8 | 197 | 1,706.8 | 11.5 | 203 | 1,759.9 | 11.5 | 231 | 2,264.2 | 10.2 | |
| DMSE | 154 | 2459 | 6 | 199 | 2,365.0 | 8 | 145 | 2,365.0 | 6 | 168 | 2,098.0 | 8.0 | 182 | 2,047.0 | 8.9 | 199 | 2,103.0 | 9.5 | |
| CORRECTIONS | 142 | 1473 | 10 | 150 | 1,460.0 | 10 | 102 | 1,368.0 | 7 | 131 | 1,362.0 | 9.6 | 139 | 1,358.0 | 10.2 | 125 | 1,350.0 | 9.3 | |
| ADMINISTRATION | 178 | 1466 | 12 | 259 | 1,442.0 | 18 | 210 | 1,404.0 | 15 | 178 | 1,334.0 | 13.3 | 192 | 1,289.0 | 14.9 | 182 | 1,155.0 | 15.8 | |
| PUB SAFETY | 121 | 764 | 16 | 125 | 745.0 | 17 | 95 | 727.0 | 13 | 92 | 798.0 | 12.0 | 89 | 746.0 | 11.9 | 88 | 687.0 | 9.9 | |
| (Top 5 Depts. Only) Work Comp Claims & FTEs (not including AMHS) | 794 | 8,791 | 9 | 989 | 8,445 | 12 | 736 | 8,241 | 9 | 766 | 7,266.8 | 10.5 | 805 | 7,199.9 | 11.2 | 825 | 7,759.2 | 10.6 | 4320 |

Note: Top 5 Dept. Work Comp FTEs taken from CORA Bonds FTE column and adjusted for AMHS FTE count.

| Row 14 | # Claims | FTEs |
|---|----------|---|
| AHMS COMBINED (5) YEAR TOTAL | 1,337 | 3,190.9 |
| AHMS 5 YEAR AVERAGE | 267 | 638.2 |
| AHMS Frequency Rate per 100 FTEs | 42 | Top 5 Dept. Frequency Rate per 100 FTEs 10 |

AMHS EMPLOYEE INJURY CLAIMS
Cost per 100 FTEs

| FISCAL YEAR | 2002 | | | 2001 | | | 2000 | | | 1999 | | | 1998 | | | TOTALS |
|---------------------------|------------------|--------------|------------------|------------------|--------------|------------------|--------------------|--------------|------------------|--------------------|--------------|------------------|--------------------|--------------|------------------|--------|
| | \$ Claims | FTEs | \$/100FTEs | \$ Claims | FTEs | \$/100FTEs | \$ Claims | FTEs | \$/100FTEs | \$ Claims | FTEs | \$/100FTEs | \$ Claims | FTEs | \$/100FTEs | |
| AURORA | \$44,248 | 64.7 | \$68,390 | 206,941 | 64.7 | \$319,847 | \$324,005 | 64.7 | \$500,781 | \$136,670 | 64.7 | \$211,236 | \$38,730 | 62.9 | \$61,574 | |
| BARTLET | \$40,001 | 21.1 | \$189,578 | 95,382 | 21.1 | \$452,047 | \$30,666 | 21.1 | \$145,336 | \$28,706 | 21.1 | \$136,047 | \$30,969 | 22.7 | \$136,427 | |
| CANTON | \$173,665 | 112.1 | \$154,920 | 384,527 | 112.1 | \$343,021 | \$99,886 | 112.1 | \$89,104 | \$166,378 | 112.1 | \$148,419 | \$0 | 0.0 | \$0 | |
| COLUMBIA | \$81,994 | 97.7 | \$83,924 | 4,308 | 97.7 | \$4,409 | \$115,447 | 97.7 | \$118,165 | \$111,820 | 97.7 | \$114,452 | \$32,107 | 94.8 | \$33,868 | |
| LE CONTE | \$78,545 | 62.8 | \$125,072 | 70,388 | 62.8 | \$112,083 | \$191,004 | 62.8 | \$304,146 | \$663,504 | 62.8 | \$1,056,535 | \$625,761 | 55.1 | \$1,135,682 | |
| MALDEN | \$12,878 | 36.3 | \$35,477 | 2,222 | 36.3 | \$6,121 | \$139,958 | 36.3 | \$385,559 | \$24,219 | 36.3 | \$66,719 | \$107,033 | 45.4 | \$235,756 | |
| MATAMoras | \$230,209 | 82.9 | \$277,803 | 130,842 | 82.9 | \$157,831 | \$133,160 | 82.9 | \$160,627 | \$31,019 | 82.9 | \$37,417 | \$52,202 | 112.9 | \$46,237 | |
| ROCKFORD | \$83,594 | 111.7 | \$74,838 | 335,319 | 111.7 | \$300,196 | \$135,658 | 111.7 | \$121,449 | \$68,573 | 111.7 | \$61,390 | \$24,437 | 110.3 | \$22,155 | |
| TUSTUMENA | \$201,002 | 65.9 | \$305,010 | 77,320 | 65.9 | \$117,329 | \$482,448 | 65.9 | \$732,091 | \$58,315 | 65.9 | \$88,490 | \$181,996 | 66.0 | \$275,752 | |
| FISCAL YEAR TOTALS | \$946,227 | 655.2 | \$144,418 | 1,307,249 | 655.2 | \$199,519 | \$1,652,232 | 655.2 | \$252,172 | \$1,289,204 | 655.2 | \$196,765 | \$1,093,235 | 570.1 | \$191,762 | |

| | \$ Claims | FTEs |
|----------------|-----------|---------|
| (5) YEAR TOTAL | 6,288,147 | 3,190.9 |

