

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

8672

11164 SENATE JUDICIARY

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 170
 (S) Publish Date: 4/4/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the Code of Criminal BRU Criminal Division
 Procedure: . . . " _____ Component All
 Sponsor Rules Committee
 Requester Governor 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	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 bill proposes a number of changes in the law regarding criminal defenses and criminal procedures. It addresses self-defense, and other defenses such as acting in the heat of passion and using deadly force in defense of others. It also would put some limits on collateral attacks on prior convictions. Additionally, the bill adopts a rational procedure for courts to follow in deciding claims of privilege and the granting of immunity, and it makes changes in sentencing procedures.

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

Prepared by: Joan M. Kasson Phone (907) 495-5370
 Division Attorney General's Office Date/Time 3/20/03 8:30 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/20/2003
 Agency Department of Law

ELEMENTS

The Use of **DEADLY FORCE** in **SELF-DEFENSE** is **ONLY LEGALLY JUSTIFIED** when:

1. The accused **ACTUALLY** believed that the use of **deadly force** was **NECESSARY** to defend against **death, serious physical injuries, and/or specific felonies;**

[No belief = No Self-Defense]

AND

2. The accused's belief was **objectively REASONABLE;**

[Unreasonable belief = No Self-Defense]

AND

3. The **threat/necessity** to defend was **IMMINENT;**

[No present threat = No Self-Defense]

AND

4. The accused used only **NECESSARY FORCE.**

[**EXCESSIVE** Force = No Self-Defense]

AS 11.81.330 & .335(a); Xi Van Ha v. State, 892 P.2d 184 (Alaska App. 1995) (imminence requirement); State v. Walker, 887 P.2d 971, 978-79 (Alaska App. 1994) (excessive force prohibition).

**EXCEPTIONS FURTHER LIMIT
the CLAIM of SELF-DEFENSE**

Additionally, and independently, use of Deadly Force in Self-Defense is NOT available IF:

1. "the force involved was the product of **MUTUAL COMBAT** not authorized by law;"

OR

2. The accused **PROVOKED** the other person's conduct with intent to cause physical injury to him;

OR

3. The accused "was the **INITIAL AGGRESSOR;**"

OR

4. The accused could have avoided the use of deadly force by **RETREATING.**

Elements of Heat of Passion

The heat of passion defense reduces Murder-1 or Murder-2 to Manslaughter. The heat of passion defense contains three elements:

1. The accused must act while in the “**heat of passion;**”

[Not overcome with passion = NO Defense]

AND

2. The time between the provocation and the homicide was not sufficient for the passion to cool off;

[Time to cool off = NO Defense]

AND

3. The decedent’s acts constituted “**serious provocation.**”

[No serious provocation = NO Defense]

[Unreasonable perception of serious provocation = NO Defense]

AS 11.41.115. et seq.

LaLonde v. State, 614 P.2d 808, 811 (Alaska 1980); Howell v. State, 917 P. 2d 1202, 1206 (Alaska App. 1996); Ha v. State, 892 P.2d 184 (Alaska App. 1995); Hilbish v. State, 891 P.2d 841, 851-52 (Alaska App. 1995). Stoneking v. State, 800 P.2d 949, 950-51 (Alaska App. 1990); LaPierre v. State, 734 P.2d 997, 1001 (Alaska App. 1987); Blackhurst v. State, 721 P.2d 645, 648-49 (Alaska App. 1986), Kirby v. State, 649 P.2d 963, 968-69, & n.15 (Alaska App.); Martin v. State, 664 P.2d 612, 618 (Alaska App. 1983) , cert. denied, 465 U.S. 1007 (1984).

SENATE BILL 170
Sectional Analysis

Section 1. "Heat of passion" applies only to First Degree Murder and Second Degree Murder. If a person kills while in a passion that was the result of serious provocation by the intended victim, that reduces the killing from murder to manslaughter. In one case, a man broke into the home of a drug dealer to recover money, and shot the drug dealer. He claimed that the shooting was done in a "heat of passion" and the Alaska Supreme Court reversed his murder conviction because the trial judge did not believe he was entitled to raise this defense. "Heat of passion" is often a fall-back position for defendants who do not think they will completely escape responsibility under self-defense. In cases where the state is able to disprove self-defense, it may also be required to disprove "heat of passion." This section would change "heat of passion" from a defense, that the state must *disprove* beyond a reasonable doubt, to an affirmative defense, that the defendant must prove by a preponderance of evidence. The defendant is the person who knows the motivation for the killing, and should bear the burden of establishing this justification.

Sections 2 - 4. These change self-defense from a defense, that the state must disprove beyond a reasonable doubt, to an affirmative defense, that the defendant must prove by a preponderance of evidence, with two exceptions. First, self-defense would remain a defense for the state to disprove if the person was on his or her property and did not use force against a household member; Second, it would remain a defense as under current law for force used by a peace officer acting within the scope of his or her duties. In most homicides, the defendant is only person still alive who was present at the killing. As with the defense of duress, the defendant is the person who knows the motivation for the use of force, and should bear the burden of establishing this justification. Section 2 deals with use of non-deadly force in self-defense. Sections 3 and 4 deal with deadly force. Section 4 also provides that a defendant may not claim self-defense for a killing if he brought a deadly weapon to the encounter, and was aware of and disregarded the risk that the encounter would result in combat.

Section 5 makes use of force in defense of a third person an affirmative defense. As with self-defense, the state would still be required to disprove the defense if the incident occurred on the person's property or the force was used by a peace officer.

Section 6 provides that an adult who has volunteered to talk to the police must request to be visited by an attorney, relative or friend. Occasionally attorneys people will demand to visit a person under arrest, even if the person has not made a request for the visit. This interrupts the police investigation, but it is allowed under current law. All other provisions in section 6, regarding the right to immediately make phone calls, are unchanged from current law.

Section 7. When the law provides that an element of a crime depends on a prior conviction or convictions, such as felony drunk driving, the state must prove beyond a reasonable doubt that the past convictions occurred. But the Alaska courts have said that this must occur in two trials, and that the jury must not be told of the past convictions in the first trial. This section reverses that court decision. Section 7 also provides that the defendant may not again litigate the validity of the prior conviction, unless the defendant was not provided counsel or a jury trial. Prior convictions should not again be subject to attack where the defendant has had the opportunity to appeal, and to exercise post-conviction remedies.

Sections 8 -12 and 17. These sections adopt a procedure for making decisions about Fifth Amendment claims and the granting of immunity by the state. Alaska law requires complete, transactional immunity from prosecution for a person who has claimed a privilege; thus, the decision to grant immunity must be made carefully. Currently, the courts hold secret hearings with witnesses who refuse to testify, and then give the state no information that the state needs to decide whether to grant immunity to the witness. Under this bill, the state is allowed the information it needs to make a rational decision about granting immunity from prosecution. Section 8 merely conforms statutory law to a constitutional decision by the Alaska Supreme Court. Sections 9 and 10 are minor clarifying amendments. Section 11 defines a term that explains that the witness can communicate to the court through his or her attorney, rather than speaking directly. Section 12 adopts a procedure where the decision about the privilege is made after an attorney is appointed for the witness, and after input by both the witness and the state. Section 17 clarifies that a witness who claims a Fifth Amendment privilege not to testify is entitled to a public defender if the cannot afford one. This codifies current court practice.

Sections 13 and 14, 18 - 20. Sections 13, 18 - 20 are conforming amendments regarding consecutive sentencing. Section 14 gives direction to courts in sentencing for more than one offense. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first degree murder, the court must require the mandatory minimum term of the second offense to be served consecutively. For manslaughter or kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

Section 15 is similar to section 7, and provides that in imposing a presumptive sentence (which depends on prior convictions), the defendant may only challenge the validity of a prior conviction if he was denied the right to counsel or the right to a jury trial.

Section 16 would adopt a new mitigating factor for sentencing in a sexual felonies. Because these trials are so difficult for the victim, it would allow the court to consider whether to impose a lesser sentence if the defendant reduced the impact on the victim by entering a plea of guilty or no contest within 30 days of arraignment.

Section 21 changes Rule 16 (c)(5), Alaska Rules of Criminal Procedure, to require a defendant to give notice of certain defenses 30 days in advance of trial. Current law requires a shorter notice, and is routinely ignored by defense attorneys and courts.

Section 22 makes a conforming amendment to Rule 16(e)(1), Alaska Rules of Criminal Procedure, by cross-referencing consequences provided in other law for violation of the discovery rules or an order issued by a court under the discovery rules.

Section 23 addresses pretrial discovery of expert witnesses by both the prosecution and the defense. It requires that no later than 45 days before trial, both parties provide opposing counsel with the name and curriculum vitae of expert witnesses. The defense must disclose only those experts that it may call at trial. The prosecution must disclose experts that it may call at trial or that have worked on the case. Defense attorneys frequently instruct their experts not to write reports, because the report would have to be turned over to the prosecution. The prosecution has no such luxury, and is required to provide an expert's report. This section provides that if the defense expert has not written a report, the prosecution is entitled to depose the expert at the expense of the defense. It requires the court to disallow expert testimony if disclosure isn't complete seven days before trial or another time ordered by the court.

Section 24 amends the Alaska Rules of Evidence to provide that a voluntary statement obtained in violation of the technical *Miranda* requirements, may be used to impeach the person who made the statement, if that person testifies differently. Further, evidence that has been suppressed may also be used to impeach a witness. Current law only allows these statements and evidence to be used at a later perjury trial. This makes them available to impeach a witness at the first trial.

Section 25 extends the time for use of prior convictions for impeachment at trial from five years from conviction, to five years from the date of unconditional discharge.

Section 26 adopts a new exception to the rule against use of hearsay evidence, by allowing the use at trial of statements made within 24 hours of a crime involving domestic violence, if the statement reports or describes the crime.

Sections 27 - 31 include conforming repealers, a notice of a court rule change described above, procedural directions, and an effective date, July 1, 2003.

Subject: SB-170/HB-244

Date: Tue, 29 Apr 2003 23:04:26 -0800

From: "Grant Hunter" <hunterpp@corecom.net>

To: <brian_hove@legis.state.ak.us>

4-29-2003

Sir:

I live at 2700 Forest Park Drive in Anchorage.

I respectfully request that the Judiciary Committee oppose House Bill 170 and Senate Bill 244 because they will impede the right of self-defense in those most in need of the same. I incorporate by reference the article by Brant McGee and Barbara Brink at page B5 of the Anchorage Daily News on 4-26-2003. As you may know, I am from the opposite side of the political spectrum. I firmly believe that Yates vs. United States was incorrectly decided and that the United States would be a better place if Barry Goldwater had been elected in 1964. Despite my differences on economic and national security policy with Mr. McGee and Ms. Brink, I stand shoulder-to-shoulder with them on the need to protect the natural law right to protect one's life and the Second Amendment right to keep and bear arms.

Grant W. Hunter
645 G. Street Ste. 100 PMB 653
Anchorage, AK 99501

907-258-6735

hunterpp@corecom.net



Alaska State Legislature

Please enter into the record my testimony to the _____

STUD

Committee name

Committee on _____

SB 170

, dated _____

4/24/03

Bill/Subject

8 pages to follow - please give to committee members for their ~~review~~ review during my testimony at the ~~current~~ meeting currently ~~is~~ going on. Thanks

Signed: _____

Eric Beckman, VERNE RUPRIGHT, BARBARA BECKMAN

Testifier

Representing (Optional)

Address

Phone number

I What about the "Household" members as defined has been beaten, and facing death or grave bodily injury - the amendments take away the current defense - what outcome?

II Novak misled this panel - it doesn't to take 18 grand jury members to indict - only a majority - what about that?

III Retreat state: a duty to retreat if with complete personal safety to self and others. Novak misleads again!

1.

