

H B

3 3 2

1 IN THE HOUSE

BY ADAMS AND HAUGEN BY REQUEST

2 HOUSE BILL NO. 332

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act limiting the civil liability of aviation fuel
7 refiners; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. FINDINGS. The legislature finds that

10 (1) aviation is essential to the life of every Alaskan, in com-
11 munications, commerce, and in emergencies;

12 (2) refiners distributing aviation fuel in Alaska perform an
13 important service, supplying high quality products throughout the state;

14 ~~(3)~~ once aviation fuel has been transferred by a refiner to the
15 storage tanks of a third party, a refiner has no control over the continued
16 quality and integrity of the fuel;

17 ~~(4)~~ in the event of a civil action arising from an aircraft
18 accident, it is unfair to hold a refiner liable for the quality and integri-
19 ty of fuel which was placed in aircraft fuel tanks after transfer from the
20 refiner to a third party;

21 ~~(5)~~ without protection from unreasonable liability, refiners may
22 be forced to withdraw from the Alaska aviation fuel market.

23 * Sec. 2. AS 09.65 is amended by adding a new section to read:

24 Sec. 09.65.140. CIVIL LIABILITY OF AN AVIATION FUEL REFINER. (a)

25 An aviation fuel refiner is not liable in a civil action for injuries
26 resulting from the use of contaminated or impure fuel in an aircraft, unless

27 (b) This section does not apply to an aviation fuel refiner who

28 (1) intentionally causes an injury or whose gross negligence
29 causes or contributes to an injury; or

1 (2) transfers aviation fuel directly into the fuel tanks of
2 an aircraft.

3 (c) In this section

4 (1) "aviation fuel refiner" means a company, corporation, or
5 individual, who owns or controls, or controls through a substantially
6 owned subsidiary, partnership, or joint venture, a refinery used for
7 the production of aviation fuel;

8 (2) "injury" includes death, personal injury, and property
9 damage whether tangible or intangible.

10 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
11 070(c).

12
13 Chevron what about others?
14 Why the problem?
15 What about individuals?

16
17
18 What about other states?
19 Do they have it?
20

21 Indemnification of private individuals. Mellow → Dept. of
22 Law
23
24
25
26
27
28
29

ISSUES REGARDING HB 332

1. Assuming this bill was to become law, would it actually prevent aircraft fuel refiners from being involved in lawsuits or would it simply force plaintiffs to allege "gross negligence" rather than simple negligence against the fuel refiner. A related question would be, assuming that the fuel was a contributing factor to an aircraft accident, would that constitute "gross negligence".
2. Assuming the bill is to become law, what would protect the public from fuel refiners entering the market in the future, who do not have adequate quality control systems.
3. The cost of defending against lawsuits of fuel refiners, is currently passed on to the customer in the form of an increase in prices. Assuming that the bill is to become law, would this mean that a corresponding reduction in the cost of fuel would be passed along to the consumer.
4. This type of legislation raises a serious question concerning the general concept of limiting the civil liability of a specific area of Alaska's industry. The court system is presently designed to allow defendants who cannot reasonably be found liable, to be protected from lawsuits at a fairly early stage of the litigation. This legislation would deny a plaintiff, the right to determine if in fact an aviation fuel refiner was negligent in the manufacture or delivery of its product.
5. Alternatives to the present approach of this legislation include, having the FAA adopt regulations to specify minimum design criteria for the installation, maintenance, and inspection of aviation fuel storage and dispensation systems. Also, the State could give the State Division of Weights and Measures jurisdiction over fuel tank maintenance, which should prevent fuel storage problems.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

E.D. G
T.D. H
W.D. K
W.M. C

February 9, 1981

FDH X
Mr. James Howard
Chevron International
P.O. Box 1580
Anchorage, AK 99510

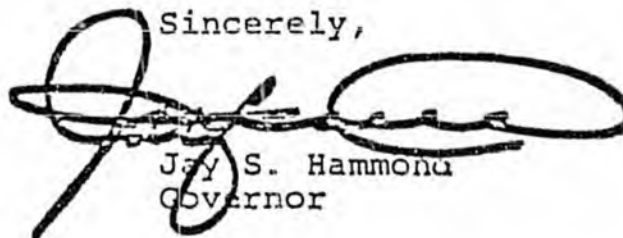
Dear Mr. Howard:

