

SB

154

# FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HCS CSSB 154 (R88)

Revision Date: 5/6/92 Department Affected: Environmental Conservation  
 Title: Limiting Lender Liability/Oil and Hazardous Substance Releases  
 Sponsor: Senator Rodey BRU: Spill Prevention and Response  
 Requestor: (H) JUDICIARY Component: Contaminated Sites

COMPONENT SERIAL NO. 

1	4	3	1
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**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	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<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
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary.)

Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-5010  
 Date: 5/6/92

Approved by Commissioner: *Deuce Ware for John Sander*  
 Agency: Environmental Conservation

Date: 5/6/92

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

# FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CSSB 154 (JUD)

Revision Date: 4/23/92  
 Title: Limiting Lender Liability/Oil and Hazardous Substance Releases  
 Sponsor: Senator Rodey  
 Requestor: \_\_\_\_\_

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:						

**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
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary.)

Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-5010  
 Date: \_\_\_\_\_

Approved by Commissioner: Janice Adair for John Sandor  
 Agency: Environmental Conservation Date: 4/23/92

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

# Alaska State Legislature



## Senate

### M E M O R A N D U M

PATRICK M. RODEY  
SENATOR

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618

During Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3793

DATE: May 6, 1992

TO: Members, House Judiciary Committee

FROM: Senator Pat Rodey

SUBJ: HCSSB 154 (RES) - Liability of lenders involving contaminated property

Attached is a summary of the above-referenced bill which is in committee. Under the time constraints of the end of session, I am circulating this in order to give you more information prior to the committee hearing. Anticipating any questions you may have, please call Tim Benintendi of my staff at 3793.

SB 154 will be before you soon. It addresses the needs of lenders, both commercial and individual, including those who choose to owner-finance the sale of their homes.

Its intention is to limit the liability of security interest holders (creditors) in certain hazardous contamination clean-up situations. Those situations are where lenders, as innocent third parties who did not initiate or contribute to a contamination, are currently held liable beyond their borrowers for any or all costs of containment or clean-up under our strict liability laws.

Lender liability can exceed the value of the loan or its collateral, and in some cases, place other company or personal assets at risk. Through SB 154, lender liability would be limited, but not eliminated, in certain cases.

The two chief reasons for this bill are to provide lenders with a clearer picture of potential liability so as to more realistically assess loan risk and collateral value; and two, to insure reasonable and consistent credit availability for Alaska business, especially small and mid-sized businesses.

Development of the bill has included assistance from DEC and the AG, both of whose offices support the bill. A zero fiscal note was issued by DEC, and remains effective through the House Resources CS.

The need for the provisions of SB 154 are not unique to Alaska. The impact of strict liability laws are being reviewed nationally. The Environmental Protection Agency has, in the past ten days, adopted regulations which would provide some limits to lender liability. In 1991, fifteen other states passed legislation similar to SB 154.

The objective of this bill is to address a specific problem in strict liability law where lenders, as innocent third parties who did not cause or contribute to a contamination on property they hold as collateral, are currently liable beyond their interest in the property. Some lenders have begun to react to unknown limits of potential liability by failing to make loans, failing to foreclose on property, and scrutinizing anew, the potential risks of otherwise solid and well-established borrowers. The implication for jobs, and viable economic activity, especially in smaller communities, is obvious.

I invite your support of HCSSB 154 (RES) as a measure which fairly addresses an excess in Alaska's strict liability laws. It does not unduly impact on the substance, intent, or effectiveness of those laws.

## SPONSOR SUMMARY

### HCS Senate Bill 154 (RES)

HCSSB 154 (RES) is intended to address inequities in strict liability laws where innocent third parties are held liable for unpermitted hazardous substance contamination. Specifically, the bill limits (but does not eliminate) the liability of security interest holders (creditors), and fiduciaries.

Originally intended to address the concerns of the state's commercial lenders, the bill was broadened in Senate Judiciary to include individual lenders, including those who own finance property.

Section 1 adds an environmental risk assessment as a document to be filed with the Office of the Recorder. The House Resources Committee added provisions for the risk assessments in this bill.

Section 2 adds to the definition of "owner" and "operator" the need for certain security interest holders to file environmental risk assessments IF they are to be exempted from being an "owner" or "operator".