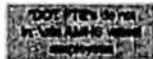
| | \$ Claims | FTEs |
|----------------|-------------|-------|
| 5 YEAR AVERAGE | \$1,257,629 | 638.2 |

| | FTEs |
|-------------------|-----------|
| Rate per 100 FTEs | \$197,065 |

**ALL DEPT WORKERS' COMPENSATION CLAIMS
SEVERITY TO 100 FTE'S**

| DEPARTMENT | 2002 | | | 2001 | | | 2000 | | | 1999 | | | 1998 | | | 1997 | | | TOTALS |
|-----------------------------|------------------|---------------|-----------------|--------------------|---------------|-----------------|--------------------|---------------|-----------------|--------------------|-----------------|-----------------|--------------------|-----------------|-----------------|--------------------|-----------------|-----------------|---------------------|
| | Claims cost | FTEs | \$/100FTEs | Claims cost | FTEs | \$/100FTEs | Claims cost | FTEs | \$/100FTEs | Claims cost | FTEs | \$/100FTEs | Claims cost | FTEs | \$/100FTEs | Claims cost | FTEs | \$/100FTEs | |
| Governor's Office | 52,756 | 196 | 26,916 | \$0 | 187 | \$0 | \$7,029 | 189 | \$3,719 | \$3,100 | 200 | \$1,550 | \$13,494 | 186 | \$7,252 | \$106,035 | 167 | \$6,703 | \$129,858 |
| Administration | 1,710,644 | 1468 | 119,686 | \$1,697,177 | 1,404.0 | \$120,882 | \$1,141,188 | 1,536.0 | \$74,295 | \$1,135,226 | 1,334.0 | \$85,096 | \$1,328,798 | 1,289.0 | \$103,087 | \$1,823,940 | 1,155.0 | \$157,917 | \$7,126,309 |
| Law | 96,166 | 478 | 20,746 | \$54,719 | 454.0 | \$12,053 | \$42,318 | 453.0 | \$9,342 | \$50,285 | 447.0 | \$11,249 | \$70,931 | 441.0 | \$16,064 | \$36,441 | 438.0 | \$8,301 | \$254,694 |
| Revenue | 172,444 | 506 | 34,080 | \$78,741 | 474.0 | \$16,190 | \$112,713 | 482.0 | \$22,969 | \$61,243 | 482.0 | \$16,545 | \$192,708 | 502.0 | \$38,388 | \$95,240 | 487.0 | \$19,558 | \$568,651 |
| Education | 124,833 | 451 | 27,635 | \$17,877 | 398.0 | \$4,482 | \$131,201 | 510.0 | \$25,726 | \$48,005 | 497.0 | \$9,659 | \$81,693 | 481.0 | \$16,838 | \$73,373 | 506.0 | \$14,501 | \$352,149 |
| Health & Social Services | 1,061,074 | 2459 | 43,151 | \$821,878 | 2,215.0 | \$37,105 | \$780,879 | 2,201.0 | \$35,469 | \$531,971 | 2,098.0 | \$25,356 | \$904,103 | 2,047.0 | \$44,167 | \$719,481 | 2,103.0 | \$34,212 | \$3,758,110 |
| Labor & Workers De- | 364,716 | 887 | 45,527 | \$156,374 | 794.0 | \$19,804 | \$193,097 | 719.0 | \$26,958 | \$82,883 | 633.0 | \$13,094 | \$45,283 | 739.0 | \$6,150 | \$148,167 | 815.0 | \$18,180 | \$626,585 |
| Commerce & Economic Dev. | 14,812 | 503 | 2,945 | \$60,023 | 451.0 | \$13,309 | \$2,034,780 | 374.0 | \$544,053 | \$89,214 | 481.0 | \$18,548 | \$56,985 | 426.0 | \$13,377 | \$40,588 | 457.0 | \$8,881 | \$2,281,569 |
| Military & Veterans Affairs | 134,295 | 259 | 51,851 | \$35,888 | 723.0 | \$16,093 | \$73,094 | 222.0 | \$32,925 | \$139,450 | 216.0 | \$64,580 | \$280,248 | 178.0 | \$157,442 | \$16,244 | 171.0 | \$9,500 | \$544,922 |
| Natural Resources | 286,263 | 714 | 40,093 | \$490,126 | 657.0 | \$75,057 | \$329,231 | 675.0 | \$48,775 | \$195,793 | 910.0 | \$21,518 | \$498,350 | 606.0 | \$81,831 | \$395,225 | 937.0 | \$42,180 | \$1,911,724 |
| Fish & Game | 251,087 | 1225 | 20,497 | \$479,722 | 1,137.0 | \$42,192 | \$506,288 | 1,148.0 | \$44,363 | \$362,537 | 1,121.0 | \$32,340 | \$253,498 | 1,095.0 | \$23,150 | \$668,608 | 909.0 | \$86,928 | \$2,273,652 |
| Public Safety | 1,899,714 | 784 | 222,476 | \$723,008 | 727.0 | \$99,451 | \$321,749 | 754.0 | \$42,872 | \$792,977 | 760.0 | \$100,522 | \$403,173 | 746.0 | \$54,045 | \$1,083,225 | 887.0 | \$122,122 | \$3,324,131 |
| Environmental Conservation | 73,544 | 491 | 14,978 | \$65,925 | 487.0 | \$14,117 | \$132,521 | 480.0 | \$27,609 | \$61,037 | 491.0 | \$12,431 | \$178,513 | 473.0 | \$37,741 | \$64,704 | 506.0 | \$12,787 | \$502,701 |
| Corrections | 837,108 | 1473 | 56,800 | \$931,086 | 1,368.0 | \$69,752 | \$465,731 | 1,366.0 | \$34,094 | \$873,703 | 1,362.0 | \$64,149 | \$973,000 | 1,358.0 | \$71,649 | \$784,805 | 1,350.0 | \$58,134 | \$3,928,325 |
| Transportation | 2,108,473 | 801 | 80,125 | \$2,400,217 | 700.0 | \$343,908 | \$1,437,692 | 700.0 | \$205,587 | \$2,040,125 | 700.0 | \$292,373 | \$1,315,377 | 700.0 | \$188,454 | \$2,106,735 | 700.0 | \$107,761 | \$8,300,146 |
| Legislative Affairs | 65,473 | 294 | 22,270 | \$46,356 | 300.0 | \$15,453 | \$8,122 | 274.0 | \$2,984 | \$80,577 | 272.0 | \$29,824 | \$110,631 | 350.0 | \$3,129 | \$7 | 292.0 | \$2 | \$245,698 |
| Legislative Audit | 0 | 37 | 0 | \$2,241 | 36.0 | \$6,225 | \$0 | 36.0 | \$0 | \$0 | 36.0 | \$0 | \$0 | 34.0 | \$0 | \$0 | 36.0 | \$0 | \$2,241 |
| Courts | 33,532 | 704 | 4,763 | \$126,608 | 690.0 | \$18,349 | \$71,730 | 681.0 | \$10,533 | \$43,917 | 692.0 | \$6,346 | \$89,612 | 680.0 | \$13,208 | \$58,037 | 674.0 | \$8,611 | \$390,103 |
| FISCAL YEAR TOTALS | 9,117,734 | 15,516 | \$58,763 | \$8,088,965 | 14,272 | \$56,678 | \$7,792,924 | 14,182 | \$54,949 | \$6,622,043 | 14,210.0 | \$46,601 | \$6,798,572 | 13,765.0 | \$49,304 | \$8,220,861 | 13,765.0 | \$59,706 | \$37,521,365 |