As you know, due to a revised product procurement policy and its attendant transportation changes, one supplier of aviation gasoline has significantly cut back its sales of this product in Alaska. I have been made aware that this action has caused problems for some aircraft operators in various parts of the state. As you also know, avgas plays a large, more vical role in the life and commerce of Alaska than in any of the smaller states, or perhaps the world. Therefore, supply disruption here has an impact on more people than just the directly concerned parties.

I am aware that you have already provided assistance to some aircraft operators experiencing supply problems. Your efforts to date are appreciated. I can only ask that you continue to do whatever else you can to assist those other operators who are still without an avgas supplier.

Please contact the Division of Energy and Power Development if you have questions or if the State of Alaska can assist you in this matter.

Sincerely,



Jay S. Hammond
Governor

cc: Jessie Dodson
Clarissa Quinlan



Chevron U.S.A. Inc.

P. O. Box 1580, Anchorage, AK 99510 • Phone (907) 279-9666

J. H. Howard
Marketing Manager
Marketing Department

February 19, 1981

The Honorable Jay S. Hammond
Office of the Governor
Juneau, Alaska 99801

Dear Governor:

Thank you for your February 9 letter concerning aviation gasoline supply. We agree that avgas plays a vital role in the life and commerce of Alaska. In addressing these needs, Chevron already supplies 80% of the avgas sold here.

Ever increasing liability problems associated with aviation fuel supply have diminished considerably our desire to take on new customers. We hope these problems will be eliminated through legislative action. Senate Bill No. 123 introduced by Senator Mike Colletta, if passed, will provide the protection necessary to stimulate the assistance to others suggested in your letter. Future supplies will then be limited only by manufacturing capabilities.

Alaska and Chevron have a long history of growth together. From our point of view, it has been a highly rewarding partnership.

Anything you can do to help us continue our long-term commitment to supplying the energy needs of Alaskans everywhere, will be appreciated.

Sincerely,

J. H. Howard

JHH:sjb

running out of gas

by Patti Epler
Times Writer

Two Merrill Field businessmen say they will either have to close their doors or raise their prices because Texaco Inc. has decided to cut back its sale of aviation gas in Alaska.

Gene Bender of Piper Sales Alaska and Ken Triplett of Alyeska Air Service say they have nowhere to turn for wholesale gas. The men said neither of the two other suppliers of aviation gas in Alaska, Chevron USA Inc. and Union Oil Co. of California, are accepting new customers.

The other companies are not taking new customers until they see what happens to two bills before the state Legislature that would limit the liability of oil companies in the sale of gas.

Bender and Triplett are the only

two cut off by Texaco in Anchorage. The third and largest Texaco retailer, Air Associates at Anchorage International Airport, will still have fuel, a Texaco spokesman said.

The spokesman said Texaco has not done much business in Alaska in the past and has decided to cut back on the aviation gas business here because it's just not worth their trouble.

Piper Sales, Alyeska Air Service and Air Associates are the only Texaco retailers in Anchorage.

In three weeks, said Bender, "I'll have to close my doors. It's either that or get some awful powerful rubber bands and some big apes to wind them up."

Bender said his business consists of aircraft sales and service, rental of planes and student instruction.

Additionally, he said, more than
(See AIRCRAFT, page A-3)

(Continued from page A-1)

600 pilots per month gas at his pumps.

Now, he says, he's not selling any fuel to anybody. What he has left in his storage tanks he must keep for his own aircraft.

Triplett, who runs a charter business, said he also has cut off his 15 regular customers in order to protect his own supply.

He will be forced to buy gas from competitors at the going, public rate. That, he said, will force him to raise his charter prices between \$5 and \$10 per hour, a factor he believes will unfairly price him out of the market.

"It's an unfair advantage," he said. "I've got too much invested here to go out of business. I'll just

have to make ends meet."

