

44B  
535

# ALASKA STATE LEGISLATURE

*Representative Georgianna Lincoln*

HESS Committee, Co-Chair  
Resources Committee, Vice-Chair

Budget Subcommittees  
Health and Social Services  
Revenue



P.O. Box V  
Juneau, Alaska 99811

Phone: (907) 465-3732  
FAX: (907) 465-2652

Alatna  
Allakaket  
Aniak  
Anvik  
Arctic Village  
Beaver  
Bettles  
Birch Creek  
Chalkyitsik  
Chuathbaluk  
Crooked Creek  
Evansville  
Fort Yukon  
Galena  
Grayling  
Holy Cross  
Hughes  
Huslia  
Kalskag  
Kaltag  
Koyukuk  
Lake Minchumina  
Lime Village  
Lower Kalskag  
Manley Hot Springs  
Marshall  
McGrath  
Minto  
Mountain Village  
Nikolai  
Nulato  
Pilot Station  
Pitkas Point  
Rampart  
Red Devil  
Ruby  
Russian Mission  
Shageluk  
Sleetmute  
St. Mary's  
Stevens Village  
Stony River  
Takatna  
Tanana  
Telida  
Tuluksak  
Tyonek  
Venetie  
Wiseman

## SPONSOR STATEMENT HOUSE BILL 535

Representative Georgianna Lincoln

Safe drinking water is something that should, by right, be available to every Alaskan, both urban and rural. Villages in rural Alaska have encountered situations where their water sources have been contaminated by hazardous substances, most often fuel. Restoration of drinking water then becomes a priority and funding must be obtained in short order.

HB 535 proposes to expand the use of the oil and hazardous substance release response fund (470 fund) to include capital construction associated with restoration of the community's drinking water. This would allow the use of the same equipment brought in by DEC to establish the extent of the contamination to be used to drill for a new water source. In the end, this makes good economic sense for the State of Alaska and for the impacted community.

The 470 fund may now be used to identify the source and extent of the contamination caused by the release of a hazardous substance, and to contain and clean up this substance when it poses an imminent and substantial threat to the public health or welfare. DEC may undertake these activities and seek to recover the funds expended from the responsible party at a later date. The 470 fund cannot be used for any capital construction related to restoration of the community's drinking water.

When a drinking water supply is contaminated and is no longer usable, residents of the affected village must obtain their water from another source, often a river or creek. This water must be boiled before drinking. However, with children dipping from a bucket this more oftentimes doesn't occur, especially with the high cost of propane for boiling the water. DEC takes in their equipment to determine the source and extent of the contamination by drilling at various locations. When their job is done, the equipment is removed from the village.

The village, in the meantime, must work through the state system to obtain funding to replace their drinking water source. Given the nature of the state capital budget, it may take one to several years to obtain enough funding to complete the construction, and equipment must again be mobilized for the short construction season.

Under provisions of HB 535, DEC may not seek recovery of costs incurred in the containment and clean up of a hazardous substance or to restore the impaired public drinking water supplies or provide for alternative drinking water supplies from a municipality or village. The financial stability of rural governments is at best shaky, and these entities often cannot afford to pay for the cleanup activities much less the restoration of drinking water supplies. They may continue to do so if a private party has been identified as the responsible party.

Over the past two years, fuel spills have contaminated drinking water supplies in the communities of Marshall, Minto and Toksook Bay. Each time, DEC sent in a spill response team to identify the source of the contamination and to initiate the clean-up. These activities were done utilizing the 470 fund.

We propose to expand the use of the 470 fund to restore drinking water supplies that have been contaminated. Given the number of times the 470 fund would have been used over the past two years, we believe there will be minimal impact on the 470 fund.

# HOUSE COMMITTEE REPORT

(7) Date Referred: February 18, 1992      FURTHER REFERRALS:      Resources Finance

Date of Committee Action: 4/8/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:      HB 535

HOUSE BILL NO. 535      PUBLIC DRINKING WATER CLEANUP

"An Act relating to the restoration of impaired public drinking water supplies or the provision of alternative public drinking water supplies in connection with oil or hazardous substance containment and cleanup activities; and providing for an effective date."