*Mr. Chairman
if it
Committee*

SB 170

§ 2 11.81.330

GENERAL PROVISIONS

§ 11.81.330

480
481
provides exemptions or
situation involved; and
y does not otherwise
tive defense. (§ 10 ch
ce justifying his continued
ell as his initial departure
te law is a continuing of
P.2d 346 (Alaska Ct. App.
ving with a suspended li
28.15.291, evidence

Sec. 11.81.330. Justification: Use of nondeadly force in defense of self. (a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self defense against what the person reasonably believes to be the use of unlawful force by the other, unless
(1) the force involved was the product of mutual combat not authorized by law;
(2) the person claiming the defense of justification provoked the other's conduct with intent to cause physical injury to the other; or
(3) the person claiming the defense of justification was the initial aggressor.
(b) In circumstances described in (a)(1) — (a)(3) of this section, the person claiming the defense of justification may use nondeadly force if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force. (§ 10 ch 166 SLA 1978)

Now

AMENDED

23-GS1024A

- 1 * Sec. 2. AS 11.81.330 is amended by adding new subsections to read:
- 2 (c) Except as provided in (d) of this section, the justification specified in (a) of
- 3 this section is an affirmative defense.
- 4 (d) The justification specified in (a) of this section is a defense if the person is
- 5 ~~X~~ (1) on premises that the person owns or leases, the person is not the
- 6 initial aggressor, and the other person is not a household member as defined in
- 7 AS 18.66.990; or
- 8 (2) a peace officer acting within the scope and authority of the officer's
- 9 employment or is a person assisting a peace officer under AS 11.81.380.

(d) 1 AS 18.66.990 definition of household member.

18.66.990 reads:

- § 88, (5) "household member" includes
- (A) adults or minors who are current or former spouses;
 - (B) adults or minors who live together or who have lived together;
 - (C) adults or minors who are dating or who have dated;

- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;
- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
- (F) adults or minors who are related or formerly related by marriage;
- (G) persons who have a child of the relationship; and
- (H) minor children of a person in a relationship that is described in (A) — (G) of this paragraph.

This is the village of A.V.

The justification then does not permit an individual to use that requisite level of non-deadly force to protect one's self in their own home if the attacker is a defined household member. Also, it does not permit an individual to defend one's self while in the public. Also does this not interfere with and do violence to 11.81.430 Special relationships? or citizens arrest?

Shunter

Sec. 11.81.430. Justification: Use of force, special relationships. (a) The use of force upon another person that would otherwise constitute an offense is justified under any of the following circumstances:

(1) When and to the extent reasonably necessary and appropriate to promote the welfare of the child or incompetent person, a parent, guardian, or other person entrusted with the care and supervision of a child under 18 years of age or an incompetent person may use reasonable and appropriate nondeadly force upon that child or incompetent person.

~~Sec. 11.81.290. Use of force by a private person in making arrest or terminating an escape. In addition to using force justified under other sections of this chapter, a person, acting as a private person, may use nondeadly force to make the arrest or terminate the escape or attempted escape from custody of a person who the private person reasonably believes has committed a misdemeanor in the private person's presence or a felony when and to the extent the private person reasonably believes it necessary to make that arrest or terminate that escape or attempted escape from custody. A private person may use deadly force under this section only when and to the extent the~~

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~~private person reasonably believes the use of deadly force is necessary to make the arrest or terminate the escape or attempted escape from custody of another who the private person reasonably believes~~

- ~~(1) has committed or attempted to commit a felony which involved the use of force against a person; or~~
- ~~(2) has escaped or is attempting to escape from custody while in possession of a firearm~~

Sec. 11.81.335. Justification: Use of deadly force in defense of self. (a) Except as provided in (b) of this section, a person may use deadly force upon another person when and to the extent

(1) the use of nondeadly force is justified under AS 11.81.330; and

(2) the person reasonably believes the use of deadly force is necessary for self defense against death, serious physical injury, kidnapping, sexual assault in the first degree, sexual assault in the second degree, or robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others, the person can avoid the necessity of using deadly force by retreating, except there is no duty to retreat if the person is

(1) on premises which the person owns or leases and the person is not the initial aggressor; or

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380. (~~§ 10 ch 166 SLA 1978; am § 10 ch 4 SLA 1990~~)

* Sec. 3. AS 11.81.335(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, a person may use deadly force upon another person when and to the extent

(1) the use of nondeadly force is justified under AS 11.81.330; and

(2) the person reasonably believes the use of deadly force is necessary for self defense against death, serious physical injury, kidnapping, sexual assault in the first degree, sexual assault in the second degree, or robbery in any degree.

* Sec. 4. AS 11.81.335 is amended by adding new subsections to read:

(c) A person may not use deadly force under this section if the person brought a deadly weapon to an encounter with reckless disregard that the encounter would result in combat.

(d) Except as provided in (e) of this section, the justification specified in (a) of this section is an affirmative defense.

(e) The justification specified in (a) of this section is a defense if the person is

(1) on premises that the person owns or leases, the person is not the initial aggressor, and the other person is not a household member as defined in AS 18.66.990; or

(2) a peace officer acting within the scope and authority of the officer's employment or is a person assisting a peace officer under AS 11.81.380.

4

AS TO:

§ 3 and 4

again as to 335 (C) "encounter" in which way is this to be defined? is it a meeting between hostile factions? or as a chance meeting? which is it? Story of homeowner absentee landlord in Anchorage "threats armed ets.... in Daily News

(d) states that except as provided in (e) the justification is an affirmative defense:

BUT (e) states the justification is a defense if the person is on premises that they own or lease, the person is not the initial aggressor and the other person is not a household member.

This would mean that if a spouse is beating another like a drum then that person cannot defend themselves Further, the citizen cannot use that force necessary UNLESS they are on there property!

Sec. 11.81.340. Justification: Use of force in defense of a third person. A person may use force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming the defense of justification reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self defense. (§ 10 ch 166 SLA 1978)

... initial aggressor.

29 * Sec. 5. AS 11.81.340 is amended by adding new subsections to read:

30 (b) Except as provided in (c) of this section, the justification specified in (a) of
31 this section is an affirmative defense.

SB 170

-2-

SB0170A

New Text Underlined [DELETED TEXT BRACKETED]

23-GS1024A

(c) The justification specified in (a) of this section is a defense if the person claiming the defense of justification

(1) reasonably believes that the third person is on premises that the third person owns or leases and the third person is not the initial aggressor;

6

§ 5

340 Third Person defense

reads reasonably believes that the third person is on premises that the third person owns or leases and the third person is not the initial agressor.

1. You would have to know that the person is on there premises and therefore you must know the person.

2. Further, See armed Citizen article read it. Or your own special relationships. such as someone stealing your kids! tell it to John Walsh!!!! and America's most wanted.

How does 330 and 335 and 340 square with 11.81.390

WHICH PERMITS ~~PASTE~~ THE Following:

Sec. 11.81.390. Use of force by a private person in making arrest or terminating an escape. In addition to using force justified under other sections of this chapter, a person, acting as a private person, may use nondeadly force to make the arrest or terminate the escape or attempted escape from custody of a person who the private person reasonably believes has committed a misdemeanor in the private person's presence or a felony when and to the extent the private person reasonably believes it necessary to make that arrest or terminate that escape or attempted escape from custody. A private person may use deadly force under this section only when and to the extent the

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GENERAL PROVISIONS

§ 11.81.410

private person reasonably believes the use of deadly force is necessary to make the arrest or terminate the escape or attempted escape from custody of another who the private person reasonably believes

(1) has committed or attempted to commit a felony which involved the use of force against a person; or

(2) has escaped or is attempting to escape from custody while in possession of a firearm on or about the person. (§ 10 ch 166 S. A 1978)

6
Whats really happening is the defenses are striped away from the citizens of this state and the burden then would necessarily shift to the accused e, r 12 47

Affirmative Defense is defined at 11.81.900 (b) (2) (A&B)

which reads :

"affirmative defense" means:

"some evidence must be admitted which places in issue the defense; and the defendant has the burden of establishing the defense by a preponderance of the evidence."

At this time that is all that is required and the state must prove the elements of the offense and the mental state beyond a reasonable doubt.

Under this scheme in most scenerios the defense is stripped away from the citizen if they do not meet the exceptions to the now swallowed rule, and if raised, if allowed, then is the citizen/defendant required to prove the justification beyond a resonable doubt? What is the standard? This is burden shifting which has no place in our laws, public policy or history. Instead of the presumption of innocence the presumption is guilt and the individual stands before the court presumed guilty until they prove their innocence.

This is "joker" in the law: A joker as defined by Websters 9th Colligate Dictionary it defines as follows:

the object of a joke : KID — **jok·ing·ly** \ˈjō-kiŋ-lē\ *adv*
jok·er \ˈjō-kər\ *n* (1729) **1 a** : a person given to joking : WAG **b** : FELLOW, GUY; *esp* : an insignificant, obnoxious, or incompetent person (a shame to let a ~ like this win —Harold Robbins) **2** : a playing card added to a pack as a wild card or as the highest-ranking card **3**
a (1) : an ambiguous or apparently immaterial clause inserted in a legislative bill to make it inoperative or uncertain in some respect (2) : an unsuspected, misleading, or misunderstood clause, phrase, or word in a document that nullifies or greatly alters it **b** : something (as an expedient or stratagem) held in reserve to gain an end or escape from a predicament **c** : an unsuspected or not readily apparent fact, factor, or condition that thwarts or nullifies a seeming advantage

7.

§ 6

12.25.150(b) Rights of Prisioner after arrest

the word "shall" is removed which makes it mandatory for the police and corrections to afford the rights.

Now it's left at their discreation as to time, place and manner of the contact.

SB

171

STATE OF ALASKA

Frank H. Murkowski, Governor

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

April 11, 2003

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

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

Dear Senator Seekins:

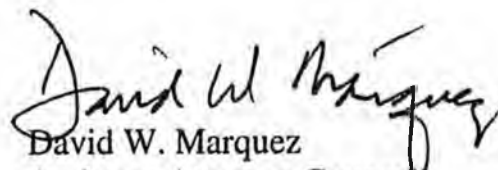
I am writing this letter to request that you and your committee consider and adopt the attached technical amendment to the subject bill.

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

Sincerely,

GREGG D. RENKES
Attorney General

By:


David W. Marquez
Assistant Attorney General

DWM:lb

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

AMENDMENT

OFFERED IN THE SENATE JUDICIARY
COMMITTEE
TO: SB 171

BY _____

Page 4, lines 23 – 27:

Delete all material and insert:

“(4) an officer or a member of the state’s organized militia on state active duty
under AS 26.05.070;”

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE COMMISSIONER

FRANK MURKOWSKI, GOVERNOR

*P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135*

April 8, 2003

The Honorable Ralph Seekins
Chair Senate Judiciary Committee
Alaska State House
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Seekins:

This letter is to request that you schedule SB ¹⁷¹~~245~~, an act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and fire fighting, for a committee hearing as soon as possible.

Your favorable consideration of this request will be greatly appreciated.

Sincerely,



Kevin Jardell
Assistant Commissioner

STATE OF ALASKA

Frank H. Murkowski, Governor

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

April 3, 2003

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

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


Dear Senator Seekins:

I am writing this letter to request that you schedule the above act, pending referral, for a hearing at your earliest convenience.

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

Sincerely,

GREGG D. RENKES
Attorney General

By: 
David W. Marquez
Assistant Attorney General

DWM:lb

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 171
(S) 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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 171
(S) 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 ()						
-------------------------------	--	--	--	--	--	--

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

FISCAL NOTE #2

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 171

ANALYSIS CONTINUATION

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 171
(S) Publish Date: 4/8/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to certain claims and BRU Risk Management
suits..... 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						
-----------------------------	--	--	--	--	--	--

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

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 Phone _____
Division: Risk Management Date/Time 2/14/03 7:46 AM
Approved by: Mike Miller, Commissioner Date 2/14/2003
Agency: Administration

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 3, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

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.