Note: Work Comp FTEs taken from CORA



**AMHS CREW COSTS Compared to
TOP 5 DEPARTMENTS
WORK COMP
CLAIM COSTS per 100 FTEs**

| FISCAL YEAR | 2002 | | | 2001 | | | 2000 | | | 1999 | | | 1998 | | | TOTALS |
|---|--------------|----------|------------|-----------|---------|-------------------|----------------|---------|------------|--------------|---------|------------|----------------------------------|---------------------------|------------|--------|
| | WC\$ | FTEs | \$/100FTEs | WC\$ | FTEs | \$/100FTEs | WC\$ | FTEs | \$/100FTEs | WC\$ | FTEs | \$/100FTEs | WC\$ | FTEs | \$/100FTEs | |
| Other DOTs | 2,106,473 | 2629 | 80,125 | 2,189,897 | 2,433.0 | 90,008 | 1,266,154 | 2,377.0 | 53,267 | 1,281,569 | 1,706.8 | 75,086.1 | 1,146,418 | 1,759.9 | 65,141.1 | |
| DHSS | 988,473 | 2459 | 40,198 | 800,966 | 2,365.0 | 33,867 | 1,022,922 | 2,365.0 | 43,253 | 407,626 | 2,098.0 | 19,429.3 | 902,172 | 2,047.0 | 44,072.9 | |
| CORRECTIONS | 835,397 | 1473 | 56,714 | 813,498 | 1,460.0 | 55,719 | 568,380 | 1,368.0 | 41,548 | 543,641 | 1,362.0 | 39,914.9 | 850,620 | 1,358.0 | 62,637.7 | |
| ADMINISTRATION | 1,710,592 | 1466 | 116,684 | 1,385,478 | 1,442.0 | 96,080 | 1,221,475 | 1,407.0 | 87,000 | 598,375 | 1,334.0 | 44,855.7 | 1,074,494 | 1,289.0 | 83,358.7 | |
| PUB SAFETY | 1,701,367 | 764 | 222,692 | 705,222 | 745.0 | 94,661 | 387,568 | 727.0 | 53,311 | 759,591 | 766.0 | 99,163.3 | 353,608 | 746.0 | 47,400.6 | |
| (Top 5 Depts. Only) Work Comp Claims & FTEs (not including AMHS) | 7,342,303 | 8,791 | 516,413 | 5,895,061 | 8,445 | 69,805 | 4,466,499 | 8,241 | 54,189 | \$ 3,590,802 | 7,266.8 | 49,413.8 | \$ 4,327,313 | 7,199.9 | 60,102.4 | |
| COMBINED (5) YEAR TOTAL | \$25,621,977 | 39,943.7 | | | | 5 YEAR AVERAGE | \$5,124,395.39 | 7,988.7 | | | | | Top 5 Dept. Rate per 100 FTEs | | \$64,145 | |
| | | | | | | | | | | | | | | AMHS Rate per 100 FTEs | \$197,065 | |

promulgated. I do not favor such a reading for two reasons.

First, it is wrong to say that cross-examination may not carry a price tag. In general civil litigation, deposition and witness costs are shifted to the losing party after judgment as a matter of course. Civ.R. 79. On the tilted playing field of workers' compensation, the employer must reimburse the employee "for the costs in the proceedings" when the employee wins. AS 23.30.145(b). (The employee does not have a similar obligation when the employer prevails.) The costs for which the employer must reimburse the employee include the costs of cross-examination paid by the employee under the Board's interpretation of *Smallwood*.³ Thus, when a litigant, or, in workers' compensation, an employer, loses, cross-examination has a price.

Second, according to the Board, its interpretation of *Smallwood* has led to needless depositions resulting in delay, oppression of the economically weaker party—generally the employee—and economic waste. The Board states that many litigants have adopted as a matter of course the practice of "Smallwooding" any and all written reports served upon them. A protection granted by this court to prevent a violation of fundamental due process became a trial tactic which ran counter to the court's fundamental policy of "providing inexpensive and expeditious resolution of claims for compensation...."

Armed with knowledge that the "right to cross-examine is absolute," many litigants generally took the opportunity to assert the right, as a matter of tactics. In many instances, where closer evaluation and the use of discretion would have allowed the case to proceed expeditiously with an alternate to absolute cross-examination, *Smallwood* became, not a matter of due process, but an invitation for procedural maneuvering and a matter of trial strategy. Although both employees and employer have used *Smallwood* tactically, the Board observed that the injured worker, for whom the system ex-

3. The Board recognized this remedy in this case.

ists, often suffered the consequences of the resulting confusion and/or delay. Also, small employers, as well, have suffered from the same problems. Instead of providing what the court originally intended, *Smallwood* frequently became an impediment to the legendary "simple, speedy remedy" that the workers' compensation system was meant to provide.

(Footnotes omitted.)

The Board's position, based on more than a decade of experience, is persuasive. The cost disincentive inherent in the normal rule which makes the depositor pay is apparently of considerable importance in deterring needless depositions.

