

ALASKA LEGISLATURE

2545

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

HB

245

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED ON

MAY 19 2003

SENATE FINANCE
COMMITTEE

DATE: 5/18/03

FURTHER:

DATE TURNED
IN TO OFFICE: 19 May 2003

Finance Committee considered CS FOR HOUSE BILL NO. 245(JUD)(efd fid)

HB 245 SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

"An Act relating to certain suits and claims by members of the military services; relating to certain suits and claims regarding acts or omissions of the organized militia; relating to workers' compensation and death benefits for members of the organized militia; relating to liability arising out of certain search and rescue, civil defense, fire management, and fire fighting activities."

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#
Law	1/27/03		✓	#1
DNR	2/3/03		✓	#2
Admin	2/14/03	*		#3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Kevin Taylor</i>		✓		
<i>Ann Holt</i>		✓		
<i>Thomas J. Alford</i>		✓		
<i>Bob Cende</i>	✓			
<i>Ben Stevens</i>	✓			
COCHAIR: <i>Linda Green</i>	✓			
COCHAIR: <i>Brony W...</i>			✓	

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 Daughhete 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.

MAY 19 2003

SENATE FINANCE
COMMITTEE

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

REPORTED OUT

MAY 19 2003

SENATE FINANCE
COMMITTEE

**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 services 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

SENATE FINANCE COMMITTEE
5/19/2003 COMMITTEE ACTION

Bill Number	HB 245		
Amendment			
Motion	to Report		
<u>Motion by</u>	Taylor		
<u>Objection by</u> <u>Removed</u>	Taylor		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			✓
Senator Olson			✓
Senator Stevens	✓		
Senator Taylor			✓
Senator Bunde	✓		
Co-Chair Green	✓		
Co-Chair Wilken	✓		
<u>Tally</u>			
Yea	4		
Nay	3		
Absent			
<u>MOTION</u>	PASSED		

Failed

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-GH1025V

Ford

5/18/03

SENATE CS FOR CS FOR HOUSE BILL NO. 245()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain suits and claims by members of the military services;
2 relating to certain suits and claims regarding acts or omissions of the organized militia;
3 relating to workers' compensation and death benefits for members of the organized
4 militia; relating to liability arising out of certain search and rescue, civil defense, fire
5 management, and fire fighting activities."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 PURPOSE. The purpose of secs. 3 - 6 of this Act is to

10 (1) provide the State of Alaska and state military and other personnel, through
11 the immunity provided in this Act, with the same protection from civil actions for damages
12 that the federal government and federal military personnel are provided under federal case law
13 and statute, except for gross negligence or reckless or intentional misconduct:

1 (2) ensure that military service decisions are based on the judgment and needs
2 of the militia rather than on concerns for possible tort exposure;

3 (3) recognize that injured military service members or their families are
4 entitled to various federal military and veterans' benefits for injuries or death occurring in the
5 course of the member's military service for the Alaska National Guard while not on state
6 active duty;

7 (4) recognize that the federal government and not the State of Alaska is
8 responsible for providing benefits to injured military service members or their families for
9 injuries or death occurring in the course of the member's military service for the Alaska
10 National Guard while not on state active duty; and

11 (5) recognize that the federal government and not the State of Alaska is
12 responsible for property damage, injuries, or death, resulting from the acts or omissions of
13 members of the Alaska National Guard who are under the command of the federal
14 government.

15 * **Sec. 2.** AS 18.60 is amended by adding a new section to read:

16 **Sec. 18.60.125. Civil immunity.** A person may not bring a civil action for
17 damages against the state, a political subdivision of the state, or the officers, agents, or
18 employees of the state or a political subdivision of the state for a death, personal
19 injury, or property damage that results from an act or omission in performing or failing
20 to perform activities or duties authorized under AS 18.60.120 - 18.60.175. This
21 section does not apply to a civil action for damages as a result of gross negligence or
22 reckless or intentional misconduct.

23 * **Sec. 3.** AS 26.05.140 is amended by adding a new subsection to read:

24 (b) The state has not waived its sovereign immunity and is not liable for the
25 acts or omissions of members of the organized militia, unless those members were
26 ordered into active state service by the governor under AS 26.05.070 and the members
27 were acting in the line of duty of those orders. This subsection does not apply to a
28 civil action for damages as a result of gross negligence or reckless or intentional
29 misconduct.

30 * **Sec. 4.** AS 26.05 is amended by adding a new section to read:

31 **Sec. 26.05.145. Suits by members of the military services.** (a) A civil

1 action for damages may not be brought by or on behalf of a member of the military
2 services against the state or against any employee of the state or any member or
3 former member of the Alaska militia for wrongful death, personal injury, or other tort
4 claim or injury arising out of activities that were incident to the member's military
5 service.

6 (b) In this section, "military service" means service in the United States
7 military, the militia described in AS 26.05.010(b), or the national guard of another
8 state.

9 (c) This section does not apply to a civil action for damages as a result of
10 gross negligence or reckless or intentional misconduct.

11 * Sec. 5. AS 26.05.260(d) is amended to read:

12 (d) A member of the organized militia who, while performing duties under
13 AS 26.05.070, including transit to and from the member's home of record, suffers an
14 injury or disability in the line of duty is entitled to all compensation and benefits
15 available under AS 23.30 (Alaska Workers' Compensation Act). For a member of the
16 Alaska State Defense Force, compensation and benefits under this subsection are
17 provided as though the member were a state employee. A member of the organized
18 militia who has not been ordered into active state service by the governor under
19 AS 26.05.070 is not entitled to compensation and benefits under AS 23.30 (Alaska
20 Workers' Compensation Act).

21 * Sec. 6. AS 26.05.260(e) is amended to read:

22 (e) If a member of the organized militia dies as a result of an injury or
23 disability suffered in the line of duty while performing duties under AS 26.05.070,
24 including transit to and from the member's home of record, death benefits shall be paid
25 to the persons in the amounts specified in AS 23.30.215. For a member of the Alaska
26 State Defense Force, the death benefits under this subsection are provided as though
27 the member were a state employee. A person is not entitled to death benefits as
28 specified in AS 23.30.215 for a member of the organized militia who dies as a
29 result of an injury or disability suffered in the line of duty but who had not been
30 ordered into active state service by the governor under AS 26.05.070.

31 * Sec. 7. AS 26.20.140 is amended to read:

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Sec. 26.20.140. Immunity of government, [AND] employees, and authorized volunteers or other persons. (a) The [NEITHER THE] state, a [NOR ANY] district of the state, and [NOR] the employees, agents, or representatives of the state or district are not [, IS] liable for personal injury or property damage sustained by any person appointed or acting as a [VOLUNTEER] civilian defense worker. This provision does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an Act of Congress.

(b) The [NEITHER THE] state, a [NOR] district [PERSONNEL] of the state, an employee, agent, or representative [NOR, EXCEPT IN CASES OF WILFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH, THE EMPLOYEES, AGENTS, OR REPRESENTATIVES] of the state or a district, or [NOR] a volunteer or auxiliary civilian defense worker or member of an agency engaged in civilian defense activity, complying with or reasonably attempting to comply with this chapter [,] or an order or regulation adopted under this chapter, or under an ordinance relating to blackout or other precautionary measures enacted by a district director of the state, is not liable for the death of or injury to persons, or for damage to property, as a result of the activity.

