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Representative Mike Kelly

House District 7

HB 103

"An Act requiring an actionable claim against the state to be tried without a jury."

HB 103 makes a small but important change to the manner in which claims against the state will be adjudicated. The doctrine of "sovereign immunity", originally taken from English common law, is a familiar one within our legal system. The doctrine precludes the institution of a suit against the sovereign [government] without its consent. This concept is intrinsic to our legal system.

We see this doctrine manifest itself in the 11th Amendment to the United States Constitution, and by extension this power is granted to the states through the 10th Amendment. More importantly, the Alaska State Constitution addresses the issue of sovereign immunity in Article 2, sec. 21 when it expressly grants the legislature sole authority to determine the manner in which suits against the state will be tried. Without that addition, the language in Article 1, sec.16 which specifically refers to "common law" would presuppose that sovereign immunity is absolute in Alaska.

Although HB 103 does change from the current standard of a trial by jury in a claim against the state, it returns to the standard that was in place from statehood until 1975. Our legal research revealed that Sen. John Butrovich (R-Fairbanks) sponsored SB 80, which changed to the current standard of a jury trial. Our research has further revealed that during the same period in 1975, the University of Alaska was in the midst of a lawsuit in which it had petitioned the court for a trial by jury and was denied. Although we have not been able to make the explicit connection, it seems that SB 80 was a legislative response to the controversy arising from that case.

Since that time, there have been a number of cases that have resulted in exorbitant jury awards against the state that may have been more reasonable had the court, rather than a jury tried them. Frequently, these awards are reversed on appeal, thus doubling the court time required for resolution. While responsible government requires the state make whole any person or entity that it harms in the course of its business, responsible government also dictates that we prevent such abuses and minimize exposure to the state. HB 103 accomplishes both ends with a simple and direct statutory change.

We further anticipate that the Alaska Court System will realize an additional benefit of less court time being consumed and thus a reduction in court operating expenses that will also allow our already overburdened courts the opportunity to address other cases with greater ease and expediency.

It is for these reasons that we appreciate your consideration and encourage you to support HB 103.