For the above reasons, I would not interpret *Smallwood* to require cost shifting. A party desiring to depose or examine the author of a report should bear the initial cost of the deposition or examination. Thus, I concur in the result of today's decision.



STATE OF ALASKA, DEPARTMENT OF
PUBLIC SAFETY, and Tom
Schwantes, Petitioners,

v.
Robert BROWN, Respondent.

No. S-2829..

Supreme Court of Alaska.

June 22, 1990.

After first accepting workers' compensation benefits, state employee who was injured on state vessel brought suit alleging that state was liable to him under Jones Act for negligence of the vessel's master and under admiralty doctrines of unseaworthiness, maintenance and cure. The Superior Court, Third Judicial District at

Decision, p. 6.

Provided by the Department of Administration

STATE DEPT. OF PUBLIC SAFETY v. BROWN Alaska 109

Cite as 794 P.2d 109 (Alaska 1990)

Anchorage, Joan M. Katz, J., denied state's motion for summary judgment on grounds of sovereign immunity and exclusive remedy provision of the Workers' Compensation Act, and state's petition for review was granted. The Supreme Court, Matthews, C.J., held that Workers' Compensation Act's exclusive remedy provision did not deprive worker injured on state vessel of his federal maritime remedy.

Affirmed.

Compton, J., filed dissenting opinion.

Brown filed suit against the state, among others, in the superior court. Brown alleged that the state was liable to him under the Jones Act, 46 U.S.C.App. § 688, for negligence of the master of the VIGILANT, and under the admiralty doctrines of unseaworthiness, maintenance, and cure. The state moved for summary judgment on grounds of sovereign immunity and the exclusive remedy provision of the Workers' Compensation Act, AS 23.80.055. The trial court denied the motion. We granted the state's petition for review.

II. DISCUSSION

The trial court summarized its reasons in an order denying the state's motion for reconsideration as follows:

After statehood, the tort claims act was passed. It expanded the waiver of sovereign immunity to cover all tort claims, specifically mentioning admiralty. No limiting language referring to the workers' compensation statute was included in the tort claims act.

It is this court's view, thus, that once the tort claims act was passed, there was no intention to retain sovereign immunity vis-a-vis negligence claims against the state. The workers' compensation law is construed as simply a limitation regarding all employee-employer relations. It has nothing to do with limiting the waiver of sovereign immunity. In the case of admiralty law, workers' compensation principles are superseded by federal law for all employees, state workers constituting no exception.

The same rationale was expressed in an opinion issued by former Attorney General Hayes more than 25 years ago. 1963 Formal Op. Att'y Gen. 28. In addressing the question of whether workers employed by the state on state ferries could sue the state under the Jones Act, the opinion stated:

[T]he only question remaining is whether the State of Alaska has waived its sovereign immunity. If it has, the Jones Act is supreme; if it has not, the State cannot be sued under the Jones Act and the only remedy available to State

States ← 18.47

Workers' Compensation ← 2085

Workers' Compensation Act's exclusive remedy provision did not deprive worker injured on state vessel of his federal maritime remedy. AS 09.50.250, 23.80.055; Jones Act, 46 U.S.C.A.App. § 688.

Robert L. Eastaugh, Delaney, Wiles, Hayes, Reitman & Brubaker, Inc., Anchorage, for petitioners.

Ron-J. Webb, Anchorage, and Eric Dickman, David S. Teske & Associates, Seattle, Wash., for respondent.

Before MATTHEWS, C.J., and RABINOWITZ, BURKE and COMPTON, JJ.

OPINION

MATTHEWS, Chief Justice.

I. FACTUAL AND PROCEDURAL BACKGROUND

Robert Brown was employed by the State of Alaska as First Mate on the Alaska Department of Public Safety patrol vessel VIGILANT, a 100-foot sea-going vessel. On June 18, 1985, while the VIGILANT was on patrol in Bristol Bay, Brown was injured as he boarded a fishing vessel to inspect it for a suspected violation of state fisheries laws.

After first accepting workers' compensation benefits under the Alaska Workers' Compensation Act, AS 23.80.005-.270,

employees is the State workmen's compensation act.

Id. at 11. The opinion next quoted the Claims Against the State Act, AS 09.50.250, and continued:

By this waiver of immunity it must be concluded that the State may be sued for negligent torts which arise under the Jones Act. It is true that under the Alaska Workmen's Compensation Act, employers, including the State (AS 23.80.265), are excluded from admiralty liability.

Id. at 12. The opinion then quoted the exclusive remedy provision of AS 23.90.055, and stated:

However, this exclusive liability provision cannot act as a limitation on suits against the State under the Federal Maritime law once the State has unqualifiedly waived its immunity for negligent torts.... A state cannot protect private citizens from suit for a maritime tort by limiting the exclusive Federal admiralty jurisdiction as delegated by Article III, Section 2, of the United States Constitution. By waiving its immunity, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the workmen's compensation act. So much of AS 23.90.055 as limits the liability of employers in admiralty must be considered an invalid infringement on the Federal jurisdiction.

Id. at 13. We agree with this reasoning. Our explanation follows.

Alaska Statute 09.50.250 provides that "[a] person ... having a ... tort claim against the state may bring an action against the state in the superior court." This statute waives the sovereign immunity of the state as to claims brought in superior court for torts sounding in admiralty, as

1. We noted in *Barber* that double recovery would not be permitted as the amounts paid under the compensation award would be sub-

ject to offset should the employee win his federal maritime case. *Id.* at 813, n. 39. This observation also governs the present case.

well as those based on state law. *State v. Stanley*, 506 P.2d 1284, 1290-1291 and n. 9 (Alaska 1973). Subject to certain explicit exceptions, the intent of this statute was to put the state on an equal footing with private persons or entities who are sued in tort. See *State v. Abbott*, 498 P.2d 712, 724 (Alaska 1972).

The Workers' Compensation Act, to which the state is subject to the same extent as private employers, provides in part that "[t]he liability of an employer [under the Workers' Compensation Act] is exclusive and in place of all other liability of the employer ... and anyone otherwise entitled to recover damages ... at law or in admiralty on account of the injury or death." AS 23.90.055. This provision would bar any suit by Brown for damages under state law. However, the present case is brought under federal maritime law.