RECOMMENDATIONS:       the same title  
 be replaced with CS HB 535 (HES)       a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S):      (Dept)       fiscal impact \_\_\_\_\_

APPROVES PREVIOUS:      (Dept/Date)       fiscal note(s) \_\_\_\_\_

zero fiscal note DEC \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Beth Davis</i>	<input type="checkbox"/>				
<i>J. C. [Signature]</i>	<input checked="" type="checkbox"/>				
<i>Cheri Davis</i>	<input checked="" type="checkbox"/>				

*[Signature]*  
 Co-CHAIRMAN'S SIGNATURE

7-LS2025D  
Lauterbach  
4/2/92

CS FOR HOUSE BILL NO. 535 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES LINCOLN, Ivan

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the restoration of impaired public drinking water supplies or the  
2 provision of alternative public drinking water supplies in connection with oil or hazardous  
3 substance containment and cleanup activities; and providing for an effective date."

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

5 \* Section 1. AS 46.08.010(c) is amended to read:

6 (c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except for  
7 containment or cleanup activities related to restoration of impaired public drinking water  
8 supplies or the provision of alternative public drinking water supplies, or as provided in  
9 AS 46.08.040(d)(2), the fund may not be used for capital improvements.

10 \* Sec. 2. AS 46.08.070(a) is amended to read:

11 (a) Except as provided in (d) of this section, the [THE] commissioner shall seek  
12 reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred  
13 in the cleanup or containment of oil or a hazardous substance that has been released.

14 \* Sec. 3. AS 46.08.070(b) is amended to read:

1 (b) Except as provided in (d) of this section, the [THE] attorney general, at the request  
2 of the commissioner, shall immediately seek to recover money expended by the department under  
3 AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that  
4 has been released or to control the threatened release of oil or a hazardous substance.

5 \* Sec. 4. AS 46.08.070 is amended by adding a new subsection to read:

6 (d) Notwithstanding (a) and (b) of this section, the state may not seek reimbursement or  
7 recovery of containment and cleanup costs incurred to restore impaired public drinking water  
8 supplies or to provide alternative public drinking water supplies if a village, as defined in  
9 AS 46.07.080, is a party responsible for the impairment.

10 \* Sec. 5. AS 46.08.900(3) is amended to read:

11 (3) "containment and cleanup" includes the direct and indirect efforts associated  
12 with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the  
13 restoration of the environment including the restoration of impaired public drinking water  
14 supplies or the provision of alternative public drinking water supplies; when applied to  
15 expenses, the term includes the additional costs of providing a reasonable and appropriate  
16 function or service incurred in response to the release of the oil or hazardous substance, including  
17 administrative expenses for the incremental costs of providing the function or service;

18 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 535

Revision Date: \_\_\_\_\_  
 Title: Restoring impaired public  
drinking water supplies  
 Sponsor: Rep. Lincoln  
 Requestor: (H) HESS

Department Affected: Environmental  
Conservation  
 BRU: Spill Prevention and Response  
 Component: Contaminated Sites

COMPONENT SERIAL NO. 1 | 4 | 3 | 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL	*	*	*	*	*	*
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:	*	*	*	*	*	*
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary.)	* See Attached
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Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-5010  
 Date: 4/1/92

Approved by Commissioner: *Janice Adair*  
 Agency: Environmental Conservation

Date: 4/2/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB 535  
Attachment to Fiscal Note

Section 4 of the proposed legislation precludes the State from recovering costs incurred to restore a public drinking water supply if the community was responsible for the contamination.

There have been two cases in recent years where a community's drinking water supply has been contaminated, and where the community may have been a responsible party. The capital costs in each case were as follows:

Community #1	Water Restoration	210,000
	Mob/demob	<u>(90,000)</u>
	Total unrecoverable costs	\$120,000
Community #2	Water Restoration	630,000
	Mob/demob	<u>(60,000)</u>
	Total unrecoverable costs	\$570,000

## New uses for 470 spill fund

There will be a push for more authorized uses of the "470" oil spill fund, which is financed by a special nickel-a-barrel tax on oil production enacted in 1989. The administration will push legislation allowing use of the 470 fund to include restoration of public drinking water facilities during contaminated site cleanups. Under current law, money is available from the fund to do cleanup of contaminated sites. But in a rural community, the same crew and equipment could dig a new water well if funds were available. Now funding must come from a different source, which often means delays and mobilization of a different crew, with a substantial added cost. Also pending is Rep. Kay Brown's HB-264, which would tap the 470 fund to finance grants and loans for leaking underground fuel storage tank cleanup. Department of Environmental Conservation says it still supports HB-264, but with amendments that would narrow the uses of 470 funds in the LUST program.