The Honorable Gene Therriault

April 3, 2003

Page 2

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 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

The Honorable Gene Therriault

April 3, 2003

Page 3

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 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

The Honorable Gene Therriault

April 3, 2003

Page 4

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

The Honorable Gene Therriault

April 3, 2003

Page 5

fires. The commissioner, through the division of forestry, provides for fire management and firefighting activities. The division of forestry's authority to

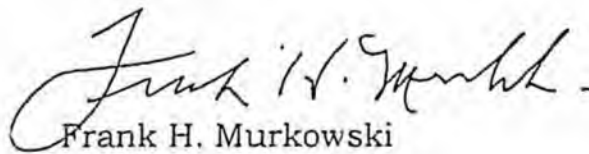
prevent, monitor, suppress, or control forest fires is one aspect of its authority to manage state forest resources. The division of forestry is asked to respond to forest fires in various geographic areas and population zones in Alaska, which often occur simultaneously during the fire season. When responding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



Frank H. Murkowski
Governor

SB

175

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

SB 175 Sponsor Statement

Civil Liabilities for Commercial Recreational Activities

Alaska offers outdoor enthusiasts myriad recreational opportunities. Many visitors from Outside, as well as in-state recreationalists, enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. However, the high cost of liability insurance presents a substantial barrier to these enterprises, the vast majority of which are small Alaska-based companies.

Senate Bill 175 delineates the burden of responsibility for the commercial recreation business as well as the person who elects to participate in that recreational activity. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Nevertheless, commercial businesses are still responsible for meeting safety standards and providing trained and competent personnel as required by the Bill.

Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. However, SB 175 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such has played a role in any damages resulting from that inherent risk. Likewise, a non-paying guest who is transported by a non-commercial aircraft or watercraft is considered to have assumed the same inherent risks as the commercial recreation user.

This legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs, which are prohibitive, especially for smaller businesses. This Bill will help avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that are closely identified with the Alaska lifestyle and have come to be expected by visitors looking for exceptional experiences.

CS FOR SENATE BILL NO. 175(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for inherent risks in sports or recreational activities;
2 and providing for an effective date."

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

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

6 **FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) all sports or recreational activities involve inherent risks that provide the
8 challenge and excitement that entice people to participate in those activities;

9 (2) people should accept the risks inherent in sports or recreational activities
10 and be responsible for injuries and damages resulting from those inherent risks;

11 (3) the state has a legitimate interest in maintaining the economic viability of
12 the sports or recreational activities industry by discouraging claims based on injuries and
13 damages resulting from risks inherent in sports or recreational activities;

14 (4) providers of sports or recreational activities should not be required to alter

1 the challenge and excitement of the activities by controlling risks inherent in the activities;
2 and

3 (5) the liability of providers of sports or recreational activities should be
4 limited to negligence that is not associated with the inherent risks of sports or recreational
5 activities.

6 (b) It is the intent of this Act to

7 (1) limit or eliminate the liability of a provider of a sports or recreational
8 activity to a participant in the activity when an injury or damage caused by or to the
9 participant is the result of risks inherent in the activity; and

10 (2) encourage the broad construction of the Act to shield providers of sports or
11 recreational activities from liability for injuries and damages caused by the inherent risks of
12 sports or recreational activities.

13 * Sec. 2. AS 05.25.040 is amended to read:

14 **Sec. 05.25.040. Owner's civil liability.** Except as provided under
15 AS 09.65.290, the [THE] owner of a boat is liable for injury or damage caused by the
16 negligent operation of the owner's boat whether the negligence consists of a violation
17 of a state statute or the failure to exercise ordinary care in the operation of the boat as
18 the rules of the common law require. The owner is not liable, however, unless the
19 boat is used with the owner's express or implied consent. It is presumed that the boat
20 is being operated with the knowledge and consent of the owner if, at the time of the
21 injury or damage, it is under the control of the owner's spouse, father, mother, brother,
22 sister, son, daughter, or other member of the owner's immediate family. This chapter
23 does not relieve any other person from a liability that the person would otherwise
24 incur and does not authorize or permit recovery in excess of injury or damage actually
25 incurred.

26 * Sec. 3. AS 09.65 is amended by adding a new section to read:

27 **Sec. 09.65.290. Civil liability for sports or recreational activities.** (a) A
28 person who participates in a sports or recreational activity assumes the inherent risks
29 in that sports or recreational activity, whether those risks are known or unknown, and
30 is legally responsible for all injuries or death to the person or other persons and for all
31 damage to property that results from the inherent risks in that sports or recreational

1 activity.

2 (b) This section does not require a provider to eliminate, alter, or control the
3 inherent risks within the particular sports or recreational activity that is provided.

4 (c) This section does not apply to a civil action based on the

5 (1) negligence of a provider if the injury, death, or damage was not the
6 result of an inherent risk of the sports or recreational activity that was provided; or

7 (2) design or manufacture of sports or recreational equipment or
8 products or safety equipment used incidental to or required by a sports or recreational
9 activity.

10 (d) Nothing in this section shall be construed to conflict with or render as
11 ineffectual a liability release agreement between a person who participates in a sports
12 or recreational activity and a provider.

13 (e) In this section,

14 (1) "inherent risks" means those dangers or conditions that are
15 characteristic of, intrinsic to, or an integral part of a sport or recreational activity;

16 (2) "provider" means a person or a federal, state, or municipal agency
17 that promotes, offers, or conducts a sports or recreational activity, whether for pay or
18 otherwise;

19 (3) "sports or recreational activity"

20 (A) means a commonly understood sporting activity, whether
21 undertaken with or without permission, including baseball, softball, football,
22 soccer, basketball, hockey, bicycling, hiking, swimming, skateboarding,
23 horseback riding and other equine activity, dude ranching, mountain climbing,
24 river floating, whitewater rafting, canoeing, kayaking, hunting, fishing,
25 backcountry trips, mushing, backcountry or helicopter-assisted skiing, alpine
26 skiing, nordic skiing, snowboarding, telemarking, snow sliding, snowmobiling,
27 off-road and all-terrain vehicle use;

28 (B) does not include

29 (i) boxing contests, sparring or wrestling matches or
30 exhibitions that are subject to the requirements of AS 05.10;

31 (ii) activities involving the use of devices that are

1 subject to the requirements of AS 05.20; or

2 (iii) skiing or sliding activities at a ski area that are
3 subject to the requirements of AS 05.45.

4 * Sec. 4. Section 9, ch. 28, SLA 2000 is amended to read:

5 Sec. 9. AS 05.25.040 is repealed and reenacted to read:

6 Sec. 05.25.040. Owner's civil liability. Except as provided under
7 AS 09.65.290, the [THE] owner of a watercraft is liable for injury or damage caused
8 by the negligent operation of the owner's watercraft whether the negligence consists of
9 a violation of a state statute or neglecting to observe ordinary care in the operation of
10 the watercraft as the rules of the common law require. The owner is not liable,
11 however, unless the watercraft is used with the owner's express or implied consent. It
12 is presumed that the watercraft is being operated with the knowledge and consent of
13 the owner if, at the time of the injury or damage, it is under the control of the owner's
14 spouse, father, mother, brother, sister, son, daughter, or other member of the owner's
15 immediate family. This chapter does not relieve any other person from a liability that
16 the person would otherwise incur and does not authorize or permit recovery in excess
17 of injury or damage actually incurred.

18 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. This Act applies to acts or omissions that occur on or after the
21 effective date of sec. 3 of this Act.

22 * Sec. 6. Section 4 of this Act takes effect on the date sec. 9, ch. 28, SLA 2000, takes
23 effect.

24 * Sec. 7. Except as provided in sec. 6 of this Act, this Act takes effect July 1, 2003.

Sectional Analysis

CS for HB 319

(Same as SB 175)

Section 1: Establishes the purpose of the bill, which is to decrease the legal uncertainties regarding liability for injuries that result from participation in commercial recreational activities.

As well, the purpose of this legislation is to encourage the continued availability of businesses that offer recreational activities to the public.

Section 2: Amends Title 5 – Amusements & Sports, by adding a new chapter entitled, “Civil Liability for Commercial Recreational Activities.”

1. This chapter establishes an acceptance of inherent risk on the part of the participants and responsibilities of the operators. Specifically,
 - a. **Acceptance of inherent risks.** Participation in a commercial recreational activity constitutes acceptance of the inherent risks.
 - b. **Contributory negligence.** A person who accepts the inherent risks of a commercial recreational activity is contributorily negligent to the extent that the inherent risk caused the injury or loss. An action to recover damages shall be reduced for contributory negligence as provided under *AS 09.50.030.
 - c. **Responsibilities of participants.** The participant is responsible to learn about and to expressly accept the risks of the activity and they must heed all relative warnings. They must act within the constraints of their health. The participant must heed all warnings regarding their The participant must maintain control of themselves, any minors under their control and any equipment or animals that the participant is using. The participant must not act in a fashion that could contribute to the injury of another participant.
 - d. **Responsibilities of operators of commercial recreational activities.** An operator must explain to the participants the fundamental inherent risks of the commercial recreational activity and must explain the skills and equipment that are not apparent to a novice. The operator must ensure that employees that assist participants are trained in basic first aid and in CPR. The operator must maintain all equipment, provide trained and competent employees and act in a reasonably safe and competent manner.
 - e. **Interaction with other laws.** This chapter doesn't affect the immunity of the ski area operator immunity or owner of unimproved land.

- f. **Effect of violations.** A commercial operator who breaches their responsibilities laid out in this chapter is negligent and liable to the extent that the breach caused injury or loss to a participant.

Section 3: Amends Title 9 by adding a new section entitled, "Civil liability for aircraft and watercraft guest passengers."

1. This chapter establishes that an owner or operator is not liable for civil damages of their guest except for damages resulting from:
 - a. gross negligence or reckless or intentional misconduct
 - b. an act or omission of a common carrier owner or operator
 - c. an act or omission that occurs while demonstrating an aircraft or watercraft to a prospective buyer
1. This new section also provides that if the owner or operator has insurance is not liable for damages that exceed their insurance coverage.
2. The owner or operator is not shielded by this chapter if they fail to provide notice to the guest that they are uninsured.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 175 (L&C)
 () Publish Date: _____

Revision Date/Time: _____ Dept. Affected: Law
 Title "An Act relating to civil liability for commercial BRU Civil Division
recreational activities and for guest passengers..." Componen' Special Litigation
 Sponsor Senator Seekins
 Requester Senate Labor and Commerce Componen' 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)

SB 175 establishes the responsibilities of persons who operate commercial recreational activities and persons who participate in those recreational activities and to decrease uncertainty regarding the legal responsibility for injuries that result from participation in commercial recreational activities. Under this bill, owners or operators of an aircraft or watercraft would not be liable for civil damages of a guest passenger if the owner or operator is not being compensated for the transportation, except under certain specified circumstances.

The Department of Law does not anticipate a fiscal impact as a result of this bill.

Prepared by: Kathryn Daughhete Phone (907) 465-3673
 Division Attorney General's Office Date/Time 4/29/03 12:09 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/29/2003
 Agency Department of Law

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April 28, 2003

Senator Seekins, Chair
 Senate Judiciary Committee
 Alaska Senate
 Juneau, Alaska

Dear Senator Seekins,

This letter is in support of SB 175, Recreation Liability Legislation, as it appears in the committee substitute.

Alaska Wildland Adventures operates rafting and fishing trips on the Kenai River, and we also operate statewide, small-group nature tours that range from the Kenai Peninsula to Denali National Park to Fairbanks. We have twelve year around employees and over 60 seasonal employees. Risks are inherent in any outdoor activity, including our programs, and these risks cannot be eliminated without destroying the unique nature of the activities.