The exclusive remedy provision cannot deprive Brown of his federal maritime remedy. In *Barber v. New England Fish Co.*, 510 P.2d 806 (Alaska 1973), a longshoreman was injured while aboard a barge owned by his employer. Although he had already collected benefits under the Alaska Workers' Compensation Act, we held that the exclusive remedy provision of the act did not preclude him from seeking a further recovery against his employer under federal maritime law for unseaworthiness.¹ Similarly, in *Thibodaux v. Atlantic Richfield Co.*, 580 F.2d 841, 847 (5th Cir.1978), cert. denied, 442 U.S. 909, 99 S.Ct. 2820, 61 L.Ed.2d 274 (1979), the court held that "an exclusive remedy provision in a state workmen's compensation law cannot be applied when it will conflict with maritime policy and undermine substantive rights afforded by federal maritime law." *Accord Purnell v. Norred Shipping B.V.*, 801 F.2d 152, 156 (3rd Cir.1986). In *Thibodaux*, the court reversed summary judgment in favor of Atlantic Richfield and remanded the case to allow plaintiffs to pursue their general maritime claims against the latter for wrongful death. 580 F.2d at 847-48. The

ject to offset should the employee win his federal maritime case. *Id.* at 813, n. 39. This observation also governs the present case.

STATE, DEPT. OF PUBLIC SAFETY v. BROWN · Alaska 111

Cite as 794 P.2d 108 (Alaska 1990)

court noted that it had been presented with an analogous question in *Roberts v. City of Plantation*, 558 F.2d 750 (5th Cir.1977). *Thibodaux*, 580 F.2d at 846. In *Roberts*, the court held that the exclusive remedy provisions of Florida's workmen's compensation act were not a defense to a Jones Act claim. 558 F.2d at 751.

The *Thibodaux* court found support in the Supreme Court's decision in *Pope & Talbot, Inc. v. Hawk*, 345 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1953). There, the court refused to apply a state contributory negligence defense which would have barred recovery for a general maritime cause of action. The court stated that "[w]hile states may sometimes supplement federal maritime policies, a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court." *Id.* at 409-10, 74 S.Ct. at 205 (footnote omitted). To hold otherwise would undermine the uniformity of maritime law "which the [Federal] Constitution has placed under national purview to control in its substantial as well as procedural features." *Id.* at 409, 74 S.Ct. at 205 (quoting *Panama R.R. Co. v. Johnson*, 264 U.S. 375, 386, 44 S.Ct. 391, 393, 68 L.Ed. 748 (1924)). These precedents compel the conclusion that the exclusive remedy provisions of the Alaska Workers' Compensation Act cannot deprive Brown of his federal Jones Act claim against the state.

The state relies on *Johanson v. United States*, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051 (1952), in support of its argument that the exclusive remedy provision of the Workers' Compensation Act applies. *Johanson* involved an injury to a seaman-federal employee who sued the government for damages for negligence under the Public Vessels Act of 1925, 46 U.S.C. §§ 781-799. The court held that this remedy was barred by the Federal Employees' Compensation Act of 1916, which provided a workers' compensation remedy to federal employees. *Id.* at 441, 72 S.Ct. at 857. The *Johanson* case presented a conflict between two federal remedies. It is thus unlike the state-federal problem which is present here.

The state also relies on three state cases: *Lyons v. Texas A & M University*, 545 S.W.2d 66 (Tex.Civ.App.1977); *Gross v. Washington State Ferries*, 59 Wash.2d 241, 367 P.2d 600 (1961); *Maloney v. State*, 3 N.Y.2d 366, 165 N.Y.S.2d 465, 144 N.E.2d 364 (1957). In these cases the sovereign immunity waiver was expressly conditioned on preserving the defense in question. *Lyons* involved an act waiving sovereign immunity which, as an integral part of the waiver, reserved to the state "all of the privileges and immunities granted by the Workmen's Compensation Act ... to private persons and corporations." 545 S.W.2d at 68. In *Maloney*, the act waiving sovereign immunity was "careful to provide that, in waiving immunity, the exclusiveness of the compensation remedy against the State is not impaired." 144 N.E.2d at 367. The sovereign immunity waiver in *Gross* was expressly conditioned by a 30-day notice of claim proviso. 367 P.2d at 605. By contrast, the waiver of immunity contained in the Alaska Claims Against the State Act is not conditioned on preserving the defense in question here—the exclusive remedy provision. These

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legislature has not chosen to do so.

Merely because the exclusive remedy defense is not a condition of the waiver of the sovereign immunity of the state does not mean that the Claims Against the State Act has repealed the exclusive remedy defense. The defense is fully applicable to all claims against the state brought under state law. However, the defense does not apply to federal remedies, and thus the decision of the superior court is AFFIRMED.

COMPTON, J., dissents.

MOORE, J., not participating.

COMPTON, Justice, dissenting.

I.

Assuming the court's conclusion is correct, state employed maritime workers

stand to recover more than state employed land-based workers who suffer the same injury in a virtually identical accident. If the court is wrong, then state employed maritime workers stand to recover less than their privately employed counterparts. Thus, under either result, inequities are inevitable. However, traditional methods of statutory analysis lead to the conclusion that sovereign immunity was retained as to Jones Act suits.

The doctrine of sovereign immunity bars Jones Act suits for damages by injured state employees in state court, absent a waiver of immunity. *Gross v. Washington State Ferries*, 59 Wash.2d 241, 367 P.2d 600, 602 (1961); *Maloney v. State*, 3 N.Y.2d 356, 165 N.Y.S.2d 465, 144 N.E.2d 364, 365 (1957); *Lyons v. Texas A & M Univ.*, 545 S.W.2d 56, 58 (Tex.Civ.App.1977).¹

The Claims Against the State Act (CATSA), AS 09.50.250, provides that "[a] person . . . having a . . . tort claim against the state may bring an action against the state in the superior court." Jones Act claims sound in tort. *See Collins v. State*, 823 F.2d 929, 932 (9th Cir.1987) (CATSA does not waive Alaska's immunity from Jones Act suit in federal court). The Alaska Workers Compensation Act (AWCA), on the other hand, provides that the "liability of an employer [within this act] is exclusive and in place of all other liability of the employer . . . at law or in admiralty. . . ." "Employer" as defined includes the state. AS 23.30.265(13). Should this language be given its plain meaning, Brown would be entitled to the worker's compensation he has received and no more.