Section 3 defines circumstances where limited liability is, and is not, applicable.

Section 4 requires the preparation and recording of environmental risk assessments in order to qualify for the limitations to strict liability. Requires the assessment to be recorded within 90 days after the loan is created.

Section 5 (f) limits a person's property which may be subject to the state's lien for cleanup costs; states that a person's liability is limited to the difference, if any, in the positive fair market value before the state's cleanup action, and FMV after the conclusion of cleanup action.

(g) provides that the state's lien is subject to prior parties' perfected liens.

Senate Bill 154 rectifies shortcomings in the original strict liability laws enacted in 1989, but does not unduly impact on the substance, intent, or effectiveness of those laws.

The bill enjoys the support of DEC, the AG, and continues with a zero fiscal note.

(9)  
Date Referred: March 20, 1992

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 5/1/92

The RESOURCES Committee considered: CSSB 154(JUD)

CS FOR SENATE BILL NO. 154(JUD) LIABILITY FOR ENVIRONMENTAL DAMAGE/LIENS

"An Act relating to the liability of certain security interest holders arising out of an unpermitted release of a hazardous substance or the substantial threat of an unpermitted release of a hazardous substance, and to liens on the property of certain security interest holders resulting from an oil or hazardous substance spill or the threat of an oil or hazardous substance spill."

RECOMMENDATIONS:  
be replaced with HCS CS SB 154 (RES)  the same title  
 a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ALOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	N <sup>o</sup>	AM
<i>[Signature]</i> <u>LEMAN</u>	<input checked="" type="checkbox"/>	<u>LINCOLN</u>			<input checked="" type="checkbox"/>
<i>[Signature]</i> <u>MOYER</u>	<input type="checkbox"/>	<u>DAVIDSON</u>		<input checked="" type="checkbox"/>	
<i>[Signature]</i> <u>IWAN</u>	<input checked="" type="checkbox"/>	<u>FINKELSTEIN</u>			
		<u>CARNEY</u>	<input checked="" type="checkbox"/>		

[Signature]  
CHAIRMAN'S SIGNATURE



Senate

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

M E M O R A N D U M

DATE: April 13, 1992  
TO: Members, House Resources Committee  
FROM: Senator Pat Rodey *Pat*  
SUBJ: CSSB 154 (JUD) Liability of Security Interest Holders

This bill will be before you on Tuesday, April 14th. It addresses the needs of lenders, both commercial and individual, including those who choose to owner-finance the sale of their homes.

Its intention is to limit the liability of security interest holders (creditors) in certain hazardous contamination clean-up situations. Those situations are where lenders, as innocent third parties who did not initiate or contribute to a contamination, are currently held liable beyond their borrowers for any or all costs of containment or clean-up under our strict liability laws.

Lender liability can exceed the value of the loan or its collateral, and in some cases, place other company or personal assets at risk. Through SB 154, lender liability would be limited, but not eliminated, in certain cases.

Reasons for SB 154 are as follows:

1. To provide lenders with a clearer picture of potential liability so as to more realistically assess loan risk and collateral value.
2. To insure reasonable and consistent credit availability for Alaska business, especially small and mid-sized businesses.

To assist with questions regarding the implications of SB 154, several individuals will be on hand to testify. Ms. Janice Adair will appear for DEC to address regulatory concerns. Mr. Robert Regis, an assistant AG who litigates strict liability

cases for the state, will be available. Both of these individuals have contributed significantly to the current version of the bill. In addition, Mr. Gerard Diemer, Environmental Risk Officer for the National Bank of Alaska will be present.

The need for the provisions of SB 154 are not unique to Alaska. The impact of strict liability laws are being reviewed nationally. The Environmental Protection Agency has regulations pending which would provide some limits to lender liability. Several other states have passed legislation similar to this bill (see Diemer letter attached).

I invite your support of CSSB 154 (JUD) as a measure which fairly addresses an excess in Alaska's strict liability laws. This bill has been crafted to limit, but not eliminate, lender liability.



# DENALI STATE BANK

119 N. Cushman Street • (907) 456-1400 • FAX (907) 456-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

March 18, 1992

Representative Donley  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

RE: SB154 "An Act Relating to the Liability of Financial Institutions Arising Out of an Unpermitted Release of a Hazardous Substance or the Substantial Threat of an Unpermitted Release of a Hazardous Substance, and to Liens on the Property of Financial Institutions Resulting From an Oil or Hazardous Substance Spill or the Threat of an Oil or Hazardous Substance Spill"

Dear Representative Donley:

This letter is being written both as President of Denali State Bank and in my current capacity as President of the Alaska Bankers Association.