As I understand it, the clarification of legal responsibilities provided by SB 175 will be very helpful in avoiding legal claims that are without merit.

Respectfully,

Kirk Hoessle
 President

Subject: SB175

Date: Mon, 28 Apr 2003 21:34:34 -0800

From: "Roark and Deborah" <roark@xyz.net>

To: <brian_hove@legis.state.ak.us>

CC: <lindaa@gci.net>

Senator Seekins and Brian Hove,

I would like to express my support for SB175 and the committee substitute as submitted by ATIA. This is a very important piece of legislation for Alaska businesses that needs to be passed this session. Thanks for your help with this bill, your hard work is much appreciated.

Roark Brown
Homer Ocean Charters/Otter Cove Resort
PO Box 2543
Homer, AK 99603
(800) 426-6212 ofc. (907) 399-1269 cell
e-mail: roark@xyz.net
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Senator Ralph Seekins
District D

SB 175 Sponsor Statement

Civil Liabilities for Commercial Recreational Activities

Alaska has many recreational opportunities to offer outdoor enthusiasts. Visitors from all over the world, along with in-state recreationalists, enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. Yet, the high cost of liability insurance presents a significant barrier to these enterprises, the vast majority of which are small Alaska-based companies.

Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. Senate Bill 175 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such has played a role in any damages resulting from that inherent risk.

This legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs, which are prohibitive, especially for smaller businesses.

This Bill will help avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that are closely identified with the Alaska lifestyle and have come to be expected by visitors looking for exceptional experiences.

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MEMORANDUM

May 7, 2003

SUBJECT: Civil liability for sports or recreational activities
(CSSB 175(JUD), Draft Version "Q")

TO: Senator Ralph Seekins
Attn: Brian

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if the amendment to AS 05.25.040 in secs. 2 and 4 of CSSB 175(JUD) conflicts with the amendment to AS 05.25.040 made in secs. 1 and 3 of CSSB 98(TRA). The answer is no. Both bills amend AS 05.25.040, but the amendments are for different provisions of law. Assuming both CSSB 175(JUD) and CSSB 98(TRA) become law, the revisor of statutes would reconcile both of the amendments and add the new law as a part of AS 05.25.040.

Please contact me if you have further questions.

MFF:med
03-500.med

23-LS0908S
Ford
5/7/03

CS FOR SENATE BILL NO. 175(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to civil liability for inherent risks in sports or recreational activities;
2 and providing for an effective date."

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

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

6 **FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) all sports or recreational activities involve inherent risks that provide the
8 challenge and excitement that entice people to participate in those activities;

9 (2) people should accept the risks inherent in sports or recreational activities
10 and be responsible for injuries and damages resulting from those inherent risks;

11 (3) the state has a legitimate interest in maintaining the economic viability of
12 the sports or recreational activities industry by discouraging claims based on injuries and
13 damages resulting from risks inherent in sports or recreational activities;

14 (4) providers of sports or recreational activities should not be required to alter

1 the challenge and excitement of the activities by controlling risks inherent in the activities;
2 and

3 (5) the liability of providers of sports or recreational activities should be
4 limited to negligence that is not associated with the inherent risks of sports or recreational
5 activities.

6 (b) It is the intent of this Act to

7 (1) limit or eliminate the liability of a provider of a sports or recreational
8 activity to a participant in the activity when an injury or damage caused by or to the
9 participant is the result of risks inherent in the activity; and

10 (2) encourage the broad construction of the Act to shield providers of sports or
11 recreational activities from liability for injuries and damages caused by the inherent risks of
12 sports or recreational activities.

13 * Sec. 2. AS 05.25.040 is amended to read:

14 **Sec. 05.25.040. Owner's civil liability. Except as provided under**
15 **AS 09.65.290, the** [THE] owner of a boat is liable for injury or damage caused by the
16 negligent operation of the owner's boat whether the negligence consists of a violation
17 of a state statute or the failure to exercise ordinary care in the operation of the boat as
18 the rules of the common law require. The owner is not liable, however, unless the
19 boat is used with the owner's express or implied consent. It is presumed that the boat
20 is being operated with the knowledge and consent of the owner if, at the time of the
21 injury or damage, it is under the control of the owner's spouse, father, mother, brother,
22 sister, son, daughter, or other member of the owner's immediate family. This chapter
23 does not relieve any other person from a liability that the person would otherwise
24 incur and does not authorize or permit recovery in excess of injury or damage actually
25 incurred.

26 * Sec. 3. AS 09.65 is amended by adding a new section to read:

27 **Sec. 09.65.290. Civil liability for sports or recreational activities.** (a) A
28 person who participates in a sports or recreational activity assumes the inherent risks
29 in that sports or recreational activity, whether those risks are known or unknown, and
30 is legally responsible for all injuries or death to the person or other persons and for all
31 damage to property that results from the inherent risks in that sports or recreational

1 activity.

2 (b) This section does not require a provider to eliminate, alter, or control the
3 inherent risks within the particular sports or recreational activity that is provided.

4 (c) This section does not apply to a civil action based on the

5 (1) negligence of a provider if the injury, death, or damage was not the
6 result of an inherent risk of the sports or recreational activity that was provided; or

7 (2) design or manufacture of sports or recreational equipment or
8 products or safety equipment used incidental to or required by a sports or recreational
9 activity.

10 (d) Nothing in this section shall be construed to conflict with or render as
11 ineffectual a liability release agreement between a person who participates in a sports
12 or recreational activity and a provider.

13 (e) In this section,

14 (1) "inherent risks" means those dangers or conditions that are
15 characteristic of, intrinsic to, or an integral part of a sport or recreational activity;

16 (2) "provider" means a person or a federal, state, or municipal agency
17 that promotes, offers, or conducts a sports or recreational activity, whether for pay or
18 otherwise;

19 (3) "sports or recreational activity"

20 (A) means a commonly understood sporting activity, whether
21 undertaken with or without permission, including baseball, softball, football,
22 soccer, basketball, hockey, bungee jumping, parasailing, bicycling, hiking,
23 swimming, skateboarding, horseback riding and other equine activity, dude
24 ranching, mountain climbing, river floating, whitewater rafting, canoeing,
25 kayaking, hunting, fishing, backcountry trips, mushing, backcountry or
26 helicopter-assisted skiing, alpine skiing, nordic skiing, snowboarding,
27 telemarking, snow sliding, snowmobiling, off-road and all-terrain vehicle use;

28 (B) does not include

29 (i) boxing contests, sparring or wrestling matches or
30 exhibitions that are subject to the requirements of AS 05.10;

31 (ii) activities involving the use of devices that are

1 subject to the requirements of AS 05.20; or

2 (iii) skiing or sliding activities at a ski area that are
3 subject to the requirements of AS 05.45.

4 * Sec. 4. Section 9, ch. 28, SLA 2000 is amended to read:

5 Sec. 9. AS 05.25.040 is repealed and reenacted to read:

6 Sec. 05.25.040. Owner's civil liability. Except as provided under
7 AS 09.65.290, the [THE] owner of a watercraft is liable for injury or damage caused
8 by the negligent operation of the owner's watercraft whether the negligence consists of
9 a violation of a state statute or neglecting to observe ordinary care in the operation of
10 the watercraft as the rules of the common law require. The owner is not liable,
11 however, unless the watercraft is used with the owner's express or implied consent. It
12 is presumed that the watercraft is being operated with the knowledge and consent of
13 the owner if, at the time of the injury or damage, it is under the control of the owner's
14 spouse, father, mother, brother, sister, son, daughter, or other member of the owner's
15 immediate family. This chapter does not relieve any other person from a liability that
16 the person would otherwise incur and does not authorize or permit recovery in excess
17 of injury or damage actually incurred.

18 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. This Act applies to acts or omissions that occur on or after the
21 effective date of sec. 3 of this Act.

22 * Sec. 6. Section 4 of this Act takes effect on the date sec. 9, ch. 28, SLA 2000, takes
23 effect.

24 * Sec. 7. Except as provided in sec. 6 of this Act, this Act takes effect July 1, 2003.

SB

176

ALASKA STATE SENATE



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Senator Ralph Seekins
District D

SB 176 Sponsor Statement

Civil Liabilities for Livestock Activity (aka The 4-H Bill)

Senate Bill 176 is largely a reincarnation of House Bill 111 introduced in the 22nd Legislature. HB 111 was the product of several work sessions involving a group of 4-H members, stable owners and a veterinarian all located in the Tanana Valley. Like HB 111, SB 176 is intended to give livestock owners and those associated with livestock activities a certain measure of protection from frivolous lawsuits. Forty-four other states currently have similar legislation.

This Bill will recognize that a person assumes some degree of risk when placing themselves in the vicinity of livestock. The livestock owner, with the best of intentions, cannot completely prevent accidents from happening. For example, a bee could come along and sting a horse causing the horse to buck and throw a rider. Or, a bunny at a 4-H sponsored petting zoo could bite the finger of a small child attempting to feed it grain. Presently, both of these accidents could result in a lawsuit. Another example follows.

During the Miller Reach Fire in June of 1996, the Alaska State Fair in Palmer opened the fairgrounds to provide needed housing for evacuated animals. Pens were erected in the Farm Exhibition area and at the France Equestrian Center to hold a variety of animals. Both areas looked like Noah's ark had just unloaded. All the animals' owners made the best of the crowded situation and appreciated the Fair's hospitality.

That is with the notable exception of one individual who chose to ride her horse despite the crowded conditions. She happened to be bucked off the horse when it was spooked by a pig located in a nearby pen. Suffering from broken ribs and a punctured lung, she sued the fair because she had "warned" them about the problem of other animals spooking her horse. In November of 1997, the fairground's insurance company settled the case out of court for \$3,500 plus legal fees and medical expenses because to fight the suit would have cost them "four or five times as much."

SB 176 will not protect the livestock owner who acts in an unreasonable manner. But, by reducing some of the liability, the expectation is that this legislation will create an atmosphere which will encourage more livestock activity. It is important to note that this Bill is the work product of 4-H members statewide. These members will be following this proposal throughout the legislative process and participate in the passage of this Bill. A 4-H member in Fairbanks wrote the bulk of this sponsor statement.

SB

1988

C

Supreme Court of Alaska.

Brent MOODY, Appellant,
v.
DELTA WESTERN, INC., Appellee.

No. S-9625.

Jan. 11, 2002.

Police chief brought negligence action against fuel truck owner, arising from incident in which, after owner's employee left unlocked truck in driveway, with keys in ignition, intoxicated individual entered truck and rammed it into van in which chief was a passenger, causing chief permanent injuries, as chief was responding to reports of recklessly driven fuel truck. Owner moved for summary judgment, which the Superior Court, Third Judicial District, Dillingham, Elaine M. Andrews, J., granted. Chief appealed. The Supreme Court, Matthews, J., held that, in a matter of first impression, the Fireman's Rule applied to bar chief's action against owner.

Affirmed.

West Headnotes

[1] Appeal and Error  893(1)
30k893(1) Most Cited Cases

In reviewing a question of law, Supreme Court applies de novo standard of review, adopting the rule of law which is most persuasive in light of precedent, reason and policy.


[2] Automobiles  210
48Ak210 Most Cited Cases


Firefighter's Rule, which holds that firefighters and police officers who are injured may not recover based on negligent conduct that required their presence, applied to bar police chief's negligence action against fuel truck owner arising from incident in which, after owner's employee left unlocked truck in driveway, with keys in ignition, intoxicated individual entered truck and rammed it into van in which chief was a passenger, causing chief permanent injuries, as chief was responding to reports of recklessly driven fuel truck.

