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SB 338



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to: (1) indemnification of tort claims against state employees; and (2) the attorney general's decision whether to indemnify an employee and arbitration of that decision.

Current Alaska law addresses lawsuits against the state in AS 09.50.250. However, the statutes fail to address a core concept of the Federal Tort Claims Act (FTCA). Under the FTCA, if a lawsuit is filed against a federal employee, and the attorney general of the United States certifies the employee was acting in the scope of employment, the United States is substituted as the defendant for the employee. The individual employee is no longer a defendant in the case. This bill adds this critical concept to Alaska law.

This bill would allow state employees to carry out their duties knowing that if there is a lawsuit filed against them for an act or omission within the scope of their employment, the lawsuit will not proceed against them as an individual. They will not be subject to the burdens court rules place on a "party" including being subject to an award of costs and fees to a prevailing party. The public would benefit as services would not be interrupted while state employees participate in lawsuits.

The bill would further provide that the decision of the attorney general whether to indemnify an employee is not subject to arbitration. An employee who is denied indemnification can contest that decision in the courts.

I urge your prompt and favorable action on this measure.

Sincerely yours,

Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 338
 (S) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating claims against RDU Civil
state employees and claims arising.... Component Torts & Workers' Compensation
 Sponsor Rules
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends AS 09.50 by converting claims against state employees acting within the scope of their employment into claims against the state."

 Passage of this legislation is not anticipated to have any foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone _____
 Division Administrative Services Date/Time 2/13/04 3:22 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/13/2004
 Agency Department of Law

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Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

March 23, 2004

Senator Cun Bunde, Chairman
Senate Judiciary Committee
Alaska Legislature

Re: Senate Bill 338

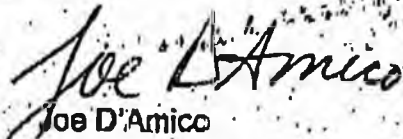
Dear Senator Bunde,

The Public Safety Employees Association (PSEA) represents over 1,300 Law Enforcement Officers from 8 different agencies throughout Alaska. We have been following Senate Bill 338 and its counterpart in the House with great interest. As you know, oftentimes a law enforcement officer has to make a life-and-death decision in a split-second. Too often, litigious suspects are able to bring a lawsuit against these public servants with little or no merit hoping for a big settlement.

In the original form, Senate Bill 338 raised concerns for our members, as some protections provided for in the Collective Bargaining Agreement would have been lost. However, after working with representatives of the Attorney General, we were pleased to see amendments which resulted in the adoption of the Committee Substitute. The CS actually increases the level of protection for Law Enforcement Officers from these types of suits.