I am asking you to support SB154 as it has passed the Alaska State Senate. The passage of this bill is vitally important to financial institutions in the State of Alaska and the borrowing customers that we serve. Much effort has been put into this bill by Senator Rodey and his staff, the Department of Environmental Conservation, and the Alaska Bankers Association. I am confident that it will fulfill the needs of all parties concerned.

Your support of this bill will be sincerely appreciated. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Gary Roth".

Gary Roth  
President and Chief Executive Officer

GR/bf



# DENALI STATE BANK

119 N. Cushman Street • (907) 456-1400 • FAX (907) 456-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

March 18, 1992

Representative Martin  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

RE SB154 "An Act Relating to the Liability of Financial Institutions Arising Out of an Unpermitted Release of a Hazardous Substance or the Substantial Threat of an Unpermitted Release of a Hazardous Substance, and to Liens on the Property of Financial Institutions Resulting From an Oil or Hazardous Substance Spill or the Threat of an Oil or Hazardous Substance Spill"

Dear Representative Martin:

This letter is being written both as President of Denali State Bank and in my current capacity as President of the Alaska Bankers Association.

I am asking you to support SB154 as it has passed the Alaska State Senate. The passage of this bill is vitally important to financial institutions in the State of Alaska and the borrowing customers that we serve. Much effort has been put into this bill by Senator Rodey and his staff, the Department of Environmental Conservation, and the Alaska Bankers Association. I am confident that it will fulfill the needs of all parties concerned.

Your support of this bill will be sincerely appreciated. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Gary Roth".

Gary Roth  
President and Chief Executive Officer

GR/bf

## **Key Bank of Alaska**

*A KeyCorp Bank*



Post Office Box 100420  
Anchorage, Alaska 99510-0420  
(907) 562-6100

**Dan Mogck**  
Vice President

Direct Line: (907) 584-0446  
Fax: (907) 584-0200

March 12, 1992

Representative David Donley  
Alaska State Legislator  
122 Capital Building  
Juneau, Alaska 99801-1182

Re: SB 154

Dear Representative Donley:

I represent the Alaska Bankers Association in our efforts to clarify the security interest exemption in the state environmental strict liability law. As a member of the House Judiciary committee, you will likely be hearing of SB 154 soon. I would like to take this opportunity to briefly outline the problem, and to educate you as to what we feel is a partial solution. I have enclosed a copy of the bill for your reference.

The state strict liability law, AS 46.03.822 - 828, is patterned after the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, aka Superfund). In both state and federal law there was a security interest exemption for lenders and other security holders. Over all the years, because of ambiguities in the in the wording, court cases have eroded the exemption. Lenders have been held to be liable as owners by foreclosing on a property, even though the lender had nothing to do with causing the problem and was only acting to protect a security interest. Courts have gone so far as to suggest that a lender may be liable as an operator if, in the words of the court, " the lender had the capability to influence hazardous waste decisionmaking through financial relationships". Because lenders may be the only deep pocket left after a clean up, they are easy targets for enforcement agencies.

The lending industry is very alarmed at the situation. The law and case decisions greatly increase the risks of lending money. Lenders, in many cases, are unable to lend money into the communities we serve, because of the environmental risks. Not being able to lend is very unsettling to our industry, as this is the primary way we invest in our communities. However, under current law, the risks of lending into a situation with any

Representative David Donley  
Page Two

potential environmental liability, particularly in the case of someone requesting funds to perform a clean up and also in the case of small loans, far outweigh the rewards.

As a partial solution, we have proposed SB 154, legislation that would clarify the security interest exemption. The clarification would allow a lender to hold indicia of ownership, which may include full legal title through foreclosure or equivalent, as long as the lender is holding primarily to protect a security interest, and does not participate in the management of a vessel or facility. Participating in management is also clarified, so that a lender will not risk liability unless there is actual participation in the management or operational affairs.

A second section of the bill addresses the state's lien for clean up and the ability of the state to recover on its lien from a property owner not otherwise liable, to the extent of an increase in the value of the property resulting from the state's clean up.