[3] Negligence  570

272k570 Most Cited Cases

"Firefighter's Rule," which holds that firefighters and police officers who are injured may not recover based on the negligent conduct that required their presence, bars only recovery for negligence that creates the need for the public safety officer's service, and thus does not apply to negligent conduct occurring after the police officer or firefighter arrives at the scene or to misconduct other than that which necessitates the officer's presence; such misconduct may include failure to warn of pre-existing known but hidden dangers.

[4] Negligence  1204(1)
272k1204(1) Most Cited Cases

[4] Negligence  1311
272k1311 Most Cited Cases

"Contractor for repairs" exception to the general duty of reasonable care which holds that an owner is under no duty to protect the contractor against risks arising from the condition the contractor is hired to repair, and thus is not liable even if the condition was the product of the owner's negligence, is grounded in necessity and fairness.

*1139 Kristen D. Pettersen, Ray R. Brown, Dillon & Findley, P.C., Anchorage, for Appellant.

Richard A. Weinig, Pletcher, Weinig, Fisher & Dennis, Anchorage, for Appellee.

William B. Aitchison, Aitchison & Vick, Inc., Portland, Oregon, for Amicus Curiae Anchorage Police Department Employees Association.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, and BRYNER, Justices.

OPINION

MATTHEWS, Justice.

The question in this case is whether the so-called Firefighter's Rule applies in Alaska. The Firefighter's Rule holds that firefighters and police officers who are injured may not recover based on the negligent conduct that required their presence. For public policy *1140 reasons we join the overwhelming majority of states that have adopted the rule.

I. FACTS AND PROCEEDINGS

The facts of this case are undisputed. On or around July 25, 1996, a Delta Western employee left a fuel truck owned by Delta Western in a driveway in Dillingham. The keys were in the ignition, the door was unlocked, and the truck contained fuel and weighed over 10,000 pounds. Delta Western had a policy of removing the keys from the ignitions of its trucks. Delta Western enacted this policy because of past incidents involving the theft and unauthorized entry of its trucks.

Joseph Coolidge, who was highly intoxicated, entered the unlocked truck and proceeded to drive around Dillingham. He ran cars off the road, nearly collided with several vehicles, and drove at speeds exceeding seventy miles per hour. Brent Moody, the chief of the Dillingham Police Department, was one of the officers who responded to the reports of the recklessly driven fuel truck. The driver of the van in which Moody was a passenger attempted to stop the truck after moving in front of it, but Coolidge rammed the van, throwing Moody against the dashboard and windshield. Moody suffered permanent injuries.

Moody filed suit against Delta Western, alleging that the company (through its employe) negligently failed to remove the truck's keys from the ignition. In its amended answer, Delta Western argued that the "Firefighter's Rule" barred Moody's cause of action. Delta Western moved for summary judgment based on its Firefighter's Rule defense. The superior court granted Delta Western's motion, holding that the Firefighter's Rule bars police officers from recovering for injuries caused by the "negligence which creates the very occasion for their engagement."

Moody now appeals.

II. STANDARD OF REVIEW

[1] The question presented is one of law and of first impression: whether Alaska should adopt the Firefighter's Rule. We therefore apply the de novo standard of review, "adopt[ing] the rule of law which is most persuasive in light of precedent, reason and policy." [FN1]

FN1. Newton v. Macill, 872 P.2d 1213, 1215 (Alaska 1994) (quoting Ford v. Municipality of Anchorage, 813 P.2d 654, 655 (Alaska 1991)).

III. DISCUSSION

[2] Nearly all of the courts that have considered whether or not to adopt the Firefighter's Rule have in fact adopted it. [FN2] Only *1141 one court has rejected it. [FN3] The New Jersey Supreme Court's reasoning in Berko v. Freda is typical of that of modern courts that have adopted the rule. [FN4] The superior court relied on Berko and explained the case as follows:

FN2. See Grable v. Varela, 115 Ariz. 222, 564 P.2d 911, 912 (App.1977); Wagoner v. Troutman Oil Co., 320 Ark. 56, 894 S.W.2d 913, 915 (1995); Walters v. Sloan, 20 Cal.3d 199, 142 Cal.Rptr. 152, 571 P.2d 609, 610 (1977) (abolished by Cal. Civil Code § 1714.9); Kaminski v. Town of Fairfield, 216 Conn. 29, 578 A.2d 1048, 1053 (1990); Carpenter v. O'Day, 562 A.2d 595, 601 (Del.Super.1988), *aff'd*, 553 A.2d 638 (Del.1988); Kilpatrick v. Sklar, 548 So.2d 215, 216-18 (Fla.1989) (limited by Fla. Stat. Ann. § 112.182); Martin v. Gaither, 219 Ga.App. 646, 466 S.E.2d 621, 624 (1995); Thomas v. Pang, 72 Haw. 191, 811 P.2d 821, 824 (1991); Winn v. Frasher, 116 Idaho 500, 777 P.2d 722, 725 (1989); Court v. Grzelinski, 72 Ill.2d 141, 19 Ill.Dec. 617, 379 N.E.2d 281, 285 (1978) (rule employed in premises liability cases); Sports Bench, Inc. v. McPherson, 509 N.E.2d 233, 234-35 (Ind.App.1987); Pottebaum v. Hinds, 347 N.W.2d 642, 643 (Iowa 1984); Calvert v. Garvey Elevators, Inc., 336 Kan. 570, 694 P.2d 433, 438 (1985); Sallee v. GTE South, Inc., 839 S.W.2d 277, 279 (Ky.1992); Holloway v. Midland Risk Ins. Co., 759 So.2d 309, 313-14 (La.App.2000); Flowers v. Rock Creek Terrace Ltd., 308 Md. 432, 520 A.2d 361, 368 (1987); Wynn v. Sullivan, 294 Mass. 562, 3 N.E.2d 236, 237 (1936) (limited by Mass. Gen. Laws ch. 41 § § 100, 111F); Kreski v. Modern Wholesale Elec. Supply Co., 419 Mich. 347, 415 N.W.2d 178, 188-89 (1987) (abolished by M.C.L. § § 600.2965-2967); Armstrong v. Mailand, 284 N.W.2d 343, 350 (Minn.1979) (abolished by Minn.Stat. § 604.06); Phillips v. Hallmark Cards, Inc., 722 S.W.2d 86, 89 (Mo.1986); Nared v. School Dist. of Omaha, 191 Neb. 376, 215 N.W.2d 115, 117-18 (1974); Moody v. Mannv's

Auto Repair, 110 Nev. 320, 871 P.2d 935, 940 (1994) (limited by Nev.Rev.Stat. § 41.139); Matarese v. Nationwide Mut. Ins. Co., 141 N.H. 311, 682 A.2d 258, 258-61 (1996); Krauth v. Geller, 31 N.J. 270, 157 A.2d 129, 132-33 (1960) (abolished by N.J. Stat. Ann. § 2A:62A-21); Moreno v. Marrs, 102 N.M. 373, 695 P.2d 1322, 1325 (App.1984); Santangelo v. State, 71 N.Y.2d 393, 526 N.Y.S.2d 812, 521 N.E.2d 770, 772 (1988) (limited by Gen. Mun. § 205-a-e; Gen. Oblig. § 11-106); Scheurer v. Trustees of Open Bible Church, 175 Ohio St. 163, 192 N.E.2d 38, 43 (1963); Smith v. Tully, 665 A.2d 1333, 1335 (R.I.1995); Carson v. Heudrick, 900 S.W.2d 685, 690 (Tenn.1995); Campus Mgmt., Inc. v. Kimball, 991 S.W.2d 948, 950 (Tex.App.1999) (rule employed in premises liability cases only); Commonwealth v. Millsans, 232 Va. 502, 352 S.E.2d 311, 315-16 (1987); Maltman v. Sauer, 84 Wash.2d 975, 530 P.2d 254, 257 (1975); Hass v. Chicago & N.W. Ry. Co., 48 Wis.2d 321, 179 N.W.2d 885, 887-88 (1970).

FN3. See Christensen v. Murphy, 296 Or. 610, 678 P.2d 1210, 1218 (1984).

FN4. 93 N.J. 81, 459 A.2d 663 (1983).

In Berko, the defendant parked a Cadillac in a supermarket parking lot and left the keys in the ignition. Two juveniles stole the car and engaged in a high-speed chase with Officer Berko. The officer was injured while apprehending the juveniles and brought suit against the owner of the vehicle for negligence in leaving the keys in the ignition. The New Jersey Supreme Court held that, notwithstanding its finding that the car owner was negligent, the Firefighter's Rule insulated him from liability of the officer. The court stated: Both [firefighters and police officers] are paid to confront crises and allay dangers by an uncircumspect citizenry, a circumstance that serves to distinguish firefighters and police from most other public employees. Citizens summon police and firefighters to confront danger. Government entities maintain police and fire departments in anticipation of those inevitable physical perils that burden the human condition, whereas most public employment posts are created not to confront dangers that will arise but to perform some other public function that may incidentally involve risk

... [.]

This fundamental concept rests on the assumption that government entities employ firefighters and police officers, at least in part, to deal with the hazards that may result from their taxpayers' own future acts of negligence ... [.] Exposing the negligent taxpayer to liability for having summoned police would impose upon him multiple burdens for that protection.

There is at work here a public policy component that strongly opposes the notion that an act of ordinary negligence would expose the actor to liability for injuries sustained in the course of a public servant's performance of necessary, albeit hazardous, public duties. In absence of a legislative expression of contrary policy, a citizen should not have to run the risk of a civil judgment against him for negligent acts that occasion the presence of a firefighter at the scene of a carelessly set fire or of a police officer at a disturbance or unlawful incident resulting from negligent conduct. [FN5]

FN5. Moody v. Delta W., Inc., No. 3DI-98-63-CI (Alaska Super., February 7, 2000) (quoting Berko, 459 A.2d at 666-67 (alteration in original)).

[3] Jurisdictions adopting the Firefighter's Rule emphasize its narrowness; the doctrine bars only recovery for the negligence that creates the need for the public safety officer's service. [FN6] Thus the Firefighter's Rule does not apply to negligent conduct occurring after the police officer or firefighter arrives at the scene or to misconduct other than that which necessitates the officer's presence. [FN7] Such misconduct may include failure to warn of pre-existing known but hidden dangers. [FN8]

FN6. See, e.g., Kreski, 415 N.W.2d at 183.

FN7. See Neighbarger v. Irwin Indus., Inc., 8 Cal.4th 532, 34 Cal.Rptr.2d 630, 882 P.2d 347, 352 (1994); see also Gail v. Clark, 410 N.W.2d 662, 666 (Iowa 1987) (holding firefighter's rule does not bar recovery where police officer is injured while performing a law enforcement activity unrelated to violation that necessitated his presence at the scene); Kreski, 415 N.W.2d at 189 (recognizing exceptional cases, such as those involving willful misconduct, in

which courts have refused to apply firefighter's rule to bar action; similarly adopting flexible approach to address "different fact patterns as they are presented").

FN8. See *Flowers*, 520 A.2d at 369.

Modern courts stress interrelated reasons, based on public policy, for the rule. The negligent party is said to have no duty to the public safety officer to act without negligence in creating the condition that necessitates the *1142 officer's intervention because the officer is employed by the public to respond to such conditions and receives compensation and benefits for the risks inherent in such responses. Requiring members of the public to pay for injuries resulting from such responses effectively imposes a double payment obligation on them. Further, because negligence is at the root of many calls for public safety officers, allowing recovery would compound the growth of litigation. [FN9]

FN9. See *Krauth*, 157 A.2d at 131 ("[I]n the final analysis the policy decision is that it would be too burdensome to charge all who carelessly cause or fail to prevent fires with the injuries suffered by the expert retained with public funds to deal with those inevitable, although negligently created, occurrences."); *Walters*, 142 Cal.Rptr. 152, 571 P.2d at 613 ("[A]bolition of the fireman's rule would burden our courts with litigation among the employer public agency, the retirement system, and the negligence insurer.").