The exclusive liability provision of AWCA, beginning in 1949, provided the exclusive remedy against the territory as an employer in lieu of claims "now existing at common law or otherwise." § 43-3-10 ACLA (1949); § 48-3-38 ACLA (1949). This was followed by a broad, general enactment providing relief to persons with "any claim" against the territory. § 56-7-1 ACLA (Supp.1957). This enact-

ment did not explicitly purport to supersede exclusive worker's compensation liability for the state; the exclusive liability provision was retained.

Upon statehood, the exclusive liability provision of AWCA was reenacted, limiting claims "at law or in admiralty." AS 23.30-055. Thus, despite the existence of a general right in third persons to make "claims" against the state in superior court, the legislature seemingly reaffirmed the state's limited waiver of immunity when acting as an employer. CATSA was refined to something near its present form in 1962. AS 09.50.250.

Without the enactment of AWCA or CATSA, an injured territorial or state worker would have had no claim at all against the territory or state, even with the aid of the Jones Act. The territory or state would have been immune from suit. *Ex Parte New York No. 1*, 256 U.S. 490, 500, 41 S.Ct. 588, 590, 65 L.Ed. 1057 (1921); *cf. Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 472-73, 107 S.Ct. 2941, 2945-46, 97 L.Ed.2d 389 (1987). The original AWCA must therefore have been a limited waiver of sovereign immunity; otherwise an employee of the territory would not have been entitled to any compensation from the territory for an injury occurring while on the job. Thus, in order to prevail, Brown needs to show that the more general waiver of sovereign immunity in CATSA was somehow intended to abrogate the effect of the more limited waiver of sovereign immunity in AWCA, despite AWCA being left intact.

Despite its lengthy discussion of federal case law, none of which is relevant given that the employer here is the state, the court's rationale is really rather simple. The court seizes upon our prior cases narrowly construing retentions of sovereign immunity when the state is not an employer, e.g., *Freeman v. State*, 705 P.2d 918, 920 (Alaska 1985), transforms them into establishing a requirement that retentions of sovereign immunity must necessarily be

1. It is worth noting that the court is unable to cite a single state case affording an injured state

maritime employee Jones Act relief.

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explicit, and then concludes that because sovereign immunity was not explicitly retained in CATSA itself, it was not retained at all.² This is not the issue; rather the question should be whether CATSA was intended to repeal the effect of AWCA.

Repeal by implication is not favored. *Peter v. State*, 531 P.2d 1263, 1267 (Alaska 1975). A specific statutory provision ordinarily is not repealed by a later enacted, general statutory provision. *Preston v. Heckler*, 784 F.2d 1859, 1868 (9th Cir.1984); *United States v. Hawkins*, 228 F.2d 517, 519 (9th Cir.1955). Repeal by implication is limited and only found when necessary to carry out the legislature's intent. *Warren v. Thomas*, 568 P.2d 400, 408 (Alaska 1977).

Did the legislature, in enacting CATSA, intend to subject the state to Jones Act claims by its own employees, notwithstanding AWCA? Did it intend to allow its maritime workers to receive preferential treatment over its land-based workers? Had the question occurred to the legislators at the time, then arguably a clause referencing AWCA and maintaining its integrity as the sole, comprehensive remedy for injured state maritime workers could have been included.

In saying this, however, I reject any implication that the legislature is somehow prevented by "federalism" from amending CATSA to make clear that the sole remedy of its injured maritime employees is worker's compensation, and that Brown is entitled to a "double dip." The mere fact that the Jones Act exists as a federal cause of action does not mean that state sovereign immunity, properly asserted, is abrogated. See *Alascadero State Hospital v. Scanlon*, 473 U.S. 284, 242, 105 S.Ct. 3142, 3147, 87 L.Ed.2d 171 (1985). Moreover, the Jones Act has been held not to abrogate properly asserted state sovereign immunity. *Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 475-76, 107 S.Ct. 2941, 2946-47, 97 L.Ed.2d 389 (1987). Any Jones Act recovery by Brown must be offset by the workers' compensation benefits.

2. If the court is correct that retentions of sovereign immunity must be explicit, then the court's assertion that AWCA is still an effective defense against state law claims must be wrong, since

he has received. *Barber v. New England Fish Co.*, 510 P.2d 806, 812-18 & n. 39 (Alaska 1973).

II.

The foregoing, of course, assumes away the bothersome question of whether the Jones Act was ever intended to apply at all to states as employers. One justice of the United States Supreme Court has opined that it was not. *Welch*, 483 U.S. at 496, 107 S.Ct. at 2957 (Scalia, J., concurring). The court in *Welch* left open the question. *Id.* at 476, 107 S.Ct. at 2947.

The rationale for Justice Scalia's concurrence appears to derive from the majority opinion in *Will v. Michigan Dep't of State Police*, 491 U.S. —, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). In *Will*, the Court held that states are not persons within the meaning of 42 U.S.C. § 1993. *Will*, 109 S.Ct. at 2308. In *Will*, the Court, while noting that the case did not involve the Eleventh Amendment since the underlying suit was brought in state court, *id.*, nonetheless opined that similar federalism concerns were implicated when Congress subjected a state to liability which it would not otherwise be subject to. Accordingly, the Court held that if Congress intends to preempt state sovereign immunity by subjecting a state to a federal remedy, it must make its intention to do so "unmistakably clear in the language of the statute." *Id.* at 2308-09. "In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Id.*, quoting *United States v. Bass*, 404 U.S. 336, 349, 92 S.Ct. 515, 528, 80 L.Ed.2d 488 (1971).