Triplett said Chevron and Union are not taking new customers because they don't want to add to their liabilities. He is hoping the two bills limiting oil companies' liability will pass this year.

The problem now, he said, is that state law makes the oil companies responsible for their fuel even after they have sold it to someone else.

The bills would stop the liability of the oil companies once they have sold their gas to a retailer and the retailer puts it in his own tanks, Triplett said.

"But," he said, "even if those are passed, there's no guarantee they'll take Alyeska Air Service as a customer."

cc: [unclear]

J.H. HOWARD:
THIS ALSO SENT TO OUR
REPRESENTATIVE. — RLU

February 27, 1981

Senator Dick Eliason
Juneau, AK

Dear Dick,

Senator Colleta has or is about to introduce this attached bill. We would appreciate your whole-hearted support of it, since under the present "scheme of things" our suppliers, our dealers and our own liability in this matter extends far and away beyond reasonable normal control.

Please be assured that all of us, including most end users, exercise the utmost caution in assuring product quality and handling—and our company provides safeguards against most all human and/or physical error, but to be required to be responsible past the point where we have no legal right to tell someone what to do—and see that they do it—unreasonable.

We understand a number of aviation fuel dealers and suppliers have gone out of business in Western Alaska purely because of the present hazard, brought to the fore by a recent court award citing the full gamut of responsibility in the loss of an aircraft up there.

If this persists, many more dealers may be forced into a similar position and we all know what an effect it would have on this area's livelihood and economy which depends so heavily on aircraft travel. My sincere thanks for your assistance.

Sincerely,

R.L. Ulricksen

RLU/pdg

ALASKA STATE LEGISLATURE - SENATE CC

T04
RCR

SENATOR RICHARD I. ELIASON
P.O. BOX 143
SITKA ALASKA 99835
POUCH V
JUNEAU, ALASKA 99811

COMMITTEES
FINANCE
RESOURCES
STATE AFFAIRS

March 13, 1981

Mr. Ralph L. Ulricksen
P.O. Box 418
Sitka, Alaska 99835

Dear Ralph,

Thank you for taking the time to write expressing your support for an act relating to civil liability of refiners which is going to be introduced by Senator Colleta.

It seems to me that a distributor has fulfilled his responsibility and liability at the time he delivers a high-quality product to a third party. It does not make a great deal of sense to hold a distributor responsible for that product after it leaves his control.

I will discuss this bill with Senator Colleta and I do not see any problem in supporting the bill.

Sincerely yours,



Dick Eliason
State Senator
District B

DE:sp

~~sent~~ I sent a copy to [unclear]

T.D.H.

Alaska State Legislature

House of Representatives



Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

February 12, 1981

Mr. Oscar L. Jones
Box 769
Petersburg, Alaska 99833

Dear Oscar:

I spoke with Mike Colletta today. He has introduced the "civil liabilities refinery bill". I've enclosed a copy of the bill for your information.

You can count on my support of this bill when it is presented to the House.

Sincerely,

Representative E. J. "Ernie" Haugen

Joni
FYI
OJH



Alaska State Legislature

Senate

Committee on Transportation

Senator Bill Ray
Chairman

Official Business
Pouch V
State Capitol
Juneau, Alaska 99811

April 16, 1981

Jack Krehbiel
449 West Willoughby
Juneau, Alaska 99801

Dear Mr. Krehbiel:

I received your letter of April 3 regarding Alaska Statute 09.65.140 and proposed amendments pertaining to civil liability of refiners.

I appreciate your taking the time to present this information. You can be assured that I will take your views into consideration when this legislation is before me.

Sincerely,

A handwritten signature in cursive script that reads "Bill Ray".