[4] Courts find an analogy in cases in which a contractor is injured while repairing the condition that necessitated his employment. [FN10] In these cases, the owner is under no duty to protect the contractor against risks arising from the condition the contractor is hired to repair, and thus is not liable even if the condition was the product of the owner's negligence. [FN11] This "contractor for repairs" exception to the general duty of reasonable care is grounded in necessity and fairness. [FN12] Property owners should not be deterred by the threat of liability to the contractor from summoning experts to repair their property, regardless of why repairs are needed. Further, owners have paid for the contractor's expertise at confronting the very danger

that injured him and should not have to pay again if the contractor is then injured. [FN13] The same factors are found to apply with respect to the public's need to call for the services of public safety officers. [FN14]

FN10. See, e.g., *Krauth*, 157 A.2d at 131.

FN11. See, e.g., *Peters v. Titan Navigation Co.*, 857 F.2d 1342, 1345 (9th Cir.1988) (affirming summary judgment for shipowner regarding claims brought by hydraulic system repairman who was injured after slipping on spilled hydraulic fluid, because owner owes no duty to protect repairman from risks inherent in very condition he was hired to repair); see also 41 Am.Jur.2d, *Independent Contractors* § 41, n. 74 (1995) and the cases there cited.

FN12. See *Palenscar v. Michael J. Bobb, Inc.*, 439 Pa. 101, 266 A.2d 478, 481 (1970) ("It would be unjust to find that [the owner was negligent because he] should have repaired the system, and yet hold the company liable to one who had been employed to do exactly that.").

FN13. See *id.* at 480-81; see also *Anicet v. Gant*, 580 So.2d 273, 276 (Fla.App.1991) (describing contractor cases, where "the employee is deemed not to be entitled to a tort recovery arising from a condition for the encountering and correction of which he is specifically paid").

FN14. See *Krauth*, 157 A.2d at 131:

[I]t is the fireman's business to deal with [fire] hazard and hence, perhaps by analogy to the contractor engaged as an expert to remedy dangerous situations, he cannot complain of negligence in the creation of the very occasion for his engagement. In terms of duty, it may be said there is none owed the fireman to exercise care so as not to require the special services for which he is trained and paid.

Cf. Anicet, 580 So.2d at 276 (denying mental institution worker recovery for injuries inflicted by violently insane person; analogizing to contractor cases, and also

noting that the firefighter's rule, which at its core provides that "a person specifically hired to encounter and combat particular dangers is owed no independent tort duty by those who have created those dangers--even though ... the landowner or other defendant is actually guilty of negligence or of other fault in creating the dangers," presents "an apt analogy").

38 P.3d 1139

END OF DOCUMENT

We agree with the reasoning of the modern courts and with the analogy to contractor cases. The Firefighter's Rule reflects sound public policy. The public pays for emergency responses of public safety officials in the form of salaries and enhanced benefits. [FN15] Requiring members of the public to pay for injuries incurred by officers in such responses asks an individual to pay again for services the community has collectively purchased. Further, negligence is a common factor in emergencies that require the intervention of public safety officers. Allowing recovery would cause a proliferation of litigation aimed at shifting to individuals or their insurers costs that have already been widely shared. To borrow the language of the seminal *1143 *Krauth* case, "in the final analysis the policy decision is that it would be too burdensome to charge all who carelessly cause" conditions requiring a response by a public safety official "with the injuries suffered by the expert retained with public funds to deal with those inevitable, although negligently created," conditions. [FN16]

FN15. See AS 39.35.010-.690 (Public Employees Retirement System); AMC 03.85.010-.180 (Death, Disability and Retirement Benefits for Anchorage Police Officers & Firefighters).

FN16. 157 A.2d at 131.

We thus conclude that the Firefighter's Rule applies in Alaska. We reach this conclusion based on the merits of the rule as accepted by the overwhelming majority of the courts of our sister states. It follows that summary judgment was properly granted.

AFFIRMED.

CARPENETI, Justice, not participating.

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

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Senator Ralph Seekins
District D

SB 198 Sponsor Statement

An Act Relating to Recovery of Civil Damages by a Peace Officer or Firefighter

Senate Bill 198 revises the common law known as the "Firefighter's Rule". This rule precludes firefighters and peace officers from recovering civil damages for injuries caused by any negligent act inflicted while on duty. The "Firefighters Rule" does not distinguish between negligent acts requiring the firefighter's or peace officer's response from negligent acts that are *unrelated* to the reason the firefighter or peace officer was required to respond.

For example, as currently employed, the "Firefighters Rule" precludes a police officer from suing for damages for injuries suffered as a result of being struck by a drunk driver during the course of transporting a prisoner to the courthouse. This despite the fact that the negligent act, in this case the drunk driving, is unrelated to the duty the officer was performing at the time. Senate bill 198 corrects this incongruity. Yet, on the other hand, this bill does nothing to change the case where the police officer is injured during the course of a pursuit of the drunk driver. This is considered a foreseeable risk associated with the profession and, accordingly, well within that which the "Firefighter's Rule" should cover.

Therefore, Senate bill 198 makes a distinction between negligence that is related to the reason the firefighter or peace officer is responding and negligence that is unrelated to the reason the firefighter or peace officer is responding. In the first instance, it *does not* allow a civil action. Instead the firefighter or peace officer must rely on the state's workers compensation system. However, in the case where injury was caused by a negligent act *not related* to the reason for the firefighter or peace officer's response, then—under this legislation—a civil action can be brought against the at-fault party.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 198
 (S) Publish Date: 5/9/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to recovery of civil damages by BRU Civil Division
a peace officer or firefighter; . . ." Component Special Litigation
 Sponsor Senator Seekins
 Requester Senate State Affairs Committee 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)

This bill would amend common law that precludes a peace officer or firefighter or their representative from recovering civil damages for a negligent act or omission resulting in injury or death in the line of duty to specifically exclude negligent acts or omissions that are unrelated to the activity that created the need for the presence of the peace officer or firefighter.

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

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 5/5/03 2:07 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 5/5/2003
 Agency: Department of Law

SB

203

ALASKA STATE LEGISLATURE

SENATOR
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While in Juneau
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Senate
Senate District F

Sponsor Statement SB 203

Fair Hearing Bill

Senate Bill 203 is a culmination of many years of effort to achieve a more efficient, timely, and fairer administrative hearing process. The purpose of this legislation is to separate the administration adjudication process away from the agencies that write, promulgate and enforce administrative law. As the separation occurs opportunities to create an efficient and more professional administrative hearing process in a central panel will be realized. It is through these efficiencies that any initial start-up costs are soon negated, and significant savings accrue over time. Of course the reductions in time and expense to citizens and businesses, though never reflected in fiscal notes, are equally important components in this major reform.

Instead of allowing hearing officers to be typical employees and extensions of the agencies whose administrative law they adjudicate, SB 203 is designed to give these administrative adjudicators a more independent and protected station from which to deliver timely due process through fair and objective hearings. This is accomplished through the creation of a model central independent hearing office, and the application of protections and new rules for all hearing officers in and out of that office.

As tempting as an all-encompassing reform might through placing all hearing officers and functions within a central office, two critical obstacles have caused us to move in a more incremental approach. The first is a commitment to keep costs down. The second is sensitivity to both employees and administrators who will be involved in the reform. The model central office created in this bill will over time incorporate more hearing functions and officers. In the interim it will provide resources and training and alternative dispute resolution for all state hearing officers.

The primary objectives of this act are to insure better quality, less costly, less time consuming, and fairer administrative hearings. Achieving these goals will not only be beneficial to our constituents, but good for business, and government as well. Creation of independent hearing offices in other states has enjoyed bi-partisan support. I look forward to the same as SB 203 proceeds through our legislative process.

Senate Bill 203 accomplishes three main objectives.

A model administrative hearing office is created.

A small, but important model independent hearing office within the Department of Administration is created by transferring existing hearing officers and functions into new location with new rules and standards.

The model will be managed and brought up to speed through a Chief Administrative Hearing Officer with a high standard of accountability and record keeping.

The goals of the model are efficient, timely, fair hearings with outstanding ad judicatory professionalism in the delivery of due process for our citizens and businesses.

A new set of standards and protection for hearing officers statewide is established.

A secondary but equally important goal is the training and oversight of hearing officers throughout the state via the Central Office.

Also included is protection for all hearing officers from undue agency or legislative influence and a requirement for a standard code of conduct for all state hearing officers.

New standards of agency interaction with hearing officers is established with guidelines on how that contact should be conducted subject to our existing ethics act.

A time maximum limit is established in the administrative hearing process.

Resolution of conflicts with state administrative law must be reasonable. SB 203 requires that those resolutions should occur within 90 days after the case has been assigned for a hearing.

If not resolved by then, SB 203 stipulates that the court shall consider that the plaintiff has exhausted all administrative remedies so that they can proceed to the judiciary for a solution if they so desire.

Summary

Improving administrative hearings is not only a worthy goal to pursue on behalf of citizens and businesses, it is also an important step in making government more accountable and efficient.

To improve Alaska's administrative hearing process two things had to be addressed. The first is the process itself and the second was the professional standards of our hearing officers. SB 203 is designed to accomplish these two goals in the most cost efficient and responsible way possible.

An Act establishing an Independent Office of Administrative Hearings.

Section By Section Quick Reference

- Section 1.** Purpose and intent
- Section 2.**
- 44.21.510 Establishes location of independent office of administrative hearings and qualifications and compensation of chief hearing officer.
 - 44.21.520 Powers and duties of chief hearing officer.
 - 44.21.530 Administrative hearing functions to be included in the new independent office. Provisions of service and delegation of decision authority.
 - 44.21.540 Hearing officer qualifications and duties. Authority for chief administrative hearing officer to enter into contracts with qualified individuals to serve as hearing officers.
 - 44.21.550 Code of conduct for hearing officers.
 - 44.21.560 Establishment of procedures for administrative hearings, including time limits, decision authority, and rules for altering a hearing officer decision.
 - 44.21.570 Disqualification of hearing officer.
 - 44.21.580 Agency cooperation with hearing officers. Selection of hearing officers. Non-interference.
 - 44.21.590 Administrative hearing records. Record keeping requirements.
 - 44.21.599 Definitions
- Sections 3 – 72** Conforming technical amendments to affected statutes.
- Section 73** 24.60.030 Prohibits legislative influence.

Sections 74 – 98 Conforming technical amendments to affected statutes.

Section 99 39.52.120 Prohibits agency influence.

Section 100 – 127 Conforming technical amendments to affected statutes.

Section 128 Transition authority to accommodate administrative process.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 203
 (S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to certain BRU Administrative Hearings
administrative hearings..." Component Administrative Hearings
 Sponsor Rules _____
 Requester State Affairs _____ 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	686.6	686.6	686.6	686.6	686.6	686.6
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	35.0	35.0	35.0	35.0	35.0	35.0
Supplies	6.0	3.0	3.0	3.0	3.0	3.0
Equipment	4.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	746.6	739.6	739.6	739.6	739.6	739.6

CAPITAL EXPENDITURES						
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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
1040 Real Estate Surety	12.1	12.1	12.1	12.1	12.1	12.1
1156 Rcpt. Sup. Svcs.	142.0	142.0	142.0	142.0	142.0	142.0
1004 GF	258.4	251.4	251.4	251.4	251.4	251.4
1007 Interagency Receipts	167.9	167.9	167.9	167.9	167.9	167.9
1133 Indirect Cost Reimb.	166.2	166.2	166.2	166.2	166.2	166.2
Other (Specify Type-Do not abbreviate)						
TOTAL	746.6	739.6	739.6	739.6	739.6	739.6

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

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time	8	8	8	8	8	8
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. The OAH will conduct administrative hearings under the direction of the Chief Administrative Hearing Officer.