The 470 fund is not a dedicated fund, but rather a reserve account in the general budget. It was actually created in 1986 to finance emergency containment of cleanup of oil or other hazardous substances, but didn't have any significant funding until the Exxon Valdez spill in 1989, which motivated legislators to enact the nickel-a-barrel tax as a funding source, also expanding the fund to \$50 million and adding other authorized uses of the money, such as environmental restoration, litigation, and contingency plan review. In FY 1991 and FY 92 (the current budget year) about \$30-\$33 million yearly has been spent, much of it on Exxon Valdez spill related expenses. Oil producers, who pay the tax, complain that with the authorized uses of the fund being expanded every year, the \$50 million fund will be continually drawn down, making the nickel-a-barrel surtax, in effect, a permanent tax. Others counter that aside from direct spill-related cleanup and contingency plan review, some of the money is being spent on contaminated site cleanup near Kenai and North Slope producing fields.

## "Sleeper" issue: Coastal management review of spill contingency plans

Another "sleeper" issue for the '92 session may be powers of the Alaska coastal policy council and the state coastal management act itself. What is likely to bring this to a head is the current muddle over review of oil spill contingency plans for "consistency" with the state's coastal management program. In development of its HB-567 oil spill regulations (HB-567, enacted in 1990, sets out new spill contingency and planning standards) Dept. of Environmental Conservation first said its review of spill contingency plans would also meet requirements of the coastal policy act. Not so, said coastal resource districts, with Aleutians east and west coastal districts taking the lead. The state Coastal Policy Council, made up of state and local officials, in October ordered a 60-day public review and since then has held workshops on the issue. What may emerge is a compromise: Coastal districts agreeing to adhere to DEC's timetable for review of contingency plans but DEC agreeing to pass contingency plans through coastal districts, giving them "due deference" in their comments (a legal term that gives locals more clout) and agreeing to adhere to the "elevation" process established in the coastal management program for resolving disputes. If that deal emerges, it still raises questions as to whether DEC review of spill contingency plans can be stopped by appeals through coastal management. This issue affects more than major oil companies. Next July, new contingency plan requirements will apply to fuel shippers and tank farm operators.

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## Tapping constitutional budget reserve?

Word on the street in Juneau is that the Hickel administration would support, under "certain circumstances," tapping the constitutional budget reserve. This has over \$400 million after the recent BP settlement, but it takes a 3/4 legislative vote to tap the fund. Another budget reserve, also with several hundred million dollars, can be tapped by a simple majority vote in the legislature and will likely be used to fund the FY 1992 capital budget, administration sources say. The administration's thinking is that the constitutional reserve would be used for some single purpose. A funding source for school construction is one idea reportedly kicked around.

BACK UP



# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF MILITARY AND VETERANS AFFAIRS ALASKA DIVISION OF EMERGENCY SERVICES

PO BOX 5750  
FT. RICHARDSON, AK 99505-5750  
PHONE: (907) 428-7000

January 2, 1992

### NOTE:

This letter is an example of the problems experienced by rural residents faced with an unreliable water supply. Even obtaining water from traditional sources can now have environmental and health problems.

Mr. John Amik  
Village Administrator  
Kipnuk Village Council  
General Delivery  
Kipnuk, Alaska 99614

Dear Mr. Amik:

The Division of Emergency Services has reviewed your request for assistance in meeting the village's need for a more readily available source of water by filling the storage tank with water drawn from a nearby lake. While recognizing the difficulty that villagers encounter in supplying themselves with water in the traditional ways, hauling ice from nearby lakes, we have concluded that your proposal does not offer a feasible alternative.