Bill Ray
Senator
District C

Alaska Air Carriers Association

March 5, 1981

Mr. J. H. Howard
Marketing Manager
Chevron USA, Inc.
P.O. Box 1580
Anchorage, Alaska 99510

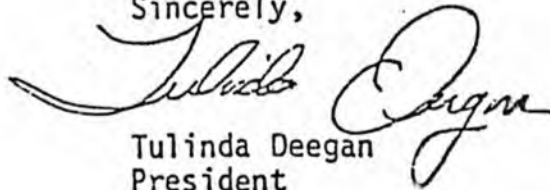
Dear Mr. Howard:

At the Annual Membership Meeting, February 28, 1981, the membership of the Alaska Air Carriers Association passed a resolution endorsing the concept of limiting the civil liability of aviation fuel refiners, pending further study of Senate Bill Number 123, by the Board of Directors of the AACA.

The AACA represents commercial air carriers in the state of Alaska. Members of AACA rely on aviation fuel refiners to supply sufficient fuel to serve the air transportation needs of Alaskans.

The AACA Board of Directors will be meeting in April to review the proposed legislation.

Sincerely,



Tulinda Deegan
President

TD:BC:kdc

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN.
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

Page A-6

Tuesday, March 3, 1981

Dirty fuel linked to air crash

By Pat Murphy

extensive water and rust contamination" in the fuel system of the aircraft at Merrill Field has been linked to the fiery crash that killed four people in October 1979.

The final report on the accident, issued by the National Transportation Safety Board, said the contaminated fuel was found in the underground fuel tanks at Spernak. It also said the aircraft's fuel supply was contaminated with water.

The pilot for Spernak Airways and three passengers were killed in the crash of a Cessna 207 which rolled into a hangar shortly after takeoff and ignited a blaze which burned for 12 hours.

declined to specify the terms.

Bud's Aircraft is no longer a part of the suit, and it has been added as a defendant. It said the parties to the suit are Spernak Airways, Cessna Aircraft, the suit says, was "grossly negligent," and showed "wanton disregard for proper design, manufacture, warning and instruction for use" of the fuel system on the model 207 aircraft.

The suit also says the plane crashed as "a direct and proximate result" of Cessna's "defective design, manufacture, warning and instruction for use" of the craft's fuel and related systems.

George Spernak, owner of Spernak Airways, said he hadn't seen the transportation board's report and declined comment on it. When a portion of report was read to him Monday, Spernak said, "We've been here since 1955 and we haven't heard those reports."

Spernak Airways has two underground fuel tanks which are supplied by Union Oil, Spernak said, adding "they are checked for water by Union Oil each time and we watch their procedures."

Spernak said the same fuel tanks (See FUEL, page A-3)

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Fuel . . .

(Continued from page A-1) are being used now that were used at the time of the crash.

Each air taxi operator is responsible for maintaining its storage tanks. No local, state or federal regulations currently are in effect to govern fuel storage or tank maintenance.

Merrill Field Manager Joe Fouts said the municipality, which operates the field, leases land to the various air taxi services for their operations. He said about 20 leaseholders have their own underground fuel tanks.

Joe Swanson, head of the state's division of weights and measures, said a bill had been pending in the legislature to give his agency jurisdiction over fuel tank maintenance.

"But the bill didn't go anywhere,"

Swanson said.

The federal board said it recognized the pilot is responsible for making sure that an airplane has uncontaminated fuel.

Pilots normally check for water or particles during preflight inspection, the report said, and contamination can be detected because water or particles settle to the bottom of the tank.

"However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank," the report said. "This creates the opportunity for contaminated fuel to go undetected."

The report goes on to list several other instances which may prevent immediate detection of con-

taminated fuel and conclude while the pilot, "although responsible, is presented with situations which water detection is difficult."

The board recommended that the Federal Aviation Administration adopt three specific regulations which would:

1. Require the use of water detection devices on all fuel tanks.
2. Require the use of water detection devices on all fuel tanks.
3. Require the use of water detection devices on all fuel tanks.

is still pending, but
Cannarot, attorney for Stan-

2 aircraft firms run out of gas

by Patti Epler
Times Writer

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Pav talks

NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C.