A straightforward application of *Will* to the facts before us leads to the conclusion that the Jones Act simply is inapplicable to the states. The Court has already held, in

CATSA does not explicitly retain sovereign immunity as to state claims. Nor could *Collins* be correctly decided if CATSA is as broad a waiver as the court maintains.

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the analogous though different context of the Eleventh Amendment, that the Jones Act is not sufficiently clear and unambiguous. *Welch*, 483 U.S. at 475-76, 107 S.Ct. at 2946-47.

Thus, either under traditional modes of statutory analysis as applied to AWCA and CATSA, or under the *Will* Court's method of interpreting federal statutes, Brown is limited to his workers' compensation remedy. Accordingly, I dissent.



STATE of Alaska, Petitioner,

v.

George KENDALL, Respondent.

No. A-9003.

Court of Appeals of Alaska.

June 22, 1990.

State appealed from an order of the Superior Court, Third Judicial District, Anchorage, Joan Katz, J., which suppressed evidence uncovered in warrantless search. The Court of Appeals, Coats, J., held that police had reasonable suspicion to stop defendant and to briefly detain him, and ultimately had sufficient information to arrest him for possession of cocaine.

Reversed.

1. Arrest \S 63.5(5)

Police had legal authority to detain defendant as part of investigative stop where defendant showed up at house that was being searched for drugs 15 minutes after anonymous call to house stated that caller would be coming with "some dope" in approximately 15 minutes, and after resident of house had told undercover agent that more cocaine would be coming at later time.

2. Arrest \S 63.5(7)

Police were entitled to use reasonable force to hold defendant after defendant, who was legally detained as part of investigative stop, attempted to flee.

3. Arrest \S 71.1(7)

Where police officers obtained sufficient information to arrest defendant for possession of cocaine at time they were struggling to arrest him for resisting arrest, cocaine found in film canister and velvet bag taken from defendant was admissible, even though officers did not arrest defendant on cocaine charges until after they had found cocaine; arrest was legal when objective information police had was sufficient to justify arrest. AS 11.71.030(a)(1); U.S.C.A. Const. Amend. 4.

4. Arrest \S 63.4(4)

Trial court should analyze objective information which police had at time they made arrest when determining whether there was probable cause to make arrest.

Michael S. McLaughlin, Asst. Dist. Atty.,
Dwayne W. McConnell, Dist. Atty., Anchorage,
and Douglas B. Bally, Atty. Gen., Juneau,
for petitioner.

Leslie A. Hiebert, Asst. Public Advocate,
and Brant McGee, Public Advocate, Anchorage,
for respondent.

OPINION

Before BRYNER, C.J., and COATS
and SINGLETON, JJ.

COATS, Judge.

On December 1, 1988, the grand jury indicted George Kendall for misconduct involving a controlled substance in the third degree, possession of cocaine, a class B felony. AS 11.71.030(a)(1). In March 1989, Kendall filed a motion to suppress evidence of a warrantless search conducted by the police on October 22, 1988, which resulted in the discovery of the cocaine. Following an evidentiary hearing, Superior Court Judge Joan Katz granted Kendall's motion and suppressed the evidence. The state filed a petition for review in this court.

Beard Stacey Trueb & Jacobsen, LLP

ATTORNEYS AT LAW

821 N Street, Suite 205 • Anchorage, Alaska 99501

March 24, 2003

Sent Via DHL Overnight & Facsimile (907) 465-3871 (2, page(s))

Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Re: Senate Bill 120

Dear Con:

As a constituent of your district for the last 11 years, I have chatted with you on a number of occasions regarding various issues. I write to you concerning Senate Bill 120, which has been referred to your committee, Senate Labor and Commerce.

I am writing to inform you that I have several objections to this legislation. My law firm has represented some of the State's employees who are now covered under the federal law known as the Jones Act. We are maritime law experts and, therefore, have considerable knowledge concerning this bill.

First, the bill would create second-class citizens out of the State's Marine Highway employees. Every seaman in the State would be able to seek compensation under the Jones Act except the State's Marine Highway employees. If a person is employed as a commercial fisherman, for a tugboat company, or for Tote or CSX Lines, they are covered under the Jones Act and entitled to those remedies. The only exception would be State marine workers. Passage of this bill may indeed violate Article I, Section 1 of the Alaska Constitution guaranteeing equal protection of the laws to all citizens.

Second, in a long line of cases the United States Supreme Court, and every state court that has considered the issue, has held that states cannot apply worker's compensation statutes to merchant seamen. The reasoning is two-fold. The primary obstacle is the fact that a seaman's remedies are maritime in nature and under the purview of federal admiralty jurisdiction. Under the federal Constitution, maritime matters are reserved for the federal legislature to the exclusion of the states. In short, there is a federal constitutional bar to the states applying state workers' compensation laws to seamen. The secondary reason is that Congress has completely occupied the field with a law of national application, the Jones Act, and the states may not apply inconsistent laws. These principles are well established and beyond reasonable dispute. There are two Alaska cases that have dealt directly with this issue and are consistent with every other case on the subject. These cases are: Anderson v. Alaska Packers Association, 635 P.2d 1182 (1981), and Trident v. Murray, 2000 AMC 288 (Ak. Superior

Ct. 1999). Therefore, if the Legislature were to make workers' compensation applicable to seamen, it would be a mere gratuity, or supplemental benefit, and not binding upon the injured worker.

Third, the state's waiver of sovereign immunity is contained in the Alaska Constitution. Article II, Section 21 provides: "The legislature shall establish procedures for suits against the state." (Emphasis supplied). The word "shall" is always mandatory. Article II, Section 21 abolished the doctrine of sovereign immunity in Alaska because it left no option for the legislature not to establish procedures for suits. Section 21 also mandates that the legislature establish the "procedures" for suits against the state. The word "procedures" is commonly understood to refer to the mechanics of filing suits and it has nothing to do with the substantive right to sue the state. This is the only logical manner in which Article II, Section 21 can be read. See Muskopf v. Corning Hospital District, 359 P.2d 457, 460-61 (Cal. 1961)(interpreting similar constitutional language, and judicially abolishing sovereign immunity). Accordingly, if Alaska is going to abolish sovereign immunity for these suits in its own courts it will have to do so via a constitutional amendment. Senate Bill 120 cannot accomplish the revocation of state sovereign immunity.