* Sec. 8. AS 26.20.140 is amended by adding new subsections to read:

(c) This section does not apply to a civil action for damages as a result of gross negligence or reckless or intentional misconduct.

(d) In this section, "civilian defense worker" means a worker engaged in a civil defense activity in an official capacity or at the direction of the state, including

(1) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state;

(2) a member of a board, commission, or task force created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state;

(3) a contractor to the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, or an officer or employee of the contractor;

1 (4) an officer or a member of the state's organized militia on active
2 state service under AS 26.05.070;

3 (5) an officer or employee of another state; and

4 (6) a volunteer authorized by the state, a municipality or other political
5 subdivision of the state, or a federal agency to engage in a civil defense activity.

6 * **Sec. 9.** AS 26.20.200(1) is amended to read:

7 (1) "civil defense" means the protection and defense of the civilian
8 population by the organized efforts of the residents of the state other than those in the
9 military service, and includes without limitation, fire fighting, policing, rescue, air raid
10 warning, security, communications, medical service, vaccination and other actions
11 to protect public health, transportation, evacuation of persons, welfare aid, guard
12 duty, anti-espionage and anti-sabotage service, construction of temporary housing and
13 bomb proof shelters, [AND] any other service necessary for the protection of and aid
14 to the public not normally furnished by the military services, and training,
15 preparation, travel, and other activities necessary for the provision of the services
16 described in this paragraph;

17 * **Sec. 10.** AS 26.23.210 is amended by adding a new subsection to read:

18 (c) The provisions of AS 26.20.140, providing for immunity of government,
19 employees, and other authorized persons in certain circumstances, apply when the
20 entities or persons covered by AS 26.20.140 perform duties under AS 26.23.010 -
21 26.23.220, except as otherwise provided in AS 26.23.136 for entities or other persons
22 providing assistance to the state under a compact in a form substantially as contained
23 in AS 26.23.136.

24 * **Sec. 11.** AS 41.15 is amended by adding a new section to read:

25 **Sec. 41.15.045. Civil immunity.** (a) Notwithstanding other provisions of
26 law, a person may not bring a civil action for damages for death, personal injury, or
27 property damage that results from an act or omission in performing or failing to
28 perform activities or duties arising out of prevention, monitoring, control, or
29 suppression of fires authorized to be performed under AS 41.15.010 - 41.15.170
30 against

31 (1) the state or its officers, agents, and employees;

1 (2) a political subdivision of the state or its officers, agents, and
2 employees;

3 (3) any organization authorized to prevent, control, or suppress fires;
4 or

5 (4) others assisting in the control or suppression of fires at the request
6 of an officer or employee of the United States or the state.

7 (b) This section does not apply to a civil action for damages as a result of
8 gross negligence or reckless or intentional misconduct.

9 * **Sec. 12.** AS 41.17 is amended by adding a new section to read:

10 **Sec. 41.17.081. Civil immunity.** (a) Notwithstanding other provisions of
11 law, a person may not bring a civil action for damages for death, personal injury, or
12 property damage that results from an act or omission in performing or failing to
13 perform activities or duties arising out of prevention, monitoring, control, or
14 suppression of fires authorized to be performed under regulations adopted under
15 AS 41.17.080(a)(8) against

16 (1) the state or its officers, agents, and employees;

17 (2) a political subdivision of the state or its officers, agents, and
18 employees;

19 (3) any organization authorized to prevent, control, or suppress fires;
20 or

21 (4) others assisting in the control or suppression of fires at the request
22 of an officer or employee of the United States or the state.

23 (b) This section does not apply to a civil action for damages as a result of
24 gross negligence or reckless or intentional misconduct.

25 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **APPLICABILITY.** This Act applies to all claims and causes of action accruing on or
28 after the effective date of this Act.

SENATE FINANCE COMMITTEE
5/19/2003 COMMITTEE ACTION

Bill Number	HB 245		
Amendment	r		
Motion	Adopt CS "I"		
<u>Motion by</u>	Taylor		
<u>Objection by</u>	Wilken		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Bunde			✓
Senator Hoffman	✓		
Senator Olson	✓		
Senator Stevens			✓
Senator Taylor	✓		
Co-Chair Green			✓
Co-Chair Wilken			✓
<u>Tally</u>			
Yea	3		
Nay	4		
Absent			
<u>MOTION</u>	FAILED		

Sectional Analysis of CSHB 245(JUD)

This legislation amends several statutory provisions and adds others in order to immunize the State and its employees against claims and lawsuits arising from various activities involving the Alaska National Guard and State Defense Force, search and rescue, civil defense, and fire-fighting.

Section 1 is a declaration of legislative intent to not waive the State's sovereign immunity as to claims related to the activities listed in the preceding paragraph.

Section 2 creates a new statutory provision, AS 18.60.125, which would immunize the State and its employees for claims or lawsuits arising from acts or omissions relating to search and rescue activities, including failure to initiate same. This section would afford the State of Alaska the same immunity from suit afforded for other law enforcement activities, such as criminal investigations.

Section 3 amends AS 26.05.140 to immunize the State and its employees of the organized militia, namely the Alaska State Defense Force and the Alaska National Guard, unless the acts or omissions from which a claim or lawsuit arises occurred while the member was under State active duty pursuant to Title 26. Specifically, this amendment would grant immunity for the acts or omissions of Guardsmen where the service performed was under Title 32 of the United States Code, including weekend drills and other types of inactive duty training, active duty and active duty for training, active guard and reserve duty and civilian technicians paid by the federal government. This amendment would not affect the rights to pursue a claim or lawsuit against the United States pursuant to the Federal Tort Claims Act for the act or omission.

Section 4 creates a new statutory provision, AS 26.05.145, to immunize the State and its employees for lawsuits brought by members of the military, including the Alaska State Defense Force, Alaska National Guard, the United States' military branches, and the national guard units of the other states, for death, personal injury or property damage arising out of or incident to the member's military service. This amendment has the effect of creating the same immunity for the State as that held by

Provided by the Department of Law

the federal government under the *Feres* doctrine and overrides the decision of the Alaska Supreme Court in *Himsel v. State*, 36 P.3d 35 (Alaska 2001).

Section 5 amends AS 26.05.260(d) to include a sentence limiting state workers' compensation benefits to members of the organized militia who are called to active state service by the Governor under AS 26.05.070. This provision will not affect the rights of Alaska National Guard members to receive federal benefits under Title 32 of the U.S. Code.

Section 6 amends AS 26.05.260(e) to clarify that only the spouse and dependents of a member of the organized militia who dies as a result of injury during active state service under AS 26.05.070 will be entitled to death benefits under state workers' compensation law provided in AS 23.30.215. This provision will not affect the rights of survivors of Alaska National Guard members to receive federal benefits under Title 32 of the U.S. Code.

Sections 7-10 amend AS 26.20.140, the civil defense immunity statute, to broaden the immunity to cover injury to property damage sustained by any civilian defense 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. Section 7 makes an exception only when malice or reckless indifference to the interests, rights, or safety of others is shown by clear and convincing evidence. Section 8 adds a new subsection defining "civilian defense worker" for purposes of this immunity. Section 9 amends AS 26.20.200 to add to the definition of "civil defense" security, vaccination and other actions to protect public health, training, preparation, travel, and other activities necessary for the provision of the services described in the definition. Section 10 amends the disaster statutes, AS 26.20, to specify that the immunity provisions of AS 26.20.140 apply when entities or persons covered by that section perform duties under AS 26.23 relating to disasters, except as otherwise provided in the Emergency Management Assistance Compact adopted under AS 26.23.136.