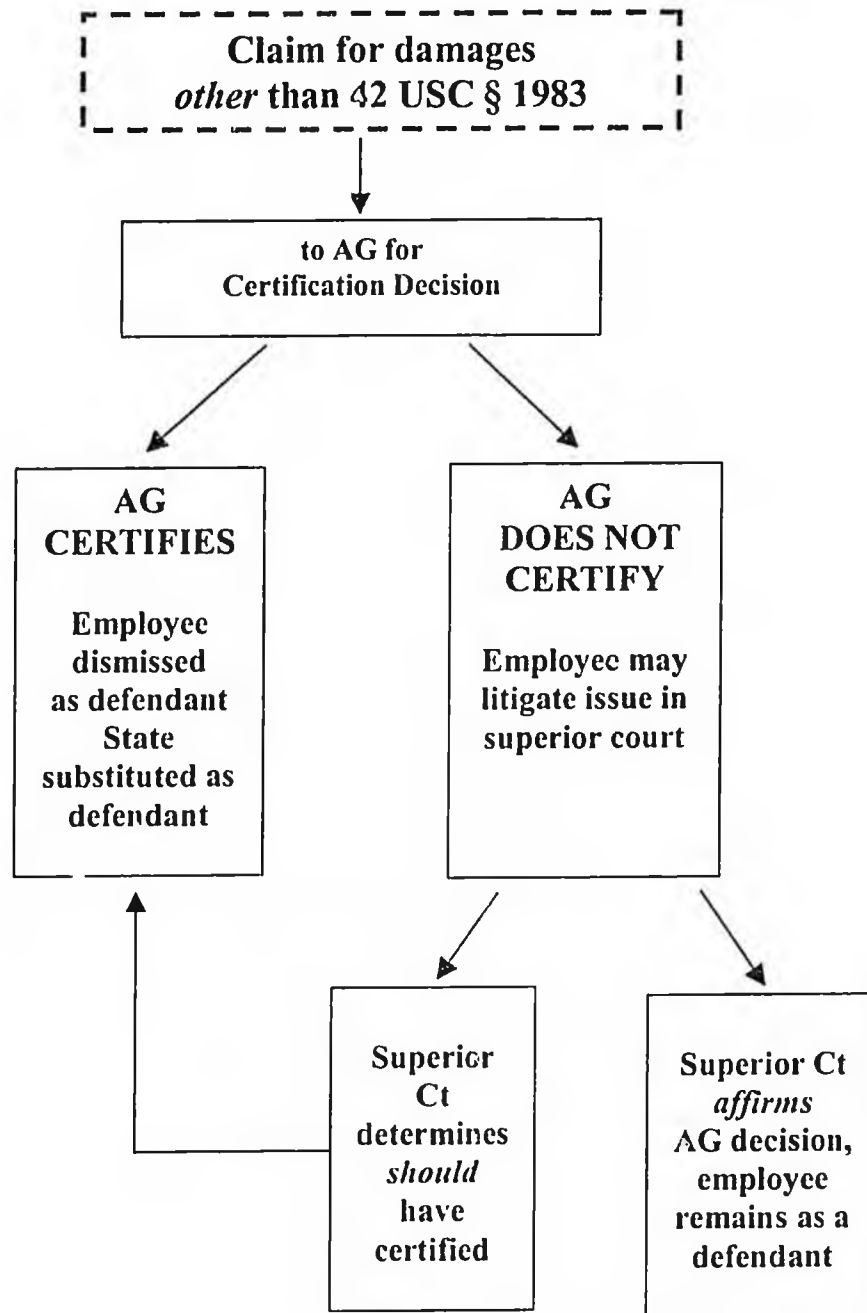
The Public Safety Employees Association supports the CS for Senate Bill 338 in its current form. If you or any other members of the Judiciary Committee have any questions, please feel free to contact me.

Sincerely,


Joe D'Amico
Business Manager
Public Safety Employees Association

SB 338 -- HOW IT WORKS

State employee individually sued for damages



CS FOR SENATE BILL NO. 338 (STA)
"AN ACT RELATING TO ACTIONABLE CLAIMS
AGAINST STATE EMPLOYEES"

SECTIONAL ANALYSIS
OFFICE OF THE ATTORNEY GENERAL

Section 1: Creates new sections in Title 9. Proposed 09.50.253 converts lawsuits and claims against individual state employees,¹ when acting within the scope of the employee's office or employment, into a claim against the state. The state is substituted as the defendant in the action. It provides that the Attorney General determines whether the claim arose within the scope of the employee's office or employment. ("acting within the scope of the employee's office or employment" is defined on page 3, following line 12 in (h) of the bill). The Attorney General then certifies the action and the individually sued state employee is dismissed from the lawsuit with the state substituted as the defendant. The attorney general or the attorney general's designee then defends the action. All defenses and limitations applicable to the state are then applicable to the action.

If the Attorney General does not certify that the state employee was acting within the scope of the employee's office or employment, the state employee may petition the superior court for relief. If the superior court finds that the state employee was acting within the scope of office or employment, the state is substituted as the defendant and the state employee is

¹ Excluded from the definition of "state employee" are the University of Alaska, the Alaska Railroad Corporation, and a political subdivision of the state. The Attorney General does not provide representation to these entities and each may sue and be sued pursuant to its own authorizing statutes. (University of Alaska, AS 14.40.040; Alaska Railroad Corporation, AS 42.40.010, AS 42.40.900; and political subdivisions of the state, AS 09.65.070)

entitled to reimbursement by the state for the employee's reasonable costs and attorney fees incurred in filing the successful superior court petition.

The section does not apply to civil actions or proceedings against a state employee for a violation of the United States Constitution or in violation of a state statute expressly authorizing an action.

Subsection (g) provides that the certification process is in addition to and does not supercede legal defense and indemnity terms in state collective bargaining agreements.

Section 2: This is a conforming amendment to AS 09.50.300.

Section 3: This section applies the law prospectively, to causes of action arising after it is enacted.

Section 4: Includes instructions to the Revisor to change the heading of art. 3 of AS 09.50.

Section 5: Provides an immediate effective date.