Fourth, the Jones Act provides that all state courts shall have concurrent jurisdiction over these suits. 45 U.S.C. § 56. The Alaska Supreme Court has held that Jones Act suits may be filed in any available forum. Nunez v. American Seafoods, 52 P.2d 720 (2002). Under federal and state case law these Jones Act suits could be filed in Bellingham, Washington because the state has a ferry terminal there and is subject to jurisdiction in that forum. The State of Alaska has no sovereign immunity in the Washington courts. Alden v. Maine, 119 S.Ct. 2240 (1999); Hall v. Nevada, 440 U.S. 410 (1979).

Acceptance of workers' compensation benefits cannot bar a Jones Act lawsuit. Chan v. Society Expeditions, Inc., 39 F.3d 1398, 1403 (9th Cir. 1994). cert. denied, 514 U.S. 1004 (1995); Roberts v. City of Plantation, 558 F.2d 750, 751 (5th Cir. 1977); Western Boat Bldg. Co. v. O'Leary, 198 F.2d 409, 411 (9th Cir. 1952); State v. Brown, 794 P.2d 108, 110, 111 (Alaska 1990). The Washington courts are constitutionally bound to apply maritime law to a Jones Act suit filed against the State of Alaska in a Washington Court. Larios v. Victory Carries, Inc., 316 F.2d 63 (2d Cir. 1963); In Re: EXXON VALDEZ, 767 F.Supp. 1509, 1513 (D. Alaska 1991). Therefore, even if Alaska could close the courthouse door to these employees in the Alaska courts, it cannot close the Washington courthouse door. The state would therefore be faced with hiring expensive private counsel to defend itself from the lawsuits that would be filed in the Washington courts.

Fifth, there is no empirical evidence that the state would obtain any savings by covering these workers under the workers' compensation scheme. I am familiar with only one scientific study of the issue by the American Waterways Operators. That organization looked at 371 cases that were covered by workers' compensation and the

Senator Con Bunde
March 24, 2003
Page 3 of 3

Jones Act, and concluded that it was less expensive to compensate workers under the Jones Act.

In summary, Senate Bill 120, if passed will not accomplish its goals. It will lead to expensive and protracted litigation, make second-class citizens out of state employed seamen, and create confusion and uncertainty for injured workers.

In order to aid your staff in consideration of these technical legal matters. I will in the near future send you a legal brief on the matters outlined above. I respectfully request you to carefully consider the above comments while considering the wisdom of this legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lanning M. Trueb", is written over the typed name. The signature is somewhat stylized and cursive.

Lanning M. Trueb

SENATE FINANCE COMMITTEE

SIGN-IN

SB 120-CLAIMS BY STATE-EMPLOYED SEAMEN

NAME: Tom Briggs Subject/Bill No: SB120
Co./Dept./Title: Director, Alaska Marine Highway Phone: 465-6977
Address: 3 mi Zip: _____
Do you wish to testify? ___ Yes ___ No Respond To Questions

NAME: Lynn Melin Subject/Bill No: SB120
Co./Dept./Title: Sr. Port Capt. ANHS Phone: 465-8801
Address: 3132 Chavvel DR Zip: 99801
Do you wish to testify? ___ Yes ___ No Respond To Questions

✓ NAME: Paul Grossi Subject/Bill No: SB 120
Co./Dept./Title: Dept of Labor + W. D / W. Comp Dir Phone: 465-2796
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No Respond To Questions

✓ NAME: BRAD THOMPSON Subject/Bill No: SB 120
Co./Dept./Title: ADMIN - RISK MGMT Phone: 465-5723
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No Respond To Questions

✓ NAME: SUSAN COX Subject/Bill No: SB 120
Co./Dept./Title: LAW - TORTS Phone: 465-3600
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 120-CLAIMS BY STATE-EMPLOYED SEAMEN

X NAME: Tom Briggs Subject/Bill No: SB120
Co./Dept./Title: Director Alaska Marine Highway Phone: 465-6977
Address: 3 mile DOT Bldg. Zip: _____
Do you wish to testify? ~~Yes~~ ___ No Respond To Questions

Y NAME: Lynn Melio Subject/Bill No: SB120
Co./Dept./Title: AMHS-1 Port Captain ^{Senior} Phone: 465-8801
Address: 3132 Channel Drive Zip: 99801
Do you wish to testify? ~~Yes~~ ___ No Respond To Questions

NAME: SUSAN COX Subject/Bill No: SB120
Co./Dept./Title: DEPT OF LAW Phone: 465-3600
Address: _____ Zip: _____
Do you wish to testify? Yes ___ No ___ Respond To Questions

NAME: BRAD THOMPSON Subject/Bill No: SB120
Co./Dept./Title: DIRECTOR - RISK MGMT Phone: 465-5723
Address: _____ Zip: _____
Do you wish to testify? Yes ___ No ___ Respond To Questions

NAME: Paul Grassi Subject/Bill No: SB 120

Co./Dept./Title: Dept of Labor + W D / Director Work Comp Phone: 465-2790

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: Susan Cox Subject/Bill No: SB 120

Co./Dept./Title: Dept of Law / Asst. AG Phone: 465-3600

Address: PO Box 110300, Juneau Zip: 99811

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/6/03

FURTHER: Finance

Date of 5-Day Notice: 3/20/03
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/1/03

Labor and Commerce Committee considered SENATE BILL NO. 120

SB 120 STATE-EMPLOYED SEAMEN

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

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# |
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| LWF | 3/31/03 | X | | 2 |
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
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| ADM | 3/6/03 | | X | 1 |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|---------------------------|---------|-------------|--------|-------|
| Davis | <i>Bettye Davis</i> | | | X | |
| French | <i>[Signature]</i> | X | | | |
| Seekins | <i>Ralph Seekins</i> | ✓ | | | |
| G. Stevens | <i>[Signature]</i> | X | | | |
| | | | | | |
| Bunde | CHAIR: <i>[Signature]</i> | ✓ | | | |