The Alaska Department of Environmental Conservation and the Office of the Attorney General have considered the bill, and in fact the present draft of the bill is their version. We certainly appreciate their involvement and hope for their continued support of this legislation.

Please call me if you or your staff have any questions regarding the bill. I ask for your support of the bill, as it will be crucial if we are to pass the bill this session.

Thank you.

Sincerely,



Dan Mogck  
Vice President

FACSIMILE

DATE: March 25, 1992  
TO: ~~Cliff Davidson~~ ✓  
COMPANY:  
FACS NO.: 907/465-2864  
FROM: Al Haslebacher  
COMPANY: Spokane District Farm Credit Council  
TOTAL PGS.: 2

SPECIAL INSTRUCTIONS OR COMMENTS:

We wanted you to know the Farm Credit Bank of Spokane supports this legislation and encourage you to give me a call if you would like additional background information.

Thanks.

WE ARE TRANSMITTING FROM AN AUTOMATIC FACSIMILE.  
TO TALK TO US: 509/838-9669  
TO FACSIMILE TO US: 509/838-9445

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# THE SPOKANE DISTRICT FARM CREDIT COUNCIL

FARM CREDIT BANKS BUILDING • POST OFFICE BOX TAF-C5 • SPOKANE, WASHINGTON 99220 • (509) 838-9208

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Testimony  
on  
Senate Bill 154  
In the Legislature of the State of Alaska  
Before the House Resources Committee  
3/25/92  
by  
Al Haslebacher  
President, SDFCC

The Spokane District Farm Credit Council is a trade association representing the legislative interests of cooperative lenders in the Twelfth Farm Credit District. Our members, the Farm Credit Bank of Spokane and the Northwest Farm Credit Services, an agricultural credit association, have over two billion dollars in loans outstanding in our five states of Alaska, Idaho, Montana, Oregon, and Washington. Farm Credit system loans in Alaska cover farms, rural homes, fishing boats, cooperative operations/facilities, and timber.

Lender liability relative to "clean-up" of acquired properties is a growing concern and will eventually tend to restrict mortgage credit unless some reasonableness is returned to CERCLA legislation. Alaska Senate Bill 154 is positive legislation that we support.

If any "tales of horror", relative to acquired properties and the resultant "losses" to the lender, would be helpful to your consideration of the bill, we can provide them. If you need any clarification or elaboration please feel free to call me at (509) 838-9208.

Al Haslebacher  
President, SDFCC

RECEIVED MAR 23 1992



# DENALI STATE BANK

119 N. Cushman Street • (907) 456-1400 • FAX (907) 456-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

March 17, 1992

Representative Davidson  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

RE: SB154 "An Act Relating to the Liability of Financial Institutions Arising Out of an Unpermitted Release of a Hazardous Substance or the Substantial Threat of an Unpermitted Release of a Hazardous Substance, and to Liens on the Property of Financial Institutions Resulting From an Oil or Hazardous Substance Spill or the Threat of an Oil or Hazardous Substance Spill"

Dear Representative Davidson:

This letter is being written both as President of Denali State Bank and in my current capacity as President of the Alaska Bankers Association.

I am asking you to support SB154 as it has passed the Alaska State Senate. The passage of this bill is vitally important to financial institutions in the State of Alaska and the borrowing customers that we serve. Much effort has been put into this bill by Senator Rodey and his staff, the Department of Environmental Conservation, and the Alaska Bankers Association. I am confident that it will fulfill the needs of all parties concerned.

Your support of this bill will be sincerely appreciated. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Gary Roth".

Gary Roth  
President and Chief Executive Officer

GR/bf

RECEIVED MAR 13 1992

**Key Bank of Alaska**

A KeyCorp Bank



Post Office Box 100420  
Anchorage, Alaska 99510-0420  
(907) 562-6100

**Dan Mogck**  
Vice President

Direct Line: (907) 564-0448  
Fax: (907) 564-0200

March 12, 1992

Representative Cliff Davidson  
Alaska State Legislator  
State Capital - 108 Capital Building  
Juneau, Alaska 99801-1182

Re: SB 154

Dear Representative Davidson:

I represent the Alaska Bankers Association in our efforts to clarify the security interest exemption in the state environmental strict liability law. As a member of the House Resources committee, you will likely be hearing of SB 154 soon. I would like to take this opportunity to briefly outline the problem, and to educate you as to what we feel is a partial solution. I have enclosed a copy of the bill for your reference.