Sections 11-12 add identical provisions to AS 41.15, which governs protection of forested land from fire and

other destructive agents, and AS 41.17, Alaska's Forest Resources and Practices Act. The new sections provide immunity from civil actions for damages based on death, personal injury, or property damage resulting from acts or omissions arising out of performance of the State's firefighting obligations in each chapter. Persons immunized include the state, its officers, employees, and agents; political subdivisions and their officers, employees and agents; authorized firefighting organizations; and others assisting in fire control or suppression at the request of state or federal authorities. This section overrides the decision of the Alaska Supreme Court in *Angnabooguk v. State*, 26 P.3d 447 (Alaska 2001), that, because the state legislature had not explicitly made all firefighting activities and decisions immune from suit, both the state and individual firefighters could be held liable for damage caused by a wildfire.

Section 13 provides that the Bill affects only causes of action accruing after the effective date and does not affect pre-existing causes of action.

Section 14 gives the Bill an immediate effective date.

SPONSOR STATEMENT

This bill relates 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, 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 investigations. Search and rescue operations are essentially another form of investigation. They should be conducted, or not

Provided by the Department of Law

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 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 Activities
(Sections 7 - 10 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 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 include any 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 worker" means any worker engaged in a civil defense activity in an official capacity or at the direction of the state, including 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.

Suits Arising From Fire Management and Firefighting Activities
(Sections 11 and 12 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 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,

/s/

Frank H. Murkowski
Governor

CSHB 245(JUD): providing protection from tort lawsuits
in four areas of governmental activity

Search and Rescue

- Provides immunity from tort lawsuits for state and local government and their employees.
- There are approximately 400 search and rescues conducted each year in Alaska.
- The Alaska State Troopers coordinate search and rescue activities using state and community resources.
- This provision is found in Section 2 of the bill.

Intra-military Tort Claims

- Bars tort actions for damages against the state and its employees by service members - there is no change to their entitlement to state workers compensation when on state duty and federal benefits when on federal duty.
- Provides the State and its military personnel the same protection from tort lawsuits that the federal government and federal military personnel have under the *Feres* doctrine; consistent with the vast majority of states.
- These provisions are found in Sections 4 - 6 of the bill.
- acts of the organized militia unless the acts were in the line of duty while on active state service under AS 26.05.070.
- This provision is found in Section 3 of the bill.
- Both of these provisions recognize that the federal government, and not the State of Alaska, is responsible for injuries and claims while service members are under federal command and control.

Civil Defense

- Bars tort claims against the government, employees, and authorized volunteers for damages sustained by a civilian defense worker - does not affect the worker's or authorized volunteer's rights to state workers compensation.
- Bars third party tort claims against the government, employees, and authorized volunteers for damages unless malice or reckless indifference is shown by clear and convincing evidence.
- These provisions are found in Sections 7 - 10 of the bill.

Fire Management and Firefighting Activities

- Amends two statutory sections to bar tort claims by third parties against the state, local government, other firefighting groups and their employees.
- Every year the State Division of Forestry is called upon to respond to hundreds of fires throughout the State of Alaska.
- This change is necessary due to two Alaska Supreme Court cases holding that the State may be sued for firefighting activities.

Provided by the Department of Law

- Litigation disrupts Forestry's day to day operations and diverts substantial state resources to defend lawsuits.
- This provision is consistent with federal and common law in other jurisdictions that immunizes these activities.
- This provision does not affect existing entitlement to workers compensation or the availability of federal or state disaster relief benefits.
- These provisions are found in Sections 11 and 12 of the bill.

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

CSHB 245 (JUD)

- ◆ The State and local governments, unlike the private sector, have a moral responsibility to respond to emergency situations: search and rescue, civil defense, and firefighting activities. We do not want state and local government to make the decision NOT to respond to such emergencies. But we are faced with tight fiscal times. Passage of this bill encourages the state, local governments, and their employees, and volunteers to provide services to the people of Alaska in responding to emergency situations using the limited resources that have been provided to them and their best judgment during the emergency.
- ◆ Public policy involves weighing our ability to provide services to the public with our ability to pay for both the services and the costs of litigation. In flush times, perhaps we can afford both. We are no longer able to do so. Our priority must be that we provide the services to the people of Alaska. It is not unreasonable to limit our exposure to tort lawsuits under this scenario.
- ◆ This bill is vitally important to the individual man and woman who is actually searching for someone lost in remote areas of Alaska, or who is responding to natural disasters such as floods and earthquakes, or who is fighting fires and trying to save lives and property. Absent this bill, this individual not only has to cope with the grave responsibilities and demands of their emergency work, but must also then worry about being sued for damages and being taken off the line of duty to be caught up in court proceedings.

If there is concern about whether this bill is unfavorable to the emergency worker:

- ◆ Emergency responders are already covered under workers compensation under existing law. This bill does not change these benefits. Workers compensation allows an injured worker or volunteer to receive medical benefits, wage loss, and other benefits without having to file a lawsuit, hire a lawyer, or prove any negligence. It is "no fault". In return, if an injured worker or volunteer receives workers compensation, it is (and always has been) their exclusive remedy and they are barred by

existing law from recovering additional tort damages against their fellow employees or employer.

If there is concern that this bill is unfavorable to members of the military:

- ◆ The law had always been that members of the military could not sue their fellow members or their employers. This is known as the *Feres* doctrine. Only recently (2001) the Alaska Supreme Court changed to allowing such suits. Until that decision (*Himsel*), no members of the military ever had any belief that they could sue their fellow members or the state. So, the bill is not taking away a tort remedy that military members had used in the past or that they ever thought that they had.

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

SENATE COMMITTEE REPORT

DATE: 5/15/03

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/18/03

Judiciary Committee considered CS FOR HOUSE BILL NO. 245(JUD)(efd fld)

HB 245 SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

"An Act relating to certain suits and claims by members of the military services; relating to certain suits and claims regarding acts or omissions of the organized militia; relating to workers' compensation and death benefits for members of the organized militia; relating to liability arising out of certain search and rescue, civil defense, fire management, and fire fighting activities."

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#
ADM	2/14	*		3
DNR	4/3		X	2
LAW	11/27		X	1

APPROPRIATION - no fiscal note

French
Therriault
Ogan

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
		X		
			X	
			X	
CHAIR:				

Seekins

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB245
P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

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

April 3, 2003

Page 2

investigation. 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

The Honorable Pete Kott

April 3, 2003

Page 3

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
April 3, 2003
Page 5

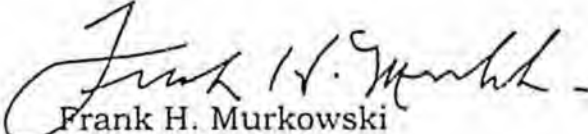
prevent, monitor, suppress, or control forest fires is one aspect of its authority to manage state forest resources. The division of forestry is asked to respond to forest fires in various geographic areas and population zones in Alaska, which often occur simultaneously during the fire season. When responding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

HB

248

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 18 2003

SENATE FINANCE
COMMITTEE

DATE: 5/9/03

FURTHER:

DATE TURNED
IN TO OFFICE: 18 May 2003

Finance Committee considered

HOUSE BILL NO. 248

HB 248 SALARY OF CHIEF PROCUREMENT OFFICER

"An Act relating to the annual salary of the chief procurement officer; 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#
Admin.	4/14/03		✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>				
<i>[Signature]</i>				
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>				

FISCAL NOTE

REPORTED OUT

 MAY 18 2003

 SENATE FINANCE
 COMMITTEE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 248
 (H) Publish Date: 4/22/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to the annual salary of the chief BRU Centralized Administrative Services
procurement officer; and providing for an effective date. Component Purchasing
 Sponsor _____
 Requester State Affairs Component No. 60

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	0.0	0.0	0.0	0.0	0.0	0.0
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 ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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)

This fiscal note is for informational purposes. As explained below, the Governor's FY2004 operating budget includes adequate funding for this legislation. This legislation changes the annual salary of the Chief Procurement Officer (CPO) from range 23 to range 24. The CPO has assumed the role of lead manager in the Division of General Services and the division director position (range 26) has been reclassified to to Deputy Director, range 23. The net fiscal impact of this legislation and the reclassification of the director position is an annual savings in FY2004 of \$8.2 at the salary step placement of the incumbents.

