

SB

395

Corps asks priority for Alaska

Times Washington Bureau

Washington — The U.S. Army Corps of Engineers asked Congress today to give high priority to the potential for further development of hydroelectric resources in Alaska.

In testimony before a House subcommittee, Brig. Gen. Richard M. Wells, a division engineer, placed special emphasis on the Bradley Lake project, near the western end of the Kenai Peninsula, for which

\$1,315,000 is sought in fiscal year 1981.

Power from the project, which is still in pre-construction planning, would serve Anchorage and the Kenai Peninsula.

Wells also sought funds to continue studies on the feasibility of small hydropower facilities throughout Alaska, flood control projects and navigation improvements at several harbors in Alaska.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

5/2/80

Senator Mulcahy:

Keith Specking tried to reach you yesterday to ask you to consider scheduling SB 395, liability for flood control, for hearing by the State Affairs Committee. Keith is away from the office today but is planning to return Monday.

I've attached a copy of Governor Hammond's transmittal letter which explains the need for the bill. Thank you for your consideration.

Rebecca Engen

February 6, 1980

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The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill repealing AS 44.80.020 - 44.80.050, relating to state liability for flood control and similar projects.

The statutes to be repealed now require the state to assume liability for damages resulting from the construction of federal flood control, river, channel, or harbor projects. These statutes were originally passed by the Territorial Legislature in 1940. No legislative history has been found, but it appears that the statutes were enacted in response to the federal Flood Control Act of 1936, 33 USC 701, et seq., which requires a state or political subdivision of a state to assume the federal government's liability for damages resulting from Corps of Engineer flood control projects.

There has been no judicial interpretation of the main liability statute, AS 44.80.020. Of special concern is the sentence "The liability of a private person is the measure of liability of the state for these damages." This creates the possibility of alternative measures or standards of state liability; the statute may have been intended to assume only the liability of the federal government for damages occurring as the result of a project. Alternatively, the statute could be construed to

encompass strict liability for all damages as if the project had been constructed by a private, profit-motivated entity rather than by a governmental entity acting in the broad interests of the public. If the second alternative were to be accepted by a court, the state could incur enormous liability upon construction of flood control projects.

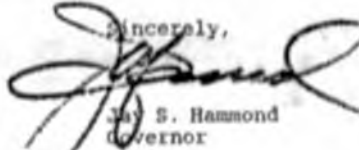
Flood control projects have as their main purpose, protection of public and private property in the vicinity of local municipalities. It is the local municipalities within known flood plains which generally request federal Corps assistance in flood control projects to protect local property values.

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A main criteria for seeking federal assistance should be a balancing of benefits against expenses incurred. Federally financed construction removes the cost of development as a concern to the local municipality involved. The present state statutes, AS 44.80.020 - 44.80.050 place on the shoulders of the state taxpayer the attendant property damage consequences of any local project. The result is that local municipalities need not consider the costs, only the benefits, and thus can be expected to seek local improvements in situations where costs to the statewide citizenry may far out-balance the local benefit to be derived from those projects.

Repeal of AS 44.80.020 - 44.80.050 will more equitably align local benefits with the attendant local costs and will assure that wise economic considerations be the predicate for local federal flood control projects and that the state will not be forced to incur multi-million dollar damage expenses whenever local municipalities obtain federal flood control assistance. Of course, there may well be occasions when flood control projects are necessary for the protection of life and property but, because of high costs, state assistance to the local municipality will be necessary. Under such circumstances, special state aid legislation, tailored to the special circumstances of each situation, can be considered, or the present AS 35.05.040(7), authorizing the Department of Transportation and Public Facilities to contract with the federal government on public works projects, could perhaps be employed to assume an appropriate level of state liability.

Sincerely,



Jay S. Hammond
Governor

SB SENATE BILL NO. 396 by the Rules Committee by request
396 of the Governor, entitled:

"An Act making supplemental appropriations to the Department of Health and Social Services, Division of Corrections; and providing for an effective date."

was read the first time and referred to the Finance Committee.

Article 2. Federal Construction of Flood Control Projects.

Section	Section
20. Liability for damages	40. Payment of awards or judgments
30. Hearing and determination of claims for damages	50. Policy

Sec. 44.80.020. Liability for damages. The state assumes liability for damages arising out of the construction by the federal government of a flood control, river, channel or harbor project. The liability of a private person is the measure of liability of the state for these damages. The submission to and rejection by the Department of Administration of a claim is a condition precedent to the maintenance of suit against the state for the recovery of these damages. (§ 2 ch 110 SLA 1949)

Revisor's note. — The last sentence of this section as enacted read: "Provided further, that the submission to any rejection by the Territorial Board shall be a condition precedent." "Any" is assumed to be a typographical error and is changed to "and".
Am. Jur. reference. — 45 Am. Jur., States, Territories and Dependencies, §§ 72 to 79

Sec. 44.80.030. Hearing and determination of claims for damages. The Department of Administration may hear and determine claims for damages arising under § 20 of this chapter and may award fair and just compensation. The department may adopt procedure consistent with law for hearing and determining claims. (§ 3 ch 110 SLA 1949)

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§ 44.80.040

ALASKA STATUTES

§ 44.80.070

Sec. 44.80.040. Payment of awards or judgments. The payment of an award or judgment made under §§ 20 — 50 of this chapter shall be made from an appropriation for that purpose. (§ 4 ch 110 SLA 1949)

Sec. 44.80.050. Policy. It is the policy of the state to cooperate with the federal government in protecting the lives and property of the residents of the state by flood control and river and harbor improvements undertaken by an agency of the federal government and to save the federal government free from liability for damages arising from the construction of a flood control or river or harbor improvement. (§ 1 ch 110 SLA 1949)

February 6, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill repealing AS 44.80.020 - 44.80.050, relating to state liability for flood control and similar projects.