*rom
-
Linda Deegan*

ISSUED: February 6, 1981

Forwarded to:

Mr. Charles E. Weithoner
Acting Administrator
Federal Aviation Administration
Washington, D.C. 20591

SAFETY RECOMMENDATION(S)

A-81-9 through -11

On October 8, 1979, a Cessna 207A, N6424H, crashed into a hangar at Merrill Field, Anchorage, Alaska, moments after lift-off from runway 33. All four occupants were killed, and the postcrash fire destroyed the hangar.

Investigation of the accident revealed that: the fuel system showed evidence of extensive water and rust contamination; the underground fuel tank at Merrill Field where the aircraft was last fueled contained a large quantity of water and rust; the underground fuel tank's filtration system was heavily contaminated; and an incorrect fuel system dispensing filter, intended for use with diesel fuel, had been installed.

In 1978, the National Transportation Safety Board investigated 17 general aviation accidents involving fuel contamination "exclusive" of water as a cause or factor, and 66 general aviation accidents involving water "in" the fuel as a cause or factor. In March 1980, the Safety Board's Anchorage field office mailed a questionnaire to all known commercial/air taxi operators in the State of Alaska. Of the operators who replied, 4 percent did not know what type of filtration assemblies and filters they used, 4 percent performed no inspections to determine when the dispensing filters should be changed, 30 percent inspected the dispensing filter daily, and 20 percent inspected the dispensing filter "at least yearly." The remaining operators inspected at intervals ranging from "once every 3 days" to "once every 3 years."

The Safety Board recognizes that the pilot is responsible for assuring that a general aviation aircraft has uncontaminated fuel. Pilots of general aviation aircraft procedurally drain a small amount of fuel from the tanks and the fuel strainer and check for the presence of water and particulate matter. If a partially filled tank cools, condensation results and settles to the bottom of the tank. This is detectable using normal preflight procedures.

3145

However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank. This creates the opportunity for contaminated fuel to go undetected. Also, the uncontaminated fuel in the lines and fittings must first be drained to detect the water-contaminated fuel. On some aircraft, more than a quart of fuel must be drained before any water appears. Most tiedown areas where preflight checks are performed belong to flight schools or fixed-base operators, most of whom do not encourage pilots to drain a quart of fuel on the asphalt because aircraft fuel tends to dissolve this particular surface. The pilot then, although responsible, is presented with situations in which water detection is difficult.

While the Board believes that pilots must conduct an adequate preflight check, we are concerned that this is not a total solution to the problem of fuel contamination. In addition to the current pilot responsibility, the Board believes that other measures should be taken to insure against contamination. For example, fuel dispensing systems could be required to be equipped with filter/separator units which respond to the presence of free water by shutting down.

The Board is aware that 14 CFR 139 prescribes rules governing the certification of land airports serving air carriers that hold certificates of public convenience and necessity issued by the Civil Aeronautics Board. Part 139.51 states that "... the applicant for an airport certificate must show that it (or its tenant), as the fueling agent, has a sufficient number of trained personnel and procedures for safely storing, dispensing, and otherwise handling fuel, lubricants, and oxygen on the airport (other than articles and materials that are, or are intended to be, aircraft cargo). . . ." This is the only rule that addresses the subject of storing and dispensing aviation fuel, and in addition, applies solely to air carrier airports. In the Board's opinion, 14 CFR 139 is inadequate even for those airports it covers because it does not address fuel contamination. Our accident statistics do not indicate that fuel contamination has been a problem to air carrier aircraft. However, informal communication with the FAA indicates that control of contamination is considered during airport certification via a rather broad interpretation of 14 CFR 139.51. The Board believes that the problem of fuel contamination should be specifically addressed for both air carrier and general aviation airports. In our judgment, fuel contamination should be specifically addressed for all segments of aviation rather than only that segment in which there is an apparent current problem. It has been generally accepted that standards for air carrier operations must be as stringent as they are for general aviation. We believe that the regulations should reflect this consistency.