Position	Old Annual Salary	New Annual Salary
CPO range 23 / 24	79.4	84.9
Director range 26	84.8	0.0
Deputy Director	0.0	71.1
Total Old / New	164.2	156.0

Prepared by: Vern Jones, Chief Procurement Officer Phone (907)465-5684
 Division General Services Date/Time 4/16/03 4:15 PM
 Approved by: Mike Miller, Commissioner Date 4/16/2003
 Agency Department of Administration

COMMITTEE COPY

MEMORANDUM

State of Alaska
Department of Administration
Division of Administrative Services

To: Kevin Jardell
Assistant Commissioner

Date: April 23, 2003

Phone: 465-5655

From: Dan Spencer
Director

Subject: Talking points for HB 248

House Bill 248 will change the salary of the State's Chief Procurement Officer (CPO) from range 23 to range 24.

This change will recognize the additional responsibilities of the CPO and will compensate him at one salary range higher than his two subordinate managers. Although the salary will be below that of a Division Director (normally a range 26) the CPO, by statute, is appointed to a six year term and may be removed only for cause, unlike a Division Director who normally serves at the pleasure of a Commissioner and the Governor.

The leadership of the Division of General Services has been restructured under this administration. The Chief Procurement Officer will act as the lead manager for the Division, with two other senior managers reporting to him. Those two positions are a Leasing/Facilities Manager (range 23) and a Deputy Director, range 23. The Deputy Director position was created by reclassifying the former Division Director (range 26) position, and this position will manage the administrative and non-procurement functions of the division, including the property management and centralized mail services programs.

The net effect of these changes, including the salary change proposed by HB 248, will be a reduction in salary cost of \$8,200 in FY 2004. This savings will be used within the program to help meet the challenges posed by the Governor's budget, including identifying more than \$1.5 million in lease savings and \$2.0 million dollars in general procurement related savings over the course of FY2003.

SENATE COMMITTEE REPORT

DATE: 4/30/03

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/9/03

State Affairs Committee considered HOUSE BILL NO. 248

HB 248 SALARY OF CHIEF PROCUREMENT OFFICER

"An Act relating to the annual salary of the chief procurement officer; 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#
DOA	4/14/03		✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

HB 248-SALARY OF CHIEF PROCUREMENT OFFICER

NAME: Dan Spencer Subject/Bill No: _____

Co./Dept./Title: Dept of Administration, Admin Svcs Dir Phone: 465-5655

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

HB 248-SALARY OF CHIEF PROCUREMENT OFFICER

NAME: Dan Spencer Subject/Bill No: _____

Co./Dept./Title: Dept of Administration, Admin Services Div. Phone: 465-5655

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

HB

2550

HAFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 250(L&C)
 (H) Publish Date: 4/22/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title State Contracts BRU _____
 Component _____
 Sponsor Holm
 Requester H L & C Component No. _____

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	***	***	***	***	***	***
-----------------------------	-----	-----	-----	-----	-----	-----

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

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)

*** The additional costs associated with this bill are based on historical claims costs. The baseline costs for the Rule 79 and 82 provisions, requiring the payment of Attorney fees and claims costs, are estimated at \$145,000 per year. (The historical high would have been \$341,000 per year and the low would have been \$7,300.) This baseline may be increased based on such factors as complexity of litigation, length of trial, etc. The \$145,000 has not been adjusted for Rule 68 offers of judgement as they are not easily applied. In addition to the anticipated Rule 79 and 82 costs, there will be additional attorney fees associated with litigating these awards. This is estimated at 20 hours per claim or \$6,000 per year. Most construction claims are associated with federal funded projects, however, Rule 79 and 82 costs and fees are not eligible for federal participation and would have to be paid with General Fund dollars.

Prepared by: Mark O'Brien
 Division: Commissioner's Office
 Approved by: Mike Barton
 Agency: DOT&PF

Phone 465-3900
 Date/Time 4/16/03 12:04 PM
 Date 4/16/2003

The purpose of HB 250 is to modify the construction claims process to once again create a fair and expeditious claims process. Specifically HB 250 will modify the procurement code pertaining to construction claims in the following manner:

1. If a procurement officer does not issue a written decision by the due date, the contractor may seek arbitration.
2. On appeals of all construction claims, the parties can agree to binding arbitration.
3. The timelines for decisions have been tightened, and redundant requirements have been eliminated.
4. An arbitrator or hearing officer who does not issue a decision by the deadline is disqualified for a year.
5. Qualifications for arbitrators and hearing officers will be established by the commissioner of administration in regulation.
6. The contractor is entitled to recover some of the claims costs incurred.

Prompt passage of HB 250 will expedite contractor's claims and return fairness to the process.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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

May 6, 2003

SUBJECT: CSHB 250(FIN) (Work Order No. 23-LS0501\Q)

TO: Representative John Harris, Co-Chair, House Finance Committee
Representative Bill Williams, Co-Chair, House Finance Committee
Attn: Joyce

FROM:  Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

Correction needed. This correction is not caused by the amendment added to the bill. In sec. 17 of the bill, there is a reference to the "effective date of this Act." However, one section (authorizing work on new regulations) has an immediate effective date. Therefore, this reference in sec. 17 is not clear and could cause confusion. I recommend changing the phrase to "the effective date of secs. 1 - 16 and 18 of this Act." If you would like this done for your CS, please advise. If not, please pass this memo along to the next committee of referral.

If I may be of further assistance, please advise.

TLB:med
03-487.med

Enclosure

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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

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If I may be of further assistance, please advise.

TLB:med
03-487.med

Enclosure

Fixed to legal

adopted

**Amendment 1
HB 250**

By: Whitaker

Sec. __ AS 36.30.005 -- *add language to bill*

(d) Notwithstanding the provisions of 36.30.627, the University of Alaska is not required to arbitrate construction contract claims unless it specifically agrees to ~~such~~ arbitration.

He

STATE OF ALASKA

Interim:

119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293

Session:

State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM DISTRICT 9

SPONSOR STATEMENT

House Bill 250, State Contracts

4/14/3

Construction claims occur when the parties to the contract disagree as to whether a specific element of a project is within the scope of work defined by a construction contract. For projects undertaken by the State of Alaska, the Alaska procurement code defines a process for resolving these differences.

Ideally such a process should resolve differences in a fair and expeditious manner.

