

SB

43

**<TARGET><BILL>SB 43</BILL><SUBJECT>SB
43</SUBJECT><COMM>SJUD29</COMM></TARGET>**

Alaska State Legislature

Senate Majority Leader

Joint Armed Services Committee
Co-Chairman
Judiciary Committee
Vice-Chairman
Resources Committee
State Affairs Committee
Legislative Council
Rules Committee



Senator John Coghill

Session Address:
State Capitol, Room 119
Juneau, AK 99801-1182
(907) 465-3719
Fax (907) 465-3258

Interim Address:
1292 Sadler Way, Suite 340
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(907) 451-2997
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www.aksenate.org

SUMMARY OF CHANGES Immunity for Fire Dept. & Members

(S)CRA

From version W to H

Section 1: An exception to the immunity was made for intentional acts of misconduct or gross negligence.

Section 2: "Notwithstanding (c) of this section" was added to ensure that subsection C does not inadvertently limit the immunities provided in subsection D.

(S)JUD

From version H to P

Section 1: An exception to the immunity was created if the legal action taken is based on the act or omission of an employee or member of a fire department in the execution of a duty under contract with a private entity.

29-LS0325P
Shutts
3/17/15

CS FOR SENATE BILL NO. 43(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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presumptive cancer
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Sponsor(s): SENATORS COGHILL, Stoltze, Egan

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4 *** Section 1.** AS 09.65.070(c) is repealed and reenacted to read: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 or
12 is based on the act or omission of an employee or member of a fire department in the
13 execution of a duty under contract with a private entity. In this subsection, "fire
14 department" means a fire department that is

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- (1) operated and maintained by a municipality or village; or
- (2) registered with the state fire marshal and provides services under contract or agreement with a municipality or village.

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

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

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

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

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

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

(2) is based **on** [UPON] the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based **on** [UPON] the grant, issuance, refusal, suspension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

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

(5) is based **on** [UPON] the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements; or

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

Alaska State Legislature

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SPONSOR STATEMENT **Immunity for Fire Dept. & Members** **Version H**

Senate Bill 43 extends protections to fire departments and employees of certain types of fire departments.

Under current law, employees of municipal fire departments receive immunity from liability. However, some fire departments, such as those in Fairbanks, Chugiak, and Girdwood, operate as volunteer-based non-profits that contract with local governments to provide services. These types of fire departments aren't similarly protected in statute.

Liability protections should not be exclusive to employees of fire departments operated by municipalities and should be extended to include all fire departments that have a contractual relationship with local governments.

Senate Bill 43 also extends immunity available to municipal fire departments and to contracted fire departments. While municipal fire departments already have some statutory protections, contract fire departments have none. Because the current statute does not protect them from liability, these fire departments, local governments, and ultimately taxpayers, are vulnerable.

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5 contract departments in Fairbanks

Alaska State Legislature

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SUMMARY OF CHANGES Immunity for Fire Dept. & Members

(S)CRA

From version W to H

Section 1: An exception to the immunity was made for intentional acts of misconduct or gross negligence.

Section 2: "Notwithstanding (c) of this section" was added to ensure that subsection C does not inadvertently limit the immunities provided in subsection D.

Sec. 09.65.070. Suits against incorporated units of local government.

(a) Except as provided in this section, an action may be maintained against a municipality in its corporate character and within the scope of its authority.

(b) A municipality may not require a person to post bond as a condition to bringing a cause of action against it.

(c) An action may not be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort or breach of a contractual duty and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.

(d) An action for damages may not be brought against a municipality or any of its agents, officers, or employees if the claim

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

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

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

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

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

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

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

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

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

(e) In this section

(1) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality;

(2) "village" means an unincorporated community where at least 25 people reside as a social unit.