This fiscal note includes personal services and associated costs for the new Chief Administrative Hearing Officer position as well as five additional hearing officer positions and two support staff positions which will be transferred from the Departments of Revenue, Community and Economic Development, and Administration.

Although precise numbers are as yet unknown, budget savings are expected to result from the creation of the OAH. The new office will be able to conduct hearings that otherwise would have been contracted out. Economies of scale may produce additional savings.

Prepared by: Kevin Jardell, Assistant Commissioner Phone _____
 Division: Commissioner's Office Date/Time 5/6/03 2:48 PM
 Approved by: Mike Miller, Commissioner Date 5/6/2003
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Office of Administrative Hearings BRU Administration and Support
Component Commissioner's Office
Sponsor Rules Committee
Requester Senate State Affairs Committee Component No. 123

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	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)

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	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)
1005 GF/Program Receipts						
1113 Indirect Cost Reimbursement	(189.2)	(189.2)	(189.2)	(189.2)	(189.2)	(189.2)
1007 Inter-agency Receipts	(144.6)	(144.6)	(144.6)	(144.6)	(144.6)	(144.6)
TOTAL	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)

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	-5	-5	-5	-5	-5	-5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would transfer the Department of Revenue's three hearing examiners and two support staff positions to the newly created Office of Administrative Hearings at the Department of Administration. Department of Revenue hearing examiners currently hear appeals of child support orders and modifications, Permanent Fund dividend eligibility cases and charitable gaming license cases.

The fiscal note shows the transfer of five positions and the accompanying funding for those positions. The Indirect Cost Reimbursement funding source is federal money allocated to the Department of Revenue as reimbursement for the cost of hearing child support cases. The Inter-agency Receipt funding is Permanent Fund Dividend funding allocated to the department for the cost of hearing dividend eligibility cases.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
Division Department of Revenue Date/Time 5/6/03 10:19 AM
Approved by: Larry Persily, Deputy Commissioner Date 5/6/2003
Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title "An Act relating to certain BRU Centralized Administrative Services
administrative hearings..." Component Office of Tax Appeals
Sponsor Rules
Requester State Affairs Component No. 2131

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	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
1007 Interagency Receipts	(40.9)	(40.9)	(40.9)	(40.9)	(40.9)	(40.9)
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)

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	-1	-1	-1	-1	-1	-1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 203 creates the Office of Administrative Hearings in the Department of Administration and transfers to it the Office of Tax Appeals Hearing Officer position.

Prepared by: Kevin Jardell, Assistant Commissioner Phone _____
Division Commissioner's Office Date/Time 5/6/03 2:42 PM
Approved by: Mike Miller, Commissioner Date 5/6/2003
Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction):
Title Office of Administrative Hearings
Sponsor Rules by Request
Requester Senate State Affairs
Dept. Affected: DCED
BRU Occupational Licensing (11?)
Component Occupational Licensing
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1007 - Inter-Agency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 140.7
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 203 establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) included in the FY04 budget request.

The fund source for these positions and related costs are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new Office, it is anticipated that receipts from licensing fees (RSS) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144
Division Occupational Licensing Date/Time 5/6/03 11:57 AM
Approved by: Edgar Blatchford, Commissioner Date 5/6/2003
Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: SB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to certain administrative BRU Civil Division
hearings; . . . the office of administrative hearings . . ." Component All
Sponsor Senate Rules Committee by Request
Requester Senate State Affairs Committee 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	*****	*****	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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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

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)*
This bill establishes the Office of Administrative Hearings in the Department of Administration. The office will conduct all adjudicative administrative hearings for an extensive list of state programs, including alcoholic beverage licensing, charitable gaming, banking, occupational licensing, and oil and gas exploration, production, and pipeline transportation property taxes, among others.

The fiscal impact on the Department of Law from this bill will be during the first year or two of transition from the current structure of agency hearing officers to the centralized Office of Administrative Hearings. Hundreds of pages of regulations directing how the current adjudicative process is handled will need to be rewritten to implement the new process. Boards, commissions, and agency staff will need to be trained. Whether or not the new workload can be absorbed with existing staff will depend on how quickly the revised regulations need to be implemented. This will likely

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 5/6/03 10:50 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 5/6/2003
Agency Department of Law

FISCAL NOTE #5

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 203

ANALYSIS CONTINUATION

vary from agency to agency. If any of the regulations projects assume an urgency that existing staff cannot meet, outside contract counsel may be necessary to handle them. Given the uncertainty, we cannot estimate what the potential cost might be.

23-LS0903U
Cook
5/12/03

CS FOR SENATE BILL NO. 203()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to certain administrative hearings; and establishing the office of**
2 **administrative hearings and relating to that office."**

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

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

6 **PURPOSE AND INTENT.** The purpose of this Act is to increase the separation
7 between the adjudicatory functions of executive branch agencies and the agencies'
8 investigatory, prosecutory, and policy-making functions. The legislature intends by this Act
9 to

10 (1) provide for the delivery of high quality adjudication services in a timely,
11 efficient, and cost-effective manner;

12 (2) ensure respect for the dignity of the individuals whose cases are being
13 adjudicated;

14 (3) foster open and clearly explained agency decisions and improve public

1 access to the process of administrative adjudication;

2 (4) guarantee protection of all parties' due process rights, increase the public
3 parties' perception of fairness in administrative adjudication, and foster acceptance of final
4 administrative decisions by the public and affected parties;

5 (5) protect the integrity of the process of administrative adjudication and
6 decisional independence of administrative adjudicators; and

7 (6) increase consistency in administrative procedures and decisions.

8 * Sec. 2. AS 44.21 is amended by adding new sections to read:

9 **Article 9. Office of Administrative Hearings.**

10 **Sec. 44.21.510. Office created.** (a) There is created in the Department of
11 Administration an independent office of administrative hearings under the direction of
12 the chief administrative hearing officer.

13 (b) The chief administrative hearing officer must

14 (1) be a resident of the state;

15 (2) have experience in administrative law; and

16 (3) be licensed to practice law in this state and have been admitted to
17 practice law in this state for at least five years.

18 (c) The chief administrative hearing officer is appointed to a five-year term of
19 office by the governor. An individual may serve not more than three full or partial
20 terms as chief administrative hearing officer. The governor may remove the chief
21 administrative hearing officer from office only for good cause and shall state in
22 writing the basis for removal. A vacancy in the office of chief administrative hearing
23 officer shall be filled by the governor and the individual appointed serves for the
24 remainder of the term to which appointed.

25 (d) The chief administrative hearing officer shall receive a monthly salary that
26 is not less than Step A nor more than Step F, Range 27, of the salary schedule in
27 AS 39.27.011(a) for Juneau, Alaska. The chief administrative hearing officer is in the
28 partially exempt service.

29 **Sec. 44.21.520. Powers and duties of chief administrative hearing officer.**

30 The chief administrative hearing officer shall

31 (1) supervise the office;

- 1 (2) employ administrative staff, who shall be in the classified service;
- 2 (3) employ hearing officers, who shall be in the partially exempt
- 3 service;
- 4 (4) preside over administrative hearings handled by the office or assign
- 5 hearing officers to preside over hearings and protect, support, and enhance the
- 6 decisional independence of the hearing officers;
- 7 (5) establish and implement performance standards and peer review
- 8 programs for hearing officers employed by the office;
- 9 (6) make available and facilitate training and continuing education
- 10 programs and services in administrative procedure, administrative adjudication,
- 11 substantive law, and technical matters for hearing officers and other administrative
- 12 adjudicators;
- 13 (7) survey administrative hearing participants and use other methods to
- 14 monitor the quality of administrative hearings held by the office and other state
- 15 agencies, and submit to the governor and the legislature on January 31 of each year the
- 16 results of the survey along with a report that includes a description of the activities of
- 17 the office and recommendations for statutory changes that may be needed in relation
- 18 to the administrative hearings held by the office or other state agencies;
- 19 (8) review and comment on regulations proposed by state agencies to
- 20 govern procedures in administrative hearings;
- 21 (9) enter into contracts as necessary to carry out the functions of the
- 22 office;
- 23 (10) annually prepare and submit to the commissioner of
- 24 administration a budget for the office for the next fiscal year that shall include and
- 25 separately identify funding for training and continuing education; a copy of the budget
- 26 submitted to the commissioner under this paragraph shall also be submitted to the
- 27 Finance Committee of each house of the legislature; and
- 28 (11) adopt regulations under AS 44.62 (Administrative Procedure Act)
- 29 to carry out the duties of the office and implement this chapter.
- 30 **Sec. 44.21.530. Jurisdiction of the office.** (a) The office shall conduct all
- 31 adjudicative administrative hearings required under the following statutes or under

1 regulations adopted to implement the statutes:

- 2 (1) AS 04.11.510(b)(1) (alcoholic beverages license);
- 3 (2) AS 05.15 (charitable gaming);
- 4 (3) AS 05.20 (recreational devices);
- 5 (4) AS 05.90.001 (special racing events);
- 6 (5) AS 06 (banks and financial institutions);
- 7 (6) AS 08 (occupational licensing), other than AS 08.08;
- 8 (7) AS 10.06 (Alaska Corporations Code);
- 9 (8) AS 10.13 (Alaska BIDCO Act);
- 10 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);
- 11 (10) AS 10.50.408 (limited liability companies);
- 12 (11) AS 14.11.016 (education-related facility grants);
- 13 (12) AS 14.18 (discrimination in public education);
- 14 (13) AS 14.20.030 (teacher certificates);
- 15 (14) AS 14.25.037 (teachers' retirement);
- 16 (15) AS 14.30 (educational programs);
- 17 (16) AS 14.37 (child care facilities);
- 18 (17) AS 14.48 (postsecondary educational institutions);
- 19 (18) AS 17.20 (Alaska Food, Drug, and Cosmetic Act);
- 20 (19) AS 18.07 (certificate of need program);
- 21 (20) AS 18.18.030 (hospice licenses);
- 22 (21) AS 18.20 (hospitals and nursing facilities);
- 23 (22) AS 18.35.040 (tourist accommodations);
- 24 (23) AS 18.55 (housing and public buildings);
- 25 (24) AS 18.60 (safety);
- 26 (25) AS 18.67.040 (Violent Crimes Compensation Board);
- 27 (26) AS 18.80 (State Commission for Human Rights);
- 28 (27) AS 21 (insurance);
- 29 (28) AS 25.27 (child support enforcement);
- 30 (29) AS 27.21 (Alaska Surface Coal Mining and Reclamation Act);
- 31 (30) AS 32.05 (Uniform Partnership Act);

- 1 (31) AS 34.45 (unclaimed property);
2 (32) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
3 (33) AS 36.30 (State Procurement Code);
4 (34) AS 38.05.065 (contracts for sale of state land);
5 (35) AS 39.25 (State Personnel Act);
6 (36) AS 39.35 and AS 39.45 (Public Employees Retirement Board);
7 (37) AS 39.52 (Alaska Executive Branch Ethics Act);
8 (38) AS 41.17 (forest resources and practices);
9 (39) AS 41.37.050 (Citizens' Advisory Commission on Federal Areas
10 in Alaska);
11 (40) AS 43.23 (permanent fund dividends);
12 (41) AS 43.56.010 - 43.56.120 (oil and gas exploration, production,
13 and pipeline transportation property taxes);
14 (42) AS 43.70 (Alaska Business License Act);
15 (43) AS 44.77 (claims against the state);
16 (44) AS 45.30.040 (mobile homes);
17 (45) AS 45.55 (Alaska Securities Act);
18 (46) AS 45.57 (Takeover Bid Disclosure Act);
19 (47) AS 46 (water, air, energy, and environmental conservation);
20 (48) AS 47.30.031 (Alaska Mental Health Trust Authority);
21 (49) AS 47.33 (assisted living homes);
22 (50) AS 47.35 (child care);
23 (51) AS 47.45 (longevity bonuses).