At this time, however, the perception in the construction community is that the process has slowly deteriorated so that it is no longer fair or expeditious. As now prescribed, when a contractor files a claim, the procurement officer involved with the claim initially evaluates the claim and issues a ruling on the perceived merits. If the contractor is not satisfied, an appeal is made to the procurement officer's supervisor.

There is no review by an independent party unless a contractor elects to appeal the supervisor's decision. Even then, the hearing officer is selected by the State, which raises a concern about the true independence of the hearing officers, since the State has sole discretion to maintain the hearing officer list. Delays are rampant. Justice is delayed. Contractors are forced to expend money defending their claim, but that money cannot be recovered in the process. Small contractors cannot afford to participate in the claims process because of these costs. Claims of less than \$250,000 are frequently not pursued because of the great expense involved. The entire process is ripe for review and revision.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 250(L&C)
 (H) Publish Date: 4/22/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title State Contracts BRU _____
 Component _____
 Sponsor Holm
 Requester HL&C Component No. _____

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	***	***	***	***	***	***
-----------------------------	-----	-----	-----	-----	-----	-----

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

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)

*** The additional costs associated with this bill are based on historical claims costs. The baseline costs for the Rule 79 and 82 provisions, requiring the payment of Attorney fees and claims costs, are estimated at \$145,000 per year. (The historical high would have been \$341,000 per year and the low would have been \$7,300.) This baseline may be increased based on such factors as complexity of litigation, length of trial, etc. The \$145,000 has not been adjusted for Rule 68 offers of judgement as they are not easily applied. In addition to the anticipated Rule 79 and 82 costs, there will be additional attorney fees associated with litigating these awards. This is estimated at 20 hours per claim or \$6,000 per year. Most construction claims are associated with federal funded projects, however, Rule 79 and 82 costs and fees are not eligible for federal participation and would have to be paid with General Fund dollars.

Prepared by: Mark O'Brien Phone 465-3900
 Division: Commissioner's Office Date/Time 4/16/03 12:04 PM
 Approved by: Mike Barton Date 4/16/2003
 Agency: DOT&PF

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

Representative Jim Holm



119 N. Cushman
Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

House District 9

State Capitol
Juneau, AK 99801
TEL 465-3466, FAX 465-2937

Sectional Analysis

CS HB 250 (L&C), State Contracts

4/14/3

NOTE: The word "CLAIM" is substituted for "CONTROVERSY" throughout the bill because "claim" is more technically correct and inclusive.

Section 1 and Section 4: Currently, if a contractor asserts a claim that cannot be resolved by agreement, the State can keep requesting more information from the contractor and thus "keep the clock running" until the State determines it has "enough" information. Section 4 allows the contractor to seek arbitration if the State does not issue a written decision by the due date. Section 1, on the other hand, allows the State to deny the claim, or a portion thereof, if the contractor does not furnish the requested information; it also prohibits the contractor from introducing new information later.

Section 2: Currently, state agencies have no penalty for missing deadlines, but if a contractor misses a deadline his claim is denied. This section places parameters on the State's deadlines, requiring the State to show good cause for an extension and allowing the contractor an opportunity to oppose the State's request for a second extension.

Section 3: "*Findings of fact about the claim*" and "*determination of any amount payable*" are added to the list of what the State's written decision must contain.

Section 5: The following new sections are added:

36.30.627 (a) provides that an appeal from the State's decision shall be resolved by binding and final arbitration

- on a claim less than \$250,000 if the contractor requests it,
- on a claim of more than \$250,000 if both the contractor and the State agree to it, or by a hearing if the contractor and the State do not agree to arbitration.

36.30.627 (b) defines what a claim includes.

36.30.629 allows the state to subpoena people and documents, and to take depositions, in hearings and arbitrations defined in this chapter.

Section 6: This section changes "controversy" to "claim" as it applies to binding and final arbitration.

Section 7: Currently, a contractor is not allowed to recover his costs or attorney fees. This new section allows the party who prevails in the case (the State or the contractor) to collect fees, and also to make a settlement offer, under the Alaska Rules of Civil Procedure.

Section 8: This substitutes "-" for "and", thus making the Commissioner's delegation powers in the appeal of a decision inclusive of all the sections 36.30.590 through 36.30.630.

Section 9: This section more clearly defines who receives the State's decisions and shortens the time frame.

Section 10: "*Controversy or claim*" becomes "*contract claim*" as regards penalties for misrepresentation.

Section 11: "*Expeditious administrative review*" becomes "*expeditious arbitration, hearing, and other administration review.*"

Section 12: A new section is added to establish a venue for arbitration or hearing and a time frame for the State to issue a final decision. It also encourages the arbitrators or hearing officers to deliver timely decisions by disqualifying for a year them if they do not. Finally, it provides that any money awarded in the decision shall be paid within 45 days.

Section 13: A new paragraph is added giving the commissioner of administration power to adopt regulations establishing the procedures for arbitration and the qualifications for arbitrators.

Section 14: This removes "hearing" from the definition of arbitration.

Sections 15, 16, and 17 are temporary "uncodified" acts establishing 1) that the bill applies to a contract entered into on or after the bill's effective date, 2) that the commissioner of administration may immediately adopt regulations to implement the bill, and 3) that "controversy" be replaced with "claim" in all applicable statutes.

Section 18 provides for the bill to become effective immediately upon passage.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

8045 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

April 22, 2003

Representative Jim Holm
Co-Chair Transportation Committee
Alaska House of Representatives
Juneau, Alaska 998801-1182

Re: House Bill 250

Dear Representative Holm:

On behalf of the more than 600 member firms of the Alaska Chapter of the Associated General Contractors of America, I would like to express our support of House Bill 250. For more than two years, AGC has been meeting with the Alaska Department of Transportation and Public Facilities to resolve problems with the current construction claims process. HB 250 reflects the modifications that the parties agree are merited at this time.

The goals of the parties when discussions were initiated were to:

1. Streamline the system
2. Strive to improve the fairness of the process, and
3. Allow the prevailing party to recapture some of its costs associated with the claim.

AGC believes that HB 250 represents a significant improvement over the current claims process and achieves the goals set forth at the start of our deliberations.

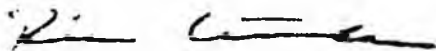
AGC has not only worked closely with the Department of Transportation and Public Facilities, it has also sought the advice and consent of the Departments of Law and Administration. In so doing, AGC strived to minimize, if not eliminate, opposition to the bill. At this point we are unaware of any group or organization that may object to the HB 250.

FAIRBANKS
P.O. BOX 6005 • FAIRBANKS, AK 99706
TELEPHONE (907) 452-1809

SOLDOTNA
43335 KALIFONSKI BEACH ROAD, STE. 32 • SOLDOTNA, AK 99669
TELEPHONE (907) 262-8535

Accordingly, we request your support of this bill.

Sincerely,
ASSOCIATED GENERAL CONTRACTORS
OF ALASKA



Richard Cattanach
Executive Director



WARNING LITES OF ALASKA, INC.

591 W. 67TH AVE., ANCHORAGE, AK 99518-1555

PHONE (907) 562-2124 • FAX (907) 562-0473

April 21, 2003

Representative Bruce Wehyrauch, Chairman
House State Affairs Committee
Juneau, AK 99801-1182

Re: HB 250

Dear Representative Wehyrauch:

I am writing in support of HB 250, a bill reforming the state contract dispute resolution process.