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version:	CSSB 43(CRA)
Fiscal Note Number:	1
(S) Publish Date:	3/6/2015

Identifier: SB043-DOT-IASO-2-16-15
 Title: IMMUNITY FOR FIRE DEPT. & MEMBERS
 Sponsor: COGHILL
 Requester: (S) Community & Regional Affairs

Department: Department of Transportation and Public Facilities
 Appropriation: International Airports
 Allocation: International Airport Systems Office
 OMB Component Number: 1649

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
OPERATING EXPENDITURES	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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? N/A

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Mary Siroky, Director	Phone:	(907)465-8974
Division:	Administrative Services Division	Date:	02/16/2015 04:45 PM
Approved By:	Mary Siroky, Director	Date:	02/16/15
Agency:	Administrative Services Division		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Analysis

DOT&PF's Airport Police & Fire Officer (APFO) units (at Anchorage Intl and Fairbanks Intl only) are registered fire departments under the state, with liability coverage. Additionally, our rural aircraft rescue and firefighting (ARFF) personnel are Maintenance & Operations folks trained in firefighting skills and, to the best of our knowledge, have mutual aid agreements with every community in which they are located, i.e., in the certificated Part 139 airports – the hubs. They do respond to local situations, as they are on the state time clock to ensure continued state coverage for those situations. **However**, those personnel are NOT registered fire departments like the international airports are.

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version:	CSSB 43(CRA)
Fiscal Note Number:	2
(S) Publish Date:	3/6/2015

Identifier: SB043-DPS-FLS-02-16-15
 Title: IMMUNITY FOR FIRE DEPT. & MEMBERS
 Sponsor: COGHILL
 Requester: (S) 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 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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	Phone:	(907)465-4336
Division:	Administrative Services	Date:	02/16/2015 03:00 PM
Approved By:	Gary Folger, Commissioner	Date:	02/16/15
Agency:	Public Safety		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

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. 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.

Introduced by: James Baisden
Requested by: Mitch Flynn
Drafted by: Mitch Flynn
Introduced on: 03/04/2015
Adopted on: 03/5/2015

**ALASKA FIRE CHIEFS ASSOCIATION
RESOLUTION
NO. 2015-01**

A RESOLUTION OF THE ALASKA FIRE CHIEFS ASSOCIATION SUPPORTING SENATE BILL 43, AND HOUSE BILL 104 AN ACT RELATING TO IMMUNITY FOR A FIRE DEPARTMENT AND EMPLOYEES OR MEMBERS OF A FIRE DEPARTMENT

WHEREAS, SB43 and HB104 provides immunity protection from liability for fire departments and their employees in the performance of their job; and

WHEREAS, it provides immunity protection from liability to municipal fire departments and their employees; and

WHEREAS, an action for tort or breach of a contractual duty based on the act or omission of an employee or member of a fire department in the execution of a function for which the department is established may not be maintained against an employee or member of a fire department; and

WHEREAS, an action for tort or breach of a contractual duty based on the act or omission of an employee or member of a fire department in the execution of a function for which the department is established may not be maintained against a fire department unless the action alleges intentional misconduct or gross negligence; and

WHEREAS, fire department defined means a "fire department that is operated and maintained by a municipality or village", or "registered with the state fire marshal" that provides services under contract or agreement with a municipality or village;

NOW, THEREFORE BE IT RESOLVED BY THE ALASKA FIRE CHIEFS ASSOCIATION SUPPORTS PASSAGE OF SB43 and HB104.

ADOPTED BY THE ALASKA FIRE CHIEFS ASSOCIATION ON THIS 5TH DAY OF MARCH 2015.

James C Baisden

James Baisden, President, AFCA



Interior Fire Chiefs Association

P.O. Box 70986
Fairbanks, Alaska 99707-0986
(907) 488-0444
Bryan (Buddy) Lane, President

March 4, 2015

Senators
Alaska State capitol
Juneau, Alaska 99801

Re; Support of SB 43

Senators,

On behalf of the Interior Fire Chiefs I am writing this letter in support of Senate Bill 43 that provides immunity from liability protection for fire departments and its members who contract services with a municipality or are employees of a municipality while performing duties of service. We support language that excludes gross negligence and willful misconduct by fire department employees.

