

Gov. Murkowski is wrong to eliminate military rights

By Representative Les Gara

Last session Governor Murkowski sponsored a bill that, among other things, eliminated certain rights of U.S. military members. Recently Democratic House Leader Ethan Berkowitz and I, who both voted against the bill, called on the governor to help us reinstate those rights. In response the governor's press secretary made a few mistaken arguments regarding the bill and our votes, and posted them on the state's Web site. I thank him for removing the posting and would like to let you know why I opposed the bill.

Though the bulk of the opposition to the bill came from Democrats, the House speaker and a few Republicans also broke ranks with the governor on this one. That leads me to believe that with the governor's support, we can reinstate the military member rights the bill eliminated.

The bill, HB 245, was sponsored by Governor Murkowski. It provides that in certain limited circumstances people harmed by the state may no longer seek compensation if they are killed or injured. The offending provision Representative Berkowitz and I recently asked the governor to help us reverse is discreet. It states that if an on-duty military member is killed or severely injured by a state employee's negligence, gross negligence or recklessness, the member may not recover damages from the state, the employee, or the employee's insurance company. In our view, this provision fails to further any legitimate state policy.

Here's how the bill would apply. Let's say a U.S. Army private is driving to town for supplies and a state employee drives a sander at high speed, or while intoxicated, through red light. Assume the sander driver causes a terrible car accident and paralyzes or kills the private. Under the governor's bill neither the private nor his family may seek compensation from the state, state employee or employee's insurance company.

These compensation rights are taken away from military members, but no one else. I can't imagine why we would do this. It's possible some legislators didn't understand the bill and it's also possible others didn't feel comfortable voting against Governor Murkowski. I did argue against it on the House floor.

The governor's press secretary, John Manly, made two mistaken arguments in a recent Web site posting. First, he argued the bill only prevents lawsuits between military members in traditional combat and training circumstances. He's mistaken.

The bill specifically says a claim "for damages may not be brought by or on behalf of (an on-duty) member of the military services against the state or against any employee of the state or any member or former member of the Alaska militia for wrongful death (or) personal injury..." I agree with Mr. Manly that we shouldn't encourage lawsuits between military members for injuries caused during training and combat. My problem, as I wrote the governor, is with the provision that eliminates legal rights when a death or injury is caused by a state employee in civilian settings.

Mr. Manly has also written that Representative Berkowitz and I voted for the bill. He's mistaken. We voted against the bill and voted against it again when it was brought up for reconsideration (May 13 and 14, 2003). Mr. Manly says the following supports his claim:

A few weeks after the bill passed from the House to the Senate, the Senate changed the bill's wording by an amendment. When the House and Senate pass differing versions of a bill, House members must vote which version to send to the governor for his signature. Members who oppose both versions cannot state their opposition again at this point. The only question at this point is whether to say "yes" to the Senate amendment, or to say "no" and reject the Senate amendment in favor of the House version of the bill. Since the Senate version was not as bad as the House version, Representative Berkowitz and I voted to "concur" on the Senate amendment. Since we couldn't vote "no" on both versions during the concurrence vote, we chose to accept, rather than reject, the Senate amendment.

A bipartisan rewrite of HB 245 would be simple. It would also be the right thing to do. I hope for the governor's support.

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