I have been an Alaskan resident since 1956, in business since 1969. I am the immediate past president of the Associated General Contractors of Alaska. My company, Warning Lites of Alaska, Inc., has been a subcontractor on Department of Transportation projects for over 30 years. We specialize in highway sign fabrication and installation.

Over the years, we have experienced what has not always been a fair and timely process for resolving disputes between the State of Alaska and its contractors and subcontractors. I believe HB 250 is a step in the right direction to resolve this problem. The emphasis in the bill for streamlining the appeals process and promoting the impartiality of decision makers will create a more professional and effective atmosphere for partnering between the State of Alaska and its contractors and subcontractors.

Thank you for your commitment to the construction industry in Alaska.

Respectfully,

WARNING LITES OF ALASKA, INC.

Marie Wilson
President

**GOODFELLOW BROS., INC. —GENERAL CONTRACTOR—**

CL # 1630

April 23, 2003

Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Attention: Representative Jim Holm

Fax (907) 465-2937

Regarding: Revision to the Construction Claims Bill HB250

The construction claims bill that Associated General Contractors and the Department of Transportation and Public Facilities worked on for more than two years was introduced last week and moved from its first committee of referral. This bill attempts to speed up the claims process and allows the collection of some of the claims costs (i.e. attorney fees, accounts and claims consultants, etc.). We feel that this bill is more fair to all the parties involved in a claim. Please regard this as a letter of support for House Bill 250.

Respectfully,

Ben A. Northey
Alaska Manager



April 22, 2003

Representative Jim Holm
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801

6441 South Airport Place
Anchorage, Alaska 99502-1209
(907) 245-1965
Fax: (907) 245-1744

Subject: HB 250

Dear Representative Holm:

Knik Construction Co., Inc. fully supports revisions to the State of Alaska contracting methods contained within HB 250.

Knik Construction Co., Inc. has been in business since 1973 and has performed many projects for the State of Alaska during its existence. As we understand the revisions contained within HB 250, the claims process would be timelier and allow the collection of some of the claims by the contractor, such as attorney fees and claim consultants.

For these reasons Knik would encourage your support of HB 250.

Very Truly Yours,

KNIK CONSTRUCTION CO., INC.


Steve Jansen
President

SJ:lmg

Cc: Richard "Dick Cattanach

HB

251

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 25, 2003

FURTHER REFERRALS:

Date of Committee Action: 5/8/03

The FINANCE Committee considered:

HB 251

HOUSE BILL NO. 251

MARINE PILOT FOR FOREIGN PLEASURE CRAFT

"An Act exempting certain foreign pleasure craft from the mandatory pilotage requirement."

Recommends it be replaced with HCS or CS for HB 251 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 IIS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DCED		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Ki Meyer</i>	Meyer	✓			
<i>Bill Stoltz</i>	STOLTZ			✓	✓
<i>Paul E. Moses</i>	MOSES			✓	
<i>Whitaker Foster</i>	FOSTER			X	
Chair: <i>John Rogers</i>	Rogers	✓			
Chair: <i>W.S. Williams</i>	Williams	✓			

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB251 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Marine Pilot for Foreign Pleasure Craft BRU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Representative Dahlstrom
 Requester House Finance Component No. 2360

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 (1156)	102.0	102.0	102.0	102.0	102.0	102.0
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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 1156 - Receipt Supported Services						
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)

CSHB 251 (FIN) exempts foreign pleasure craft of 60 feet or less in overall length from the mandatory pilotage requirement. New funds are not required to implement this bill.

However, the bill is anticipated to generate new revenue as a result of civil fines imposed and the application fee for waiver from the pilotage requirement. Based on the fee proposed in the bill and estimates from the industry, the revenue is based on: 1) 6 pleasure crafts at 60' = 6 x \$1,500 = \$9,000; 2) 12 pleasure crafts at 120' = 12 x \$4,500 = \$54,000; 3) 6 pleasure crafts at 160' = 6 x \$6,500 = \$39,000. The revenue estimate is repeated in subsequent years however, the actual revenue will be based on the number of foreign registered pleasure crafts entering State waters.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144
 Division: Occupational Licensing Date/Time 5/8/03 2:30 PM
 Approved by: Edgar Blatchford, Commissioner Date 5/8/2003
 Agency: Department of Community & Economic Development

adopted 5/8/03

23-LS0865X
Utermohle
5/7/03

CS FOR HOUSE BILL NO. 251(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DAHLSTROM, Harris, Hawker

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to exemption of certain foreign pleasure craft from the mandatory
2 pilotage requirement and to civil fines imposed on the owner or operator of a pleasure
3 craft of foreign registry; and providing for an effective date."

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

5 * Section 1. AS 08.62.040 is amended by adding a new subsection to read:

6 (f) The board may impose a civil fine on the owner or operator of a pleasure
7 craft of foreign registry who, in violation of this chapter, fails to employ a pilot
8 licensed under this chapter or fails to comply with the pilotage requirement under
9 AS 08.62.180(b). Notwithstanding AS 08.01.075, the amount of the civil penalty may
10 not exceed \$10,000 for each violation. Each entry into state water in violation of this
11 chapter or AS 08.62.180(b) is a separate violation.

12 * Sec. 2. AS 08.62.140 is amended by adding a new subsection to read:

13 (b) The fee for an application for a waiver under AS 08.62.180(b) from the
14 mandatory pilotage requirement of this chapter is \$1,500 plus \$50 for each whole foot

1 in overall length of the vessel that exceeds 60 feet.

2 * Sec. 3. AS 08.62.180 is amended to read:

3 **Sec. 08.62.180. Exemptions.** This chapter does not apply to

4 (1) vessels subject to federal pilot requirements under 46 U.S.C. 8502
5 except as provided in AS 08.62.185;

6 (2) fishing vessels, including fish processing and fish tender vessels,
7 registered in the United States or in British Columbia, Canada;

8 (3) vessels propelled by machinery and not more than 65 feet in length
9 over deck, except tugboats and towboats propelled by steam;

10 (4) vessels of United States registry of less than 300 gross tons and
11 towboats of United States registry and vessels owned by the State of Alaska, engaged
12 exclusively

13 (A) on the rivers of Alaska; or

14 (B) in the coastwise trade on the west or north coast of the
15 United States including Alaska and Hawaii, and including British Columbia,
16 Yukon Territory, and Northwest Territories, Canada;

17 (5) vessels of Canada, built in Canada and manned by Canadian
18 citizens, engaged in frequent trade between

19 (A) British Columbia and Southeastern Alaska on the inside
20 water of Southeastern Alaska south of 59 degrees, 29 minutes North latitude, if
21 reciprocal exemptions are granted by Canada to vessels owned by the State of
22 Alaska and those of United States registry; or

23 (B) northern Alaska north of 68 degrees, 7 minutes North
24 latitude and Yukon Territory or Northwest Territories;

25 (6) pleasure craft of United States registry;

26 (7) pleasure craft of foreign registry of 60 feet or less in overall
27 length [LESS THAN 300 GROSS TONS AS MEASURED UNDER 46 C.F.R. 69.51
28 - 19.75]; and

29 (8) vessels of the Canadian Navy or Canadian Coast Guard that have a
30 home port in British Columbia, Canada, while navigating the inside water of
31 Southeastern Alaska.