The state strict liability law, AS 46.03.822 - 828, is patterned after the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, aka Superfund). In both state and federal law there was a security interest exemption for lenders and other security holders. Over all the years, because of ambiguities in the in the wording, court cases have eroded the exemption. Lenders have been held to be liable as owners by foreclosing on a property, even though the lender had nothing to do with causing the problem and was only acting to protect a security interest. Courts have gone so far as to suggest that a lender may be liable as an operator if, in the words of the court, " the lender had the capability to influence hazardous waste decisionmaking through financial relationships". Because lenders may be the only deep pocket left after a clean up, they are easy targets for enforcement agencies.

The lending industry is very alarmed at the situation. The law and case decisions greatly increase the risks of lending money. Lenders, in many cases, are unable to lend money into the communities we serve, because of the environmental risks. Not being able to lend is very unsettling to our industry, as this is the primary way we invest in our communities. However, under current law, the risks of lending into a situation with any

Representative Cliff Davidson  
Page Two

potential environmental liability, particularly in the case of someone requesting funds to perform a clean up and also in the case of small loans, far outweigh the rewards.

As a partial solution, we have proposed SB 154, legislation that would clarify the security interest exemption. The clarification would allow a lender to hold indicia of ownership, which may include full legal title through foreclosure or equivalent, as long as the lender is holding primarily to protect a security interest, and does not participate in the management of a vessel or facility. Participating in management is also clarified, so that a lender will not risk liability unless there is actual participation in the management or operational affairs.

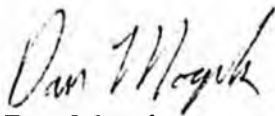
A second section of the bill addresses the state's lien for clean up and the ability of the state to recover on its lien from a property owner not otherwise liable, to the extent of an increase in the value of the property resulting from the state's clean up.

The Alaska Department of Environmental Conservation and the Office of the Attorney General have considered the bill, and in fact the present draft of the bill is their version. We certainly appreciate their involvement and hope for their continued support of this legislation.

Please call me if you or your staff have any questions regarding the bill. I ask for your support of the bill, as it will be crucial if we are to pass the bill this session.

Thank you.

Sincerely,



Dan Mogck  
Vice President

# National Bank of Alaska



Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 276-1132

January 27, 1992

Senator Patrick Rodey  
Alaska State Senate  
P.O. Box Z (MS3100)  
Juneau, AK 99811

Dear Senator Rodey:

The State Banking Association is supporting Senate Bill #154 which we believe would encourage lending to small business. The reason for our support for this legislation is to facilitate small business commerce in the state of Alaska and to place the blame for environmental problems on the guilty parties. We must be able to make loans to small business without the constant threat of being required to cleanup environmental problems in which we were unaware nor did we contribute to the environmental problem. We believe in a due diligence by the state to protect us from environmental hazards.

We believe in the concept of a clean environment and that Alaska is in much better shape than much of the U.S. We do become extremely skittish when a state leasing official encourages us to make loans on its property and tells us that due to our financial resources, they would require us to cleanup any environmental problems regardless whether the problem was created by the state itself, an adjacent property owner, or a previous ground lessee.

Borrowing in the future will become more difficult if the state anticipates that we pay for everyone's environmental problems. We are encountering more and more cases whereby the marginal environmental risk causes us to decline to make the loan because of unknown future problems which we might encounter. We encourage you to vote for Senate Bill #154 which will go a long way to encourage lenders to lend on real estate and to small business.

Sincerely yours,

A handwritten signature in cursive script that reads "Jan Sieberts".

Jan Sieberts  
Senior Vice President

sr



# ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE  
ANCHORAGE, ALASKA 99503-6647  
(907) 562-1255

## Alaska Credit Union League Statement in Support of CS for SB 154

There are 18 credit unions in Alaska (16 federally chartered, 2 state chartered) and all are members of the Alaska Credit Union League, a trade association dedicated to protecting and serving the interests of Alaska's credit unions and the members who own them.