This conclusion is based in part on engineering advice we have obtained from the Alaska Department of Environmental Conservation and the U.S. Public Health Service. There are two problems with your proposal: (1) the water in the lake from which you propose to draw, and other area lakes, is extremely turbid with suspended material at this time of year. Moreover, because of the shallowness of the lakes (two feet or less), it would be impossible to avoid pumping an excessive amount of material from the bottom along with the water. The quality of the water would thus be too poor for use in daily laundry purposes, let alone drinking. (2) the logistics of drawing water from lakes and pumping it a minimum of 2000 feet to the storage tank at this time of year would be extremely difficult to accomplish without a prolonged period of temperatures that are higher than normal for this time of year.

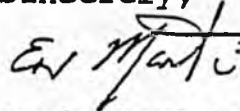
While this does not alleviate immediately the hardships that villagers must undergo to obtain water, there is some gratification in knowing that this will probably be the last year that residents of Kipnuk experience a water shortage of this magnitude. As you know, the State Department of Environmental Conservation and the U.S. Public Health Service have been working for some time on proposals to provide a long term solution to the village's water problems,

January 2, 1992  
Page 2

including the construction of larger capacity storage facilities and a washeteria. At present, over \$1.2 million in federal and State funds are committed to this project, with construction of the first phase scheduled for next summer. It is expected that completion of this phase will assure a storage capacity adequate to meet all of the community's needs throughout the winter.

In the meantime, we can offer a recommendation. We suggest that the Village approach the school and request that the school make available, at least for elderly residents who have difficulty in obtaining water in the traditional way, a place for distributing limited supplies of drinking water from the school's storage tanks. With careful monitoring, this should be possible without depleting the water supply needed by the school to meet its own needs.

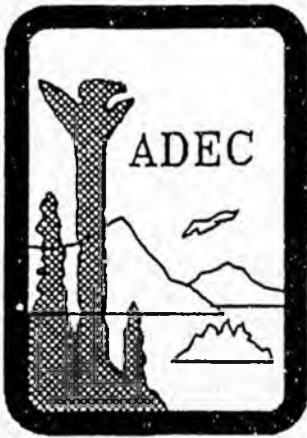
Sincerely,



Ervin Paul Martin  
Director

EPM:JB:th

cc: Office of the Governor, ATTN: Nancy Barnes  
Village Safe Water, ATTN: Greg Capito  
US Public Health Service, ATTN: Tom Coolidge  
Senator Lyman Hoffman  
Representative Ivan Ivan



Department of Environmental Conservation

## POSITION PAPER

RECEIVED: 13 1992

BILL NO: SB 391

APPROVED:

*Joel D. Taylor*

TITLE: Restoration of Impaired Water

DATE:

3-18-92

The Department supports this legislation. There have been several occasions in the last few years when undetected spills of hazardous substances, including petroleum products, have contaminated public drinking water supplies in remote communities. In many cases, the Department of Environmental Conservation (ADEC) undertook containment and cleanup activities using the Oil and Hazardous Substance Release Response (470) Fund.

Generally, cleanup activities of contaminated soil involve drilling "monitoring" wells to determine the extent of the contamination. The same equipment used for these monitoring wells can be used to drill a new drinking water well. ADEC has no mechanism to provide an alternative drinking water source to a community absent a specific capital project appropriation. The legal restrictions on the 470 Fund prevent ADEC from using this fund source to reestablish the drinking water source as a part of ADEC's cleanup activities. The community is thus forced to wait through at least one capital budget cycle for the necessary funds. By this time, another construction season is gone, as is the equipment used to drill any monitoring wells. The need to return this equipment to the community in order to drill a new drinking water well can significantly add to the cost of the capital project.

A.S. 46.08.040 outlines the purposes for which the 470 Fund may be used. It includes the containment and cleanup of a release of a hazardous substance. Any funds so expended are to be recovered from the party responsible for the release pursuant to AS 46.08.070. SB 391 amends the definition of "containment and cleanup" to include the restoration of a contaminated public drinking water supply. Any funds used for this purpose would be added to those the responsible party must repay to the State.