

**HB**

**104**

<TARGET><BILL>HB 104</BILL><SUBJECT>HB  
104</SUBJECT><COMM>HCRA29</COMM></TARGET>

# Representative Cathy Tilton

*Alaska State Legislature – House District 12*



## **SPONSOR STATEMENT**

### **Immunity for Fire Department and Members**

House Bill 104 is a companion to Senate Bill 43 which extends protections to certain types of fire departments.

Under existing statute in AS 09.65.070(c) members and employees of municipal or village operated and maintained fire departments are protected from liability. However, because of the language specifying municipal and village operated and maintained fire departments, contracted volunteer and non-profit fire departments such as those in Chugiak, Fairbanks, and Girdwood, don't receive the same protection.

Because of the relationship of contracted fire departments with the government in their responsibility to provide their service, the same liability protections should be extended as those afforded to the employees of fire departments operated by municipalities.

State Capitol Rm. 411  
907.465.2199  
Rep.Cathy.Tilton@akleg.gov

# Fiscal Note

State of Alaska  
2015 Legislative Session

Bill Version: HB 104  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB104-DPS-FLS-02-27-15  
Title: IMMUNITY FOR FIRE DEPT. & MEMBERS  
Sponsor: TILTON  
Requester: (H) Community & Regional Affairs

Department: Department of Public Safety  
Appropriation: Fire and Life Safety  
Allocation: Fire and Life Safety  
OMB Component Number: 2883

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2016 Request	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</b>	<b>FY 2016</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

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**Estimated SUPPLEMENTAL (FY2015) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2016) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **No**  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Kelly Howell, Director  
Division: Administrative Services  
Approved By: Gary Folger, Commissioner  
Agency: Public Safety

Phone: (907)465-4336  
Date: 02/27/2015 05:35 PM  
Date: 02/27/15

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2015 LEGISLATIVE SESSION

BILL NO. HB 104

**Analysis**

This bill repeals and reenacts AS 09.65.070(c) relating to suits against incorporated units of local government; specifically as they relate to immunity for a fire department and employees or members of a fire department to extend immunity to contracted fire departments. The bill also adds a definition of "fire department" for purposes of this subsection.

This bill would have no fiscal impact on the Department of Public Safety's Division of Fire and Life Safety.

AMENDMENT

OFFERED IN THE HOUSE  
TO: HB 104

BY REPRESENTATIVE TILTON

1 Page 1, lines 7 - 8:

2 Delete "a fire department or"

3

4 Page 1, line 8, following "department.":

5 Insert "An action for tort or breach of a contractual duty based on the act or omission  
6 of an employee or member of a fire department in the execution of a function for which the  
7 department is established may not be maintained against a fire department unless the action  
8 alleges intentional misconduct or gross negligence."

9

10 Page 1, following line 12:

11 Insert a new bill section to read:

12 "\*\* Sec. 2. AS 09.65.070(d) is amended to read:

13 (d) Notwithstanding (c) of this section, an [AN] action for damages may not  
14 be brought against a municipality or any of its agents, officers, or employees if the  
15 claim

16 (1) is based on a failure of the municipality, or its agents, officers, or  
17 employees, when the municipality is neither owner nor lessee of the property  
18 involved,

19 (A) to inspect property for a violation of any statute, regulation,  
20 or ordinance, or a hazard to health or safety;

21 (B) to discover a violation of any statute, regulation, or  
22 ordinance, or a hazard to health or safety if an inspection of property is made;

23 or

1 (C) to abate a violation of any statute, regulation, or ordinance,  
2 or a hazard to health or safety discovered on property inspected;

3 (2) is based upon the exercise or performance or the failure to exercise  
4 or perform a discretionary function or duty by a municipality or its agents, officers, or  
5 employees, whether or not the discretion involved is abused;

6 (3) is based upon the grant, issuance, refusal, suspension, delay, or  
7 denial of a license, permit, appeal, approval, exception, variance, or other entitlement,  
8 or a rezoning;

9 (4) is based on the exercise or performance during the course of  
10 gratuitous extension of municipal services on an extraterritorial basis;

11 (5) is based upon the exercise or performance of a duty or function  
12 upon the request of, or by the terms of an agreement or contract with, the state to meet  
13 emergency public safety requirements; or

14 (6) is based on the exercise or performance of a duty in connection  
15 with an enhanced 911 emergency system and is not based on an intentional act of  
16 misconduct or on an act of gross negligence."