SB 43 clarifies state law providing a clear immunity protection for fire departments and its members. This immunity will provide legal protection to fire departments and firefighters which will help reduce or eliminate costly lawsuits that could have a negative impact on the local taxpayer.

Thank you for your support of SB 43.

Buddy Lane
President, Interior Fire Chiefs Association



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 John Coghill
State Senate
Alaska State Capitol
Juneau, Alaska 99801-1182

RE: Support for SB43

Senator Coghill:

I write this letter today in support of Senate Bill 43, 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.

SB 43 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. As you are aware, 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. SB 43 proposes to change state law to ensure that these volunteers and/or employees receive immunities provided to individuals working directly for a municipality. SB 43 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.

SB 43 will not make firefighting safer. SB 43 will not reduce the days and hours that these volunteers spend away from their family and friends in the name of public safety. Rather, SB 43 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', written over a white background.

Mayor Luke Hopkins

ANCHORAGE FIRE DEPARTMENT



Dan Sullivan
Mayor

Headquarters
100 East 4th Avenue
Anchorage, Alaska 99501
Phone (907) 267-4936 / Fax (907) 267-4977



John Fullenwider
Fire Chief

March 16, 2015

Senator John Coghill
Senate Majority Leader
State Capitol, Room 119
Juneau, Alaska 99801-1182

Representative Cathy Tilton
State Capitol, Room 411
Juneau, Alaska 99801-1182

Re: Senate Bill 43 and House Bill 104 – Anchorage Fire Department Support

Senator Coghill and Representative Tilton

I am writing to express the Anchorage Fire Department support for the proposed amendment to AS 09.65.70© as detailed in Senate Bill 43 and Committee Substitute House Bill 104.

Anchorage Fire Departments, both municipal and volunteer agencies, rely on each other via mutual aid agreements. These bills, if enacted, will protect residents by reducing the risk of liability and frivolous tort claims against municipal and non-profit fire agencies. This will translate to more effective mutual aid support, lower costs, and better services to all Anchorage area residents.

Please encourage your colleagues in the Senate and House of Representatives to support this legislation.

Yours sincerely,

A handwritten signature in cursive script that reads "John Fullenwider".

Chief John Fullenwider



CITY OF FAIRBANKS

John Eberhart, Mayor

800 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4615

OFFICE: 907-459-6793

FAX: 907-459-6787

mayor@ci.fairbanks.ak.us

March 9, 2015

Senator John Coghill
Senate Majority Leader
State Capitol, Room 119
Juneau, Alaska 99801-1182

Representative Steve Thompson
Co-Chair House Finance Committee
State Capitol, Room 515
Juneau, AK 99801-1182

Re: Senate Bill 43 and House Bill 104 – City of Fairbanks Support

Senator Coghill and Representative Thompson,

I am writing to express the City of Fairbanks' support for the proposed amendment to AS 09.65.70(c) as detailed in Senate Bill 43 and House Bill 104.

Fairbanks area fire departments, both municipal and volunteer agencies, rely on each other via mutual aid agreements. These bills, if enacted, will protect residents by reducing the risk of liability and frivolous tort claims against municipal and non-profit fire agencies. This will translate to more effective mutual aid support, lower costs, and better services to all Fairbanks area residents.

Please encourage your colleagues in the Senate and House of Representatives to support this legislation.

Yours sincerely,

A handwritten signature in blue ink that reads "John Eberhart".

Mayor John Eberhart

cc: Warren Cummings, Fire Chief
Jim Williams, Chief of Staff
Paul Ewers, City Attorney

CS FOR SENATE BILL NO. 43()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION**

BY

Offered:

Referred:

Sponsor(s): SENATORS COGHILL, Stoltze, Egan

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to immunity for a fire department and employees or members of a fire**
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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
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11 fire department unless the action alleges intentional misconduct or gross negligence or
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- (1) operated and maintained by a municipality or village; or
- (2) registered with the state fire marshal and provides services under contract or agreement with a municipality or village.

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

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

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

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

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

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

(2) is based on [UPON] the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based on [UPON] the grant, issuance, refusal, suspension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

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

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

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