Therefore, the National Transportation Safety Board recommends that the Federal Aviation Administration:

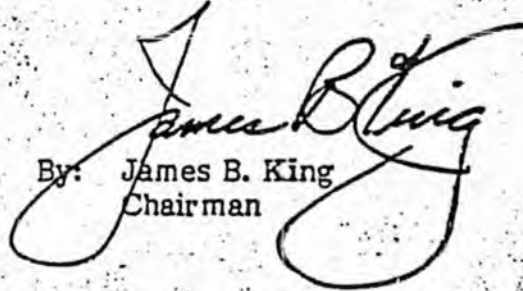
Expand 14 CFR 139 to include minimum specifications and design criteria for the installation, maintenance, and inspection of aviation fuel storage and dispensing systems at airports certificated under 14 CFR 139. (Class II, Priority Action) (A-81-9)

Take necessary action to establish minimum specifications and design criteria for aviation fuel storage and dispensing systems at public-use airports not certified under 14 CFR 139. In addition to the equipment itself, such criteria should address their installation, operation, maintenance, and inspection. (Class II, Priority Action) (A-81-10)

When specifications and criteria are established for aviation fuel storage and dispensing systems at public-use airports are not certified under 14 CFR 139, establish and implement procedures to verify compliance. (Class II, Priority Action) (A-81-11)

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members, concurred in these recommendations.

By: James B. King
Chairman

A large, stylized handwritten signature in black ink, which appears to read "James B. King". The signature is written over the typed name and title.

April 21, 1981

Mr. Mike Salazar
Box 6900
Ketchikan, AK 99901

Dear Mike,

I appreciate your comments concerning the ten million dollar excess liability insurance Chevron provides our Branded Airport Dealers. I have checked with our Retail Division in San Francisco and found that this insurance would stay in effect if the Civil Liabilities Bills, SB-123 and HB-332 were to pass.


The only time there would be a change in the insurance would be if there was a Company-wide change.

I hope this answers your questions. I appreciate your and the Alaska Air Carriers Association's support for the proposed legislation.

Sincerely,

J. H. Howard

BY



T. D. Hunter

Sr. Technical Representative

cc: Tulinda Deegan, President
Alaska Air Carriers Association

Jessie L. Dodson

bcc: W. W. Cole, Seattle
J. H. Howard
G. D. McIntosh, SF - per our phone conversation April 20, 1981
E. F. Wiles

SUMMARY OF SB 123/HB 332

A. Effect of Bill.

SB 123/HB 332 exempts a refiner of aviation fuel from certain types of civil liability in connection with aviation accidents occurring in Alaska. The bill is designed to exempt a refiner from liability where the refiner no longer has control of the product being supplied. A refiner would continue to be liable for the quality of the fuel supplied where

- 1) Aviation fuel owned by the refiner was placed directly into an aircraft (for example, all large commercial carriers) or
- 2) the refiner intentionally or through gross negligence contributed to an accident.

B. Rationale for Bill.

It is well established that Alaska has a disproportionate number of small airplanes. It is equally well established that these same airplanes are involved in a disproportionate number of aviation accidents. Each such accident gives rise to a potential claim of contaminated fuel. Accordingly, companies marketing aviation fuel in Alaska are confronted with an enormous potential liability. The cost of this potential liability may not effectively be passed along to those purchasing aviation fuel in Alaska as the state's total volume is too low. Moreover, it is unfair to saddle

refiners with this liability as the vast majority of aviation fuel is marketed by independent airport dealers over which the refiner has no real control. Without this legislation, refiners may be forced to withdraw from the Alaska market (as one major refiner has recently done) or to adopt a "lower 48" policy of making aviation fuel available only in 10,000 gallon quantities which must be purchased F.O.B. a company facility. That policy would have a substantial effect on all those who benefit from Alaska's present availability of aviation fuel.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 332
 Title An act limiting the civil liability of aviation fuel refiners
 Requested by Adams Date 3/31/81

II. FISCAL DETAIL

Agency Affected Division of Insurance
 Program Category Affected Public Protection
 BRU, Program, Or Subprogram(s) Affected Division of Insurance
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC.	0					
TOTAL	0					

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify Source)	0					

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

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

IV. DATE February 1, 1982

PREPARED BY Kenneth C. Moore, Div. of Insurance
 AGENCY Commerce & Economic Development
 PHONE 2515

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)