24 (b) An agency may request the office to conduct an administrative hearing of
25 that agency or to conduct several administrative hearings. The office may provide the
26 service after entering into a written agreement with the agency describing the services
27 to be provided and providing for reimbursement by the agency to the office of the
28 costs incurred by the office in providing the services. To the extent otherwise
29 permitted by law, the agency may delegate to the hearing officer assigned to conduct
30 the hearing on behalf of the agency the authority to make a final agency decision in
31 the matter.

1 **Sec. 44.21.540. Hearing officers.** (a) A hearing officer must be admitted to
2 practice law in this state and must have been admitted to practice in this state for at
3 least two years before being employed or retained with the office. The chief
4 administrative hearing officer shall establish additional qualifications for hearing
5 officers employed or retained by the office and for those hearing officers that may be
6 assigned to particular types of cases. Full-time hearing officers employed by the
7 office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and
8 (16).

9 (b) A hearing officer employed or retained by the office may, in conducting an
10 administrative hearing for an agency, exercise the powers authorized by law for
11 exercise by that agency in the performance of its duties in connection with the hearing.
12 A hearing officer may

13 (1) engage in alternative dispute resolution under regulations adopted
14 by the chief administrative hearing officer;

15 (2) order a party, a party's attorney, or another authorized
16 representative of a party to pay reasonable expenses, including attorney fees, incurred
17 by another party as a result of actions done in bad faith or as a result of tactics used
18 frivolously or solely intended to cause unnecessary delay;

19 (3) perform other necessary and appropriate acts in the performance of
20 official duties.

21 (c) A hearing officer employed by the office must devote full time to the
22 duties of the office unless appointed to a position that is less than full-time. A hearing
23 officer employed by the office may not perform duties inconsistent with the duties and
24 responsibilities of a hearing officer.

25 (d) The chief administrative hearing officer may enter into a contract with an
26 individual who meets the qualifications established in (a) of this section to serve as a
27 hearing officer in a particular administrative hearing or in several hearings of the same
28 type. Notwithstanding AS 36.30.015(d), the chief administrative hearing officer may
29 contract for or hire a hearing officer without notifying or securing the approval of the
30 Department of Law.

31 **Sec. 44.21.550. Code of hearing officer conduct.** (a) The chief

1 administrative hearing officer shall, by regulation, adopt a code of hearing officer
2 conduct. Hearing officers of the office and of each other agency shall comply with the
3 code.

4 (b) Except as provided in (d) of this section, the chief administrative hearing
5 officer shall receive and consider all complaints against hearing officers employed or
6 retained by the office or another agency alleging violations of the code. If the chief
7 administrative hearing officer determines that the conduct alleged, if true, would
8 constitute a violation of the code, the officer shall deliver the complaint to the attorney
9 general.

10 (c) ~~If the~~ attorney general determines that a violation has occurred, the
11 attorney general shall submit written findings to the agency that employed or retained
12 the hearing officer who is the subject of the complaint together with recommendations
13 for corrective or disciplinary action. If the hearing officer is employed or retained by
14 the office, the chief administrative hearing officer shall take appropriate corrective or
15 disciplinary action.

16 (d) The attorney general shall, by regulation, establish procedures to
17 implement (c) of this section, including procedures for investigating and holding
18 hearings on complaints. The attorney general shall receive and consider any
19 complaint filed against the chief administrative hearing officer under this section, and
20 may investigate or hold a hearing on the complaint in compliance with the regulations
21 adopted under this subsection.

22 **Sec. 44.21.560. Procedure for hearings.** (a) The chief administrative
23 hearing officer shall, by regulation, establish procedures for administrative hearings
24 conducted by the office. Each administrative hearing under the jurisdiction of the
25 office or that has been transferred to the office by an agency shall be conducted in
26 accordance with statutes that apply to that hearing, including, if applicable, the
27 Administrative Procedure Act (AS 44.62). However, to the extent regulations adopted
28 by an agency for the conduct of an administrative hearing conflict with regulations
29 adopted by the chief administrative hearing officer under this subsection, the
30 regulations adopted by the chief administrative hearing officer control.

31 (b) When an agency receives a request for a hearing that will be conducted by

1 the office under AS 44.21.530, the agency shall, within two working days, notify the
2 office. The agency shall compile and transmit to the office the agency file and all
3 materials relevant to the matter.

4 (c) A hearing officer employed or retained by the office shall, within 120 days
5 after the agency received the request for a hearing, prepare a proposed decision, unless
6 another time period is provided by law or agreed to by the parties and the chief
7 administrative hearing officer. The hearing officer shall immediately submit the
8 proposed decision to the agency.

9 (d) A proposed decision in an administrative hearing shall be in a form that
10 may be adopted as the final decision by the agency with authority to make the final
11 decision. The proposed decision is a public record unless otherwise provided by law.
12 A copy of the proposed decision shall be served by the office on each party in the case
13 and the attorneys representing those parties in the hearing. Notwithstanding
14 AS 44.62.500(b) and except as provided by other statute, the agency with authority to
15 make a final decision in the case shall, within 30 days after the date the proposed
16 decision is served, do one or more of the following:

17 (1) adopt the proposed decision as the final agency decision;

18 (2) return the case to the hearing officer to take additional evidence or
19 make additional findings or for other specific proceedings; the hearing officer shall
20 complete the additional work on the case and return it to the agency within 60 days
21 after the date the original proposed decision of the hearing officer was submitted to the
22 agency by the hearing officer;

23 (3) exercise its discretion by revising the proposed enforcement action,
24 order, award, remedy, sanction, or penalty, and adopt the proposed decision as revised;

25 (4) in writing reject, modify, or amend a factual finding in the
26 proposed decision by specifying the affected finding and identifying the testimony and
27 other evidence relied on by the agency for the rejection, modification, or amendment
28 of the finding, and issue a final agency decision;

29 (5) in writing reject, modify, or amend an interpretation or application
30 in the proposed decision of a statute or regulation directly governing the agency's
31 actions by specifying the reasons for the rejection, modification, or amendment, and

1 issue a final agency decision.

2 **Sec. 44.21.570. Disqualification of hearing officer.** (a) The chief
3 administrative hearing officer or a hearing officer employed or retained by the office is
4 disqualified from a case in which the officer cannot accord a fair and impartial hearing
5 or for other reasons established in the code of hearing officer conduct.

6 (b) A party may request the disqualification of the chief administrative hearing
7 officer or a hearing officer by filing an affidavit, before the taking of evidence at a
8 hearing, stating with particularity the grounds upon which it is claimed that a fair and
9 impartial hearing cannot be accorded by that officer. Notwithstanding
10 AS 44.62.450(c), upon receipt of the affidavit, the hearing officer assigned to the
11 administrative hearing shall make a determination. If the affiant objects to the
12 decision, the matter shall be decided by the chief administrative hearing officer, whose
13 decision is final, or if the hearing is assigned to the chief administrative hearing
14 officer, by the attorney general, whose decision is final.

15 **Sec. 44.21.580. Agency cooperation.** (a) All agencies shall cooperate with
16 the chief administrative hearing officer and with other hearing officers of the office in
17 the matters involving the duties of the office.

18 (b) Except as provided under AS 44.21.570 or by regulation adopted under
19 this chapter, an agency may not select or reject a particular hearing officer for
20 assignment to an administrative hearing.

21 (c) After an administrative hearing is referred by an agency to the office for
22 hearing, the agency may not take further adjudicatory action with respect to the
23 proceeding, except as a party litigant or to render a final decision as provided by law.

24 **Sec. 44.21.590. Administrative hearing records.** (a) The office shall
25 acquire and organize records relating to administrative hearings of the office. The
26 records must include information, materials, and data bases used in the conduct of
27 hearings, and the proposed and final agency decisions. All court decisions resulting
28 from appeals from final agency decisions shall also be collected and included in the
29 records. The records shall be made available to the public. The office shall make final
30 agency decisions available online through an electronic data base.

31 (b) This section does not apply to records that are confidential or privileged.

1 **Sec. 44.21.599. Definitions.** In AS 44.21.510 - 44.21.599,

2 (1) "administrative hearing" means a contested case before an agency
3 in which

4 (A) the matter is heard by a hearing officer who does not
5 represent or have authority to make decisions for the agency in its capacity as a
6 party to the proceedings;

7 (B) the parties may present testimony and evidence not
8 previously considered by the agency; and

9 (C) the hearing officer has authority to make factual findings,
10 legal rulings, and issue a proposed or final agency decision; an administrative
11 hearing does not include a public non-adjudicative hearing;

12 (2) "agency" means an agency of the executive branch of state
13 government, including an officer, division, or other subunit of an agency, a public
14 corporation, and the University of Alaska;

15 (3) "hearing officer" means an individual who presides over the
16 conduct of an administrative hearing and who is retained or employed by an agency
17 for that purpose;

18 (4) "office" means the office of administrative hearings established in
19 AS 44.21.510.

20 * Sec. 3. AS 04.11.510(b) is amended to read:

21 (b) The board may review an application for the issuance, renewal, transfer of
22 location, or transfer to another person of a license without affording the applicant
23 notice or hearing, except

24 (1) if an application is denied, the notice of denial shall be furnished
25 the applicant immediately in writing stating the reason for the denial in clear and
26 concise language; the notice of denial must inform the applicant that the applicant is
27 entitled to an informal conference with either the director or the board, and that, if not
28 satisfied by the informal conference, the applicant is then entitled to a formal hearing
29 conducted before a hearing officer from the office of administrative hearings
30 (AS 44.21.510) [THE BOARD]; if the applicant requests a formal hearing, the office
31 of administrative hearings [BOARD] shall adhere to AS 44.62.330 - 44.62.530

1 (Administrative Procedure Act); all interested persons may be heard at the hearing and
2 unless waived by the applicant and the board, the formal hearing shall be held in the
3 area for which the application is requested;

4 (2) the board may, on its own initiative or in response to an objection
5 or protest, hold a hearing to ascertain the reaction of the public or a local governing
6 body to an application if a hearing is not required under this subsection; the board
7 shall send notice of a hearing conducted under this paragraph 20 days in advance of
8 the hearing to each community council established within the municipality and to each
9 nonprofit community organization entitled to notification under AS 04.11.310(b);

10 (3) if a petition containing the signatures of 35 percent of the adult
11 residents having a permanent place of abode outside of but within two miles of an
12 incorporated city or an established village is filed with the board, the board shall hold
13 a public hearing on the question of whether the issuance, renewal, or transfer of the
14 license in the city or village would be in the public interest;

15 (4) if a protest to the issuance, renewal, transfer of location or transfer
16 to another person of a license made by a local governing body is based on a question
17 of law, the board shall hold a public hearing.

18 * Sec. 4. AS 05.20.080 is amended to read:

19 **Sec. 05.20.080. Application of Administrative Procedure Act.** The
20 procedure for review of the orders or actions of the department, its agents or
21 employees, is the same as that contained in AS 44.62 (Administrative Procedure Act).
22 Administrative hearings on contested cases shall be conducted by the office of
23 administrative hearings (AS 44.21.510).

24 * Sec. 5. AS 05.90.001(b) is amended to read:

25 (b) The Department of Public Safety, with the concurrence of the Department
26 of Transportation and Public Facilities, may grant, and for cause cancel, permission to
27 conduct a special racing event as provided in this section upon terms and conditions
28 and at times and places the department may determine. If an applicant's permission is
29 refused or cancelled, the applicant may request the Department of Public Safety for a
30 hearing. The hearing shall be conducted under the provisions of AS 44.62 [THE]
31 (Administrative Procedure Act) by the office of administrative hearings