The statutes to be repealed now require the state to assume liability for damages resulting from the construction of federal flood control, river, channel, or harbor projects. These statutes were originally passed by the Territorial Legislature in 1949. No legislative history has been found, but it appears that the statutes were enacted in response to the federal Flood Control Act of 1936, 33 USC 701, et seq., which requires a state or political subdivision of a state to assume the federal government's liability for damages resulting from Corps of Engineer flood control project

There has been no judicial interpretation of the main liability statute, AS 44.80.020. Of special concern is the sentence "The liability of a private person is the measure of liability of the state for these damages." This creates the possibility of alternative measures or standards of state liability: the statute may have been intended to assume only the liability of the federal government for damages occurring as the result of a project. Alternatively, the statute could be construed to

encompass strict liability for all damages as if the project had been constructed by a private, profit-motivated entity rather than by a governmental entity acting in the broad interests of the public. If the second alternative were to be accepted by a court, the state could incur enormous liability upon construction of flood control projects.

Flood control projects have as their main purpose, protection of public and private property in the vicinity of local municipalities. It is the local municipalities within known flood plains which generally request federal Corps assistance in flood control projects to protect local property values. A main criteria for seeking federal assistance should be a balancing of benefits against expenses incurred. Federally financed construction removes the cost of development as a concern to the local municipality involved. The present state statutes, AS 44.80.020 - 44.80.050 place on the shoulders of the state taxpayer the attendant property damage consequences of any local project. The result is that local municipalities need not consider the costs, only the benefits, and thus can be expected to seek local improvements in situations where costs to the statewide citizenry may far out-balance the local benefit to be derived from those projects.

Repeal of AS 44.80.020 - 44.80.050 will more equitably align local benefits with the attendant local costs and will assure that wise economic considerations be the predicate for local federal flood control projects and that the state will not be forced to incur multi-million dollar damage expenses whenever local municipalities obtain federal flood control assistance. Of course, there may well be occasions when flood control projects are necessary for the protection of life and property but, because of high costs, state assistance to the local municipality will be necessary. Under such circumstances, special state aid legislation, tailored to the special circumstances of each situation, can be considered, or the present AS 35.05.040(7), authorizing the Department of Transportation and Public Facilities to contract with the federal government on public

works projects, could perhaps be employed to assume
an appropriate level of state liability.

Sincerely,

Jay S. Hammond
Governor

Whereas, Senate Bill No. 395 has been introduced to repeal AS 44.80.020 to AS 44.80.050, an act relating to flood control project damages; and

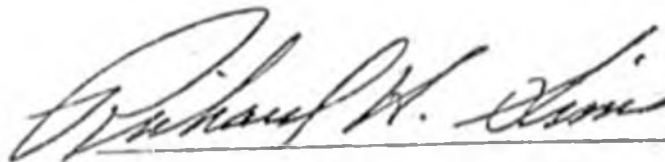
Whereas, the existing legislation provides automatic liability on behalf of the State for any flood control project; and

Whereas, under existing legislation that measure of liability is that of a private party rather than that of the sovereign; and

Whereas, each individual federally funded flood control project requires an acceptance of only federal liability by the State or municipality upon completion.

Therefore be it resolved, that the Alaska State Water Resources Board strongly recommends passage of Senate Bill 395.

Date this 14 th day of March, 1980



Richard H. Sims, Chairman



Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

SB 395 - An Act relating to flood control project damages.

BY: Rules by request of the Governor

This bill repeals Article 2 (Federal Construction of Flood Control Projects) of AS 44.80 (State Government, Liability of the State). This article makes the State liable for damages arising out of construction, by the federal government, of a flood control, river channel or harbor project. The article also provides for hearing and determination of claims for damages, payment of awards or judgements, and state policy with regard to federal flood control and river and harbor improvements.

Generally, flood control projects are requested by municipalities and constructed by the federal government. The State often has no participation whatever. Yet under the present statutes the State is automatically held liable for any damages resulting from such projects. It is the position of the Governor and the Department of Administration, Division of Risk Management, that the State should not be in a position to assume liability when there is no State participation or control.

Please see Governor's letter of transmittal.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 395
 Title Repeal of 44.80.020 - 44.80.050
 Requested by Governor Date 11/14/79

II. FISCAL DETAIL

Agency Affected Administration
 Program Category Affected Administrative Services to State Agencies
 BRU, Program, or Subprogram(s) Affected Risk Management
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.	0	0	*	*	*	*
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The repeal of 44.80.020-44.80.050 is recommended due to tremendous potential liability, however, there have not been any claims to date under the provisions of this statute. There is presently no justification for maintaining this statute as it is not necessary to comply with Federal requirements for financing of flood control projects. The Corps of Engineers contracts with the local or State jurisdiction and agrees to assume the federal government's liability from damage due to the construction works. This is standard procedure and involve a consideration of the cost and benefits of various flood control alternatives. The State is not necessarily involved at all and should not be in a position to assume liability when there is not State participation or control.

IV. DATE 11/15/79 PREPARED BY [Signature]
 AGENCY Administration-Risk Management
 PHONE 165-2180
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

* Under the broad provision of this statute losses could arise out of the following sources: flooding of property, eminent domain and inverse condemnation, (increased cost of flood insurance and transportation; reduction in property values or commercial navigation, rerouting of common carriers; curtailment of industrial or governmental expansion, and other economic losses directly or indirectly related to a flood control project.)

Extensive review has been made of the State's liability insurance policies and there appears to be limited coverage under the policy. For this reason, it is vital that the State be in a position to review each project on its own merits and determine what the cost and benefits are in relation to the risk. This can only be accomplished through repeal of 44.80.020-44.80.050.