1 * Sec. 4. AS 08.62.180 is amended by adding a new subsection to read:

2 (b) Upon written application and payment of the application fee for a waiver
3 by the owner or operator of the pleasure craft, the board may grant a waiver from the
4 pilotage requirement of this chapter to a pleasure craft of foreign registry that is more
5 than 60 feet in length overall, but not more than 173 feet in overall length. The
6 application for a waiver must be submitted to the board at least 30 days before the
7 vessel enters the state. The board shall approve or deny an application for a waiver
8 within 30 days after the application is received by the board. The 30-day period for
9 action by the board to approve or deny a request for a waiver is suspended while the
10 board is awaiting a response to a request by the board for additional information from
11 the applicant. The board may delegate responsibility for reviewing, approving, or
12 denying an application for a waiver under this subsection to the marine pilot
13 coordinator. An application for a waiver must contain the name, address, and
14 telephone number of the applicant; the name, address, and telephone number of the
15 owner of the vessel; a general description of the vessel; and other information that the
16 board may require by regulation. If the waiver is granted by the board, the operator of
17 the vessel shall (1) before entering state water beyond Alaska pilot stations, take
18 onboard a pilot licensed under this chapter and shall proceed to a port of entry
19 designated by the board; and (2) before leaving state water, take onboard a pilot
20 licensed under this chapter at a port designated by the board and shall proceed to an
21 Alaska pilot station. Except as otherwise provided by this subsection or by the board
22 by regulation, while in state water, a vessel that has been granted a waiver under this
23 subsection is not required to employ a pilot licensed under this chapter. The board
24 may revoke a waiver granted under this subsection if the vessel is not operated in
25 compliance with this subsection or with the terms under which the waiver is granted.
26 A waiver granted by the board under this subsection may be subject to such conditions
27 as the board considers appropriate to protect human life, property, and the marine
28 environment. The board may adopt regulations as the board considers necessary to
29 implement this subsection.

30 (c) In this section,

31 (1) "for hire" means for consideration, whether directly or indirectly, to

1 the owner, charterer, operator, agent, or other person having an interest in the vessel;
2 (2) "pleasure craft" means a vessel that does not carry passengers or
3 freight for hire.

4 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

Vice Chair:
Joint Armed Services Committee

Member:
Military and Veterans Affairs Committee
Labor and Commerce Committee
State Affairs Committee
Economic Development, Trade, &
Tourism Committee



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-3783
Fax: (907) 465-2293
Toll Free (877) 460-3783

Interim:
716 West 4th Avenue
Anchorage, AK 99501-2133
Phone: (907) 269-0174
Fax: (907) 269-0177

REPRESENTATIVE NANCY DAHLSTROM

ELMENDORF AFB • FORT RICHARDSON • BIRCHWOOD • FIRE LAKE • GOVERNMENT HILL • MULDOON
Representative_Nancy_Dahlstrom@legis.state.ak.us

Sponsor Statement

CSHB 251

“An Act relating to exemption of certain foreign pleasure craft from the mandatory pilotage requirements”

CSHB 251 (FIN) authorizes access to Alaskan waters by a foreign registered pleasure craft that is 60ft or greater in overall length, but less than 173ft in overall length, when granted a waiver of pilotage. To travel in Alaskan waters, these pleasure craft must comply with certain state requirements.

For these foreign pleasure craft to enter Alaskan waters, a Marine Pilot must join and travel with the vessel to its first port of call. While in Alaskan waters, the vessel may further be required to take a Marine Pilot when navigating certain waterways. Before departing Alaska a Marine Pilot will again join the vessel and travel to its point of embarkation. The vessel will adhere to regulation established by the Board of Marine Pilots and are subject to civil penalties for violations.

A recent Legislative Budget and Audit Committee audit report supports these changes. This legislative audit (#08-20015-02 November 1, 2002) states under Recommendation No. 4, “The Board of Marine Pilots should seek statutory authority to allow the board the discretion to grant waivers of pilotage requirements to large pleasure craft.”

The intent of CSHB 251 is to accomplish recommendations identified in the Audit and provide Alaskan Maritime communities with increased tourism opportunities while preserving our precious waterways.

ALASKA STATE LEGISLATURE

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Joint Armed Services Committee

Member:
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Representative_Nancy_Dahlstrom@legis.state.ak.us

Sponsor Statement

HB 251

“An Act relating to exemption of certain foreign pleasure craft from the mandatory pilotage requirements”

HB 251 authorizes an exemption from marine pilotage requirements on pleasure craft while visiting Alaska.

Currently, American registered pleasure craft of any size are not required to employing a marine pilot; however, all foreign registered vessels are. The only exception is while the vessel is moored at a dock or at anchor.

The intent of HB 251 is to standardize the operation of pleasure craft by granting a waiver/exemption to foreign registered vessels of less than 200 feet.

A recent Legislative Budget and Audit Committee audit report supports these changes. This legislative audit (#08-20015-02 November 1, 2002) states under Recommendation No. 4, “The Board of Marine Pilots should seek statutory authority to allow the board the discretion to grant waivers of pilotage requirements to large pleasure craft.”

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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 24, 2003

SUBJECT: Draft bill relating to an exemption from the mandatory pilotage requirement for certain foreign pleasure craft (Work Order No. 23-LS0865\A)

TO: Representative Nancy Dahlstrom
Attn: Rex Shattuck

FROM: George Utermohle 
Legislative Counsel

You have requested a sectional summary of a draft bill relating to an exemption from the mandatory pilotage requirement for certain foreign pleasure craft.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 08.62.180 by adding a new paragraph to provide an exemption from the mandatory pilotage requirement of AS 08.62 for foreign pleasure craft of less than 200 feet overall length, if an exemption is granted by the Board of Marine Pilots under the new subsection (b).

Section 2 of the bill amends AS 08.62.180 by adding a new subsection that authorizes the Board of Marine Pilots to grant an exemption from the mandatory pilotage requirement to foreign pleasure craft of less than 200 feet overall length and specifies the information that must be submitted with the application for the exemption.

GU:lmb
03-094.lmb

DAVID L. SOKOL
302 SOUTH 38TH STREET
SUITE 400
OMAHA, NEBRASKA 68131

RECEIVED
JUN 19 2002
DIVISION OF
OCCUPATIONAL LICENSING
JUNEAU

June 14, 2002

The Honorable Tony Knowles
State Capitol
P. O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles:

I would like to bring to your attention a situation which I believe may have been caused inadvertently; however, it has the potential to significantly impact the economy of several southeastern communities in Alaska.

Several years ago I had the privilege of being a guest on a private motor yacht that cruised the waterways of southeastern Alaska, primarily in the areas between Ketchikan, Sitka and Juneau. I, and the other seven guests, had a wonderful time shopping in Sitka and Juneau, fishing and sightseeing in some of America's most beautiful waterways. Following on this experience, two years ago I had the opportunity to purchase my own boat and it was our intention to spend this summer in southeastern Alaska. Unfortunately, when my captain was preparing the cruise this spring he came across *Alaska Statute 08.62.180* which deals with marine pilotage requirements in Alaska. While we are familiar with typical pilotage requirements in other states and countries, this law is unique, in our understanding, in that it essentially requires full time pilotage not just in and out of harbors, but also throughout the waterways. Further, there are no qualification exemptions for demonstrated captain proficiency.

As such, pursuant to this statute we must essentially hire a pilot from one of the two companies providing this service for the entirety of our cruise. I contacted both of these firms in Ketchikan and was informed that the cost would be \$1,400.00 to \$2,200.00 per day depending on our schedule. This would equate to approximately \$72,000.00 for our summer cruise. Because of this requirement we have altered our plans and we are going to spend the summer in British Columbia. This is obviously a severe disappointment given that I am an American citizen.