29-LS0550\W  
Shutts  
3/9/15

**CS FOR HOUSE BILL NO. 104( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-NINTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE TILTON**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to immunity for a fire department and employees or members of a fire**  
2 **department."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 09.65.070(c) is repealed and reenacted to read:

5 (c) An action for tort or breach of a contractual duty based on the act or  
6 omission of an employee or member of a fire department in the execution of a function  
7 for which the department is established may not be maintained against an employee or  
8 member of a fire department. An action for tort or breach of a contractual duty based  
9 on the act or omission of an employee or member of a fire department in the execution  
10 of a function for which the department is established may not be maintained against a  
11 fire department unless the action alleges intentional misconduct or gross negligence.  
12 This subsection does not apply to an action for tort or breach of a contractual duty  
13 based on the act or omission of an employee or member of a fire department in the  
14 execution of a duty under contract with a private entity. In this subsection, "fire

1 department" means a fire department that is

2 (1) operated and maintained by a municipality or village; or

3 (2) registered with the state fire marshal and provides services under  
4 contract or agreement with a municipality or village.

5 \* Sec. 2. AS 09.65.070(d) is amended to read:

6 (d) Notwithstanding (c) of this section, an [AN] action for damages may not  
7 be brought against a municipality or any of its agents, officers, or employees if the  
8 claim

9 (1) is based on a failure of the municipality, or its agents, officers, or  
10 employees, when the municipality is neither owner nor lessee of the property  
11 involved,

12 (A) to inspect property for a violation of any statute, regulation,  
13 or ordinance, or a hazard to health or safety;

14 (B) to discover a violation of any statute, regulation, or  
15 ordinance, or a hazard to health or safety if an inspection of property is made;  
16 or

17 (C) to abate a violation of any statute, regulation, or ordinance,  
18 or a hazard to health or safety discovered on property inspected;

19 (2) is based upon the exercise or performance or the failure to exercise  
20 or perform a discretionary function or duty by a municipality or its agents, officers, or  
21 employees, whether or not the discretion involved is abused;

22 (3) is based upon the grant, issuance, refusal, suspension, delay, or  
23 denial of a license, permit, appeal, approval, exception, variance, or other entitlement,  
24 or a rezoning;

25 (4) is based on the exercise or performance during the course of  
26 gratuitous extension of municipal services on an extraterritorial basis;

27 (5) is based upon the exercise or performance of a duty or function  
28 upon the request of, or by the terms of an agreement or contract with, the state to meet  
29 emergency public safety requirements; or

30 (6) is based on the exercise or performance of a duty in connection  
31 with an enhanced 911 emergency system and is not based on an intentional act of

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misconduct or on an act of gross negligence.



## Fairbanks North Star Borough Mayor's Office

809 Pioneer Road PO Box 71267 Fairbanks, Alaska 99707-1267 (907)459-1300 FAX (907)459-1102

March 2, 2015

The Honorable Cathy Tilton  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

RE: Support for HB 104

Representative Tilton:

I write this letter today in support of House Bill 104, an act relating to immunity for a fire department and employees or members of a fire department. Thank you as well for your personal support in moving this important piece of legislation forward.

HB 104 clarifies state law to provide clear immunity protection for employees, members or trained volunteers of a fire department that provides municipal fire service pursuant to a contract with a municipality. Most residents of the Fairbanks North Star Borough living outside of the Cities of Fairbanks and North Pole reside within one of our fire service areas – and therefore receive fire protection by one of our volunteer fire departments.

All of the Fairbanks North Star Borough fire service areas contract with non-profit corporations for fire service, most of which is ultimately provided by volunteers. HB 104 proposes to change state law to ensure that these volunteers and/or employees receive immunities provided to individuals working directly for a municipality. HB 104 also extends limited immunity to municipal and contracted fire departments.

Fire service volunteers are among the unsung heroes of our community. The sacrifices these volunteers make in the name of public safety are inspiring. All give up leisure time with family and friends to attend mandatory safety trainings and drills. Many have reported for duty on frigid nights when the bitter cold makes handling machinery, tools and vehicles hazardous. Too often, their volunteer duties include consoling neighbors faced with losses of property, heirlooms and irreplaceable family keepsakes. Finally - and most importantly - every volunteer does his or her duty with the full knowledge that they put their lives (and often their health) on the line in order to make their community a safer place.

HB 104 will not make firefighting safer. HB 104 will not reduce the days and hours that these volunteers spend away from their family and friends in the name of public safety. Rather, HB 104 will provide these fire service employees and volunteers with the legal protection to continue to perform their duty.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Luke Hopkins'.

Mayor Luke Hopkins