

# Alaska State Legislature

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REPRESENTATIVE BART LEBON

## Memorandum

February 16, 2022

TO: Senator Click Bishop, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senate Finance Committee

FROM: Representative Bart LeBon 

RE: Response to Committee Member Questions HB 85 January 31, 2022

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HB 85 received the following two questions during the Senate Finance hearing from Sen. Wielechowski on January 31<sup>st</sup>.

**Question:** Why does HB 85 refer to the term “person” rather than “lender” in section 22 ([see page 10, line 1](#)):

**Answer:** The purpose of section 22 of HB 85 is to conform state law to the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) standard for lender liability. [CERCLA Section 101\(20\)](#) contains a secured creditor exemption that eliminates owner or operator liability for lenders who hold ownership in a CERCLA facility primarily to protect their security interest in that facility, provided they do not “participate in the management of the facility.”

Using “person” instead of “lender” conforms with federal law, promotes clarity and reduces unnecessary additional state statutory definitions. The federal definition of “person” is outlined in [42 U.S.C. § 9601\(21\)](#), which states, “The term “person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.” In CERCLA, “lender” is a defined term under [42 U.S.C. § 9601\(20\)\(H\)\(iv\)](#) and

this definition includes “any person (including a successor or assignee of any such person) that makes a bona fide extension of credit or takes a security interest from a nonaffiliated person.” Section 22 of HB 85 further qualifies what “person” is included in the exemption: “A person who holds or held a security interest in a vessel or facility to secure a loan made by the person...” Note use of the term “person” was vetted with DEC, who agreed to have the term “Person” remain to conform to the federal CERCLA language.

**Question:** What is the purpose of repealing [AS 06.05.265](#) (see [page 10, line 23](#))?

**Answer:** The language under [AS 06.05.265](#) is duplicative and unnecessarily broad. It is inappropriate to automatically make all officers and directors jointly and severally liable for a single individual’s misconduct. Further, director and officer liability is established under [AS 06.05.215](#), which carries the same title as AS 06.05.265 and appropriately holds officers and directors personally liable.

*Sec. 06.05.215. Liability of directors and officers for certain loans.*

*A director, executive officer, managing officer, or issuing officer of a state bank who knowingly or with gross negligence approves or permits the funds of the bank to be lent or overdrafts to be made in an unsafe or unsound manner, or in violation of an order of the department, the bank’s lending policies, this title, or a regulation adopted under this title, is personally liable to the bank for all the loans and overdrafts. The bank may enforce the liability against the director or officer by an action in a court of competent jurisdiction.*

*Sec. 06.05.265. Liability of directors for certain loans.*

*A loan in violation of [AS 06.05.200](#) — 06.05.260 makes the officers and directors of the bank jointly and severally liable to the bank for the loan.*

AS 06.05.200. Reserves against deposits.

AS 06.05.205. Loans and extensions of credit

AS 06.05.207. Real estate loans

AS 06.05.209. Credit Cards

AS 06.05.210. Loans to directors, officers, and employees

AS 06.05.211. Loans secured by forest tracts

AS 06.05.212. Overdrafts

AS 06.05.215. Liability of directors and officers for certain loans

AS 06.05.225. Application of other laws to loans insured under national housing act.

AS 06.05.230. Investment in property and banking premises

AS 06.05.231. Bank service corporations

AS 06.05.235. Bank holding companies

AS 06.05.237. Financial holding companies

AS 06.05.240. Acquisition of property to satisfy or protect previous loan

AS 06.05.245. Disposition of property not needed in the conduct of a banking business

AS 06.05.255. Borrowing

AS 06.05.260. Pledge, assignment, and transfer of assets