I do fully understand the need for appropriate pilotage requirements under certain circumstances; however I believe that this statute's lack of flexibility is unreasonable. By way of example, our boat is approximately 135 feet in length and we have three licensed captains as part of our seven-person crew. Our captain is fully licensed to 1600 gross

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JUNEAU

Page Two
Governor Tony Knowles
June 14, 2002

tons and is intimately familiar with the Alaskan waterways. Under AK 08.62.180 those qualifications are irrelevant; however, in British Columbia we received a pilotage exemption in less than two weeks.

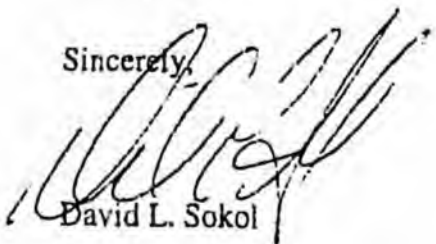
We would recommend to you a change in AK 08.62.180 to either allow an exemption process for qualified captains or to place a reasonable length limitation (possibly 200 feet or less) exemption for pleasure craft with properly licensed captains. While the statute currently has gross tonnage limitations, I believe you will find such measurements inconsistent and difficult to administer due to the many tonnage conventions utilized in the United States and Internationally.

The real damage caused by making these pilotage requirements unreasonable is to the small towns of southeast Alaska. I have become aware of eleven vessels that have chosen to not cruise in Alaskan waters this summer. I am certain there are others as well. In our own case we would have had 48 guests (6 cruises with 8 guests) over the summer, seven crew living with the boat all summer, fuel, food, fishing licenses, tackle, airline traffic, souvenir shopping, restaurants, cabs, etc. Just our boat alone would have generated over \$250,000 in economic activity in Ketchikan, Sitka and Juneau. If we assume 20 boats avoid Alaska because of unnecessary pilotage requirements, \$5,000,000 of economic activity will be lost.

Please understand, we are fully in favor of proper safety and environmental standards, and we wish for Alaskan waterways to be kept clean and safe for all future generations. Providing reasonable exemptions, as is done throughout the rest of the United States and around the world, will not require these standards to be lessened.

I recognize that since this will require a legislative solution, you cannot resolve this situation for this summer. I hope that something can be done before next spring. Please call me if I can provide additional information, or if I can help you in dealing with this situation.

Sincerely,



David L. Sokol

CC: Peter Christensen, Pilot Coordinator
Board of Marine Pilots
P. O. Box 110806
Juneau, AK 99811-0806

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U.S. Department
of Transportation

United States
Coast Guard



Commander
17th Coast Guard District

P.O. Box 25517
Juneau, AK 99801
Staff Symbol: (m)
Phone: (907) 463-2802

16712

MAR 6 2003

The Honorable Gene Theriault
State Capitol Building
Juneau, AK 99801

Dear Mr. Theriault:

I wanted to take the opportunity to applaud your efforts to permit an orderly process for exempting Canadian warships and Coast Guard vessels home-ported in British Columbia from state pilotage requirements. We support this reciprocal agreement and believe it will only serve to improve the important relationships we share with our Canadian neighbors.

I also would like to take this opportunity to respond to requests for my comments on state legislative discussions of easing pilotage requirements for foreign pleasure vessels. The current statute requires a pilot for vessels 300 gross tons and over. Proposals have been made to increase that tonnage exemption, effectively allowing larger vessels the opportunity to transit Alaskan waters without a pilot. These are matters of state interest over which the Coast Guard has no authority but about which I do have concerns. Vessels greater than 300 gross tons are large and can pose serious risks to the safety of navigation and the environment. Removing pilots from these vessels could dramatically impact vessel safety since local knowledge and experience are a key component of safe navigation. Having a pilot onboard helps prevent groundings and subsequent environmental damage. Their presence facilitates communications during vessel passages in the narrow waters of Southeast Alaska as well. By their presence onboard during vessel operations, the pilots are also in a unique position to alert the proper authorities if there are indications the vessel or crew may present law enforcement or homeland security concerns. Finally, the pilot's local knowledge helps with sensitive property and territorial concerns; distinguishing between local, federal and tribal areas. This type of overall awareness prevents accidents in the first place and helps mitigate them when they do happen. It cannot be replaced by a foreign crew, a transponder, or a float plan. We appreciate the service and performance of your state pilots and recommend their continued presence on foreign pleasure vessels 300 gross tons and over.

Again, I recognize these are state interests and appreciate the opportunity to present my concerns as part of our cooperative relationship. I trust all will go well with the remainder of your session. Please contact myself or LT Matt Jones of my staff at 907-463-2809 if we may be of further assistance on these matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. W. Underwood", written over a horizontal line.

J. W. UNDERWOOD
Rear Admiral, U.S. Coast Guard
Commander, Seventeenth Coast Guard District

Copy: The Honorable Fred Dyson
The Honorable Gary Wilken
Mr. Joseph W. Geldhof, Esq.



HAINES BOROUGH, ALASKA.
P.O. BOX 1209
HAINES, AK 99827
(907) 766-2231 * FAX (907) 766-3179

COPY

February 7, 2003

Senator Gene Therriault
Senate President
State Capitol
Juneau, AK 99801-1082

Re: Private Foreign-Flagged Yachts

Dear Senator Therriault:

On behalf of the newly-formed Haines Borough, I would like to add my support to a proposal to change a state law that could help the economy of our small community. I am referring to the current attempt to put a waiver system in place to allow private foreign-flagged yachts to cruise in Alaskan waters without a marine pilot aboard.

Haines has felt the devastating effects of a general downturn in our economy for many years. With the loss of the timber industry and the low return for our fisheries resources, we have turned to tourism as one way to help rebuild our community. The impact of the spending by guests and crew on these large yachts in a small coastal community such as Haines cannot be overstated.

Haines is open for business and we welcome any changes in state law that will help bring new customers here. Thank you for your consideration of these changes. They could have a very positive impact on the economy of our community.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Lapp". The signature is stylized and cursive.

Jerry Lapp
Deputy Mayor
HAINES BOROUGH



THE CITY OF WHITTIER

Gateway to the Western Prince William Sound

P.O. Box 608 • Whittier, Alaska 99593 • (907) 472-2327 • Fax (907) 472-2404

April 14, 2003

Representative Nancy Dahlstrom
State Capitol
Juneau, AK 99801-1082

RE: HB 251-exemptions from marine pilotage for certain yachts

Dear Representative Dahlstrom:

The City of Whittier would like to add its support for HB 251, legislation that could help strengthen our economy by encouraging large yachts to come to Alaska. I am referring to the law that currently dissuades private pleasure craft from cruising in our waters by mandating that they employ a marine pilot while they are in Alaska.

Whittier has a large harbor and facilities to accommodate these desirable visitors. We are hoping to become a tourism destination in the future and would like to do all we can to persuade yachts of all sizes to visit our community. The state should also be doing all it can to attract this new money to our coastal ports, especially during these times of financial uncertainty. The city and small businesses can both benefit from the revenue brought to Whittier by these desirable independent tourists.

The City of Whittier is open for business and is always exploring new ways to draw people to our community. If passed, HB 251 will help greatly in that effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick A. Johnbaum".

Rick A. Johnbaum, Manager
City of Whittier

Cc Rep. Mike Hawker