

HB

245

COMPARISON OF SB 171 WITH CSHB 245(JUD)

- The substantive change between the two versions of the bill is the deletion from CSHB 245(JUD) of all references to "homeland security". Thus CSHB 245(JUD) omits homeland security workers and homeland security activities from the amendments to Title 26, relating to civil defense.
- The sections of the bill affected by this substantive change are sections 7 through 10 of SB 171.
- CSHB 245(JUD) also reflects formatting changes made by Legislative Legal Counsel. It is anticipated that if there is a committee substitute for SB 171, Legislative Legal Counsel will incorporate the same formatting changes.

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

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

*1031 WEST 4TH AVENUE, SUITE 200
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May 15, 2003

Senator Ralph Seekins
Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: SB 171 – “An act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date”

Dear Seantor Seekins:

I am writing this letter to request that you and your committee consider and adopt the attached amendments to the subject bill. These amendments are consistent with those made by the House in CSHB (JUD) which has also been referred to your committee.

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

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:

David W. Marquez
Assistant Attorney General

DWM/pr

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

AMENDMENT

OFFERED IN THE SENATE JUDICIARY
COMMITTEE
TO: SB 171

BY _____

1 Page 1, line 2, following "**militia;**":

2 Insert "**relating to workers' compensation and death benefits for members of the**
3 **organized militia;**"

4

5 Page 1, line 3:

6 Delete "**homeland security,**"

7

8 Page 3, line 27:

9 Delete "**or homeland security**"

10

11 Page 4, line 3:

12 Delete "**or homeland security**"

13

14 Page 4, line 4:

15 Delete "**or homeland security**"

16

17 Page 4, line 12:

18 Delete "**or homeland security**"

19

20 Page 4, line 13:

21 Delete "**or homeland security**"

22

23 Page 4, lines 30 - 31:

1 Delete "or homeland security"

2

3 Page 5, lines 12 - 15:

4 Delete all material.

5

6 Renumber the following bill sections accordingly.

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 Daughhettee for Gregg D. Renkes, Attorney General Date: 1/27/2003
Agency: Department of Law

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 245

ANALYSIS CONTINUATION

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The state's self insurance program for tort liability exposures will be favorably affected by this bill.

The limitation of civil actions arising out of certain claims & suits by members of the military service 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
Division: Risk Management
Approved by: Mike Miller, Commissioner
Agency: Administration

Phone: _____
Date/Time: 2/14/03 7:46 AM
Date: 2/14/2003

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HB245
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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

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investigations. 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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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
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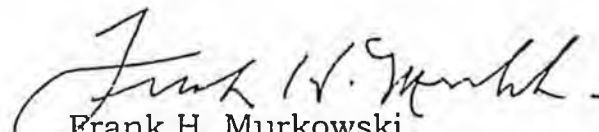
prevent, monitor, suppress, or control forest fires is one aspect of its authority to manage state forest resources. The division of forestry is asked to respond to forest fires in various geographic areas and population zones in Alaska, which often occur simultaneously during the fire season. When responding 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