Some 338,000 Alaskans are currently members of these 18 credit unions. Obviously, credit unions are considered by Alaskans to be among the safest financial institutions in the marketplace.

However, in today's economic climate, the financial services industry and its regulators are very concerned about real estate loan losses. From a lender's standpoint, the factor which creates the greatest potential for loss is not market risk or credit risk but the risk associated with environmental contamination. Under state law, a lender can be held strictly liable for the cost of clean up of contaminated properties- regardless of who contaminated the property. The current owner (which a lender becomes through the foreclosure process) is financially responsible for clean up and damages.

There is no way to guarantee that during the term of the loan the property value will not be impaired by contamination. If the individual owner is not financially capable of cleaning up a property, the state can file a lien superior to a pre-existing lenders lien. This situation has curtailed and eliminated sources of credit for real estate lending (this includes business loans secured by real estate, home equity loans and loans for the improvement and purchase of homes).

In fact, Alaska USA Federal Credit Union discontinued granting real estate loans in October of 1989 because of losses and potential losses incurred or threatened under the strict liability provisions of state law. Prior to that time, the credit union granted \$50 million in real estate loans each year. It is the position of the Alaska Credit Union League that the availability of credit for real estate related purposes is an essential part of the Alaska economy.





# ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE  
ANCHORAGE, ALASKA 99503-6647  
(907) 562-1255

Currently, prudent lending requires not only the traditional appraisal, title insurance, etc. but also site assessment for the detection of environmental contamination. If through the site assessment contamination is discovered, then the law requires it to be reported. If the contaminated real estate is ever to have economic value, it must be cleaned up. It makes good environmental sense to encourage lending because the lender as a third party must do site assessments and has great incentive (loss of loan and collateral) to do thorough assessments to identify contaminated or potentially contaminated properties that might otherwise go undetected and unreported for years.

The changes to existing law proposed by CS of SB 154 encourage the more active involvement of financial institutions in real estate lending by limiting ( not eliminating) liability of financial institutions that have acquired contaminated facilities or vessels through foreclosure or trust agreements. We believe it is in the best interest of the environment, the economy, and the people of the State of Alaska that SB 154 become law this session.



# National Bank of Alaska



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January 28, 1992

Senator Patrick Rodey  
Alaska State Senate  
P. O. Box Z (MS3100)  
Juneau, Alaska 99811

Dear Senator Rodey:

I want to ask you for your support of Senate Bill #154 which deals with issues of environmental liability to lenders. Passage of the Bill will facilitate small business commerce in the State of Alaska.

We all wish to live in a clean and healthy environment; however, we have become concerned over attempts to hold lender's liable for the cost of cleaning up a borrower's property.

Lenders already have adequate incentives to encourage their borrowers to engage in environmentally safe practices but lenders are not equipped to police the environmental activities of their borrowers. Imposition of unlimited liability on lenders can be expected to restrict credit to any borrowers where there is environmental risk. A reduction in the availability of credit threatens businesses and their ability to contribute to cleanup of the environment and thereby also frustrates environmental interests.

Banks are now examining property carefully before they foreclose and sometimes walk away from their collateral in order to avoid liability. I have been designated the banks' "Environmental Risk Officer". As such, I review loan requests to assess the level of risk to the bank.

Imposing liability for environmental cleanup costs on lenders is likely to do little to prevent pollution, but may interfere with the availability of credit to even prudent businesses that use hazardous substances such as fish processors, all maritime businesses, trucking, car dealerships, dry cleaners, aviation and service stations to name just a few.

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We recently declined credit to a gift shop in Valdez, not because they used hazardous substances, but because they were next door to a service station. In rural Alaska most communities rely exclusively on petroleum for heat and transportation and to operate all forms of equipment essential to their livelihoods. Existing State environmental laws were modeled after what others have done in the lower 48 and do not consider problems unique to Alaska.

Meanwhile, other states continue to pass legislation similar to Senate Bill #154. In 1991 alone Arizona, Illinois, Indiana, Maine, Maryland, Minnesota, Missouri, Hawaii, Nebraska, Oregon, Texas, West Virginia, Indiana, Montana and New Mexico all passed such legislation.

Again I ask you for your support of Senate Bill #154.

Sincerely,

NATIONAL BANK OF ALASKA

  
Gerard Diemer  
Assistant Vice President  
Commercial Credit Services

GD:ld