

**SB**

**41**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 10, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/15/97

The FINANCE Committee considered:

CSSB 41(FIN)

CS FOR SENATE BILL NO. 41(FIN)

ENVIRONMENTAL AUDITS

"An Act relating to environmental audits to determine compliance with certain laws, permits, and regulations."

recommends it be replaced with the following committee substitute HPS CSSB 41 (JUD)  the same title  a new title


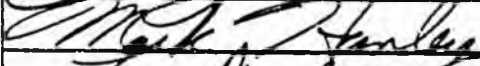
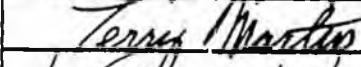








additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

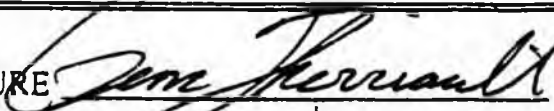
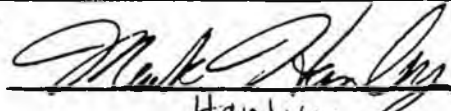
ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) AK COURT SYSTEM [ , fiscal note(s) \_\_\_\_\_  
law

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) Labour 3/18/97  
DHSS 3/13/97

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Theriault	<input checked="" type="checkbox"/>			
	Hanley	<input checked="" type="checkbox"/>			
	Martin	<input checked="" type="checkbox"/>			
	Kohring	<input checked="" type="checkbox"/>			
	Grossendorf			<input checked="" type="checkbox"/>	
	Jimmie	<input checked="" type="checkbox"/>			
	G. Davis	<input checked="" type="checkbox"/>			
	Kelly	<input checked="" type="checkbox"/>			
	Foster	<input checked="" type="checkbox"/>			
					
					

(c) CHAIR'S SIGNATURE

   
 Theriault Hanley

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO. HCS CSSB 41 (JUD)**

Revision Date: 04/14/97

Dept. Affected: Alaska Court System

Title: Environmental & Health Safety Audits

BRU: Trial Courts

Component: \_\_\_\_\_

Sponsor: Sens. Leman, Pearce & Taylor

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**Fund Source**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY 97) cost: None

**Positions**

Full-Time						
Part-Time						
Temporary						

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

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Phone: 264-8228

Agency: Alaska Court System

Date: 04/14/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Date: 04/14/97

Agency: Alaska Court System

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09:30 PM

**Alaska Court System**  
**Fiscal Analysis**  
**HCS CSSB 41 (JUD)**

HCS CSSB 41 (JUD) creates a privilege from disclosure and use in evidence for information contained in an environmental audit in certain civil actions or administrative proceedings. If a person or entity asserts the privilege, the opposing party would need to request an in-camera review of the information, in order to determine if the information is not privileged and must be disclosed.

An in-camera review of this nature can be extremely time consuming; many environmental audits are composed of tens of thousands of pages of documents. Cases in which an in-camera review is requested may require large amounts of time for pretrial proceedings. However, according to the Department of Law, the latest version of SB 41 can be expected to simplify the privilege process compared with earlier versions of the bill, and privilege cases may not show up in court for three to five years following enactment. Accordingly, this note does not speculate on costs. Should there be an impact, however, the court system may need to return to the legislature for funding.

Note that many privilege cases not involving the state will also be litigated, such as cases in which the plaintiff is a private citizen, an environmental organization, or a municipality. Accordingly, the court system will actually see far more cases than the cases which impact Law.

# FISCAL NOTE

No. 8  
Bill Verson: CSSB 41 (FIN)  
(S) Publish Date: 3-18-97

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Revision Date: 03/17/97  
Title: Environmental & Health Safety Audits

Dept. Affected: Alaska Court System  
IFRU: Trial Courts  
Componsor: \_\_\_\_\_

Sponsor: Sens. Leman, Pearce & Taylor  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 788

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 01	FY 02	FY 03
PERSONAL SERVICES	5.3	5.3	5.3	5.3	5.3	5.3
TRAVEL						
CONTRACTUAL	30.6	30.6	30.6	30.6	30.6	30.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	35.9	35.9	35.9	35.9	35.9	35.9

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES (						
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Fund Sources (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	35.9	35.9	35.9	35.9	35.9	35.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	35.9	35.9	35.9	35.9	35.9	35.9

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen II, Staff Counsel *CSC*  
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Acting Administrative Director *SJ*  
 Agency: Alaska Court System

Phone: 284-8228  
 Date: 03/17/97

Date: 03/17/97

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**Alaska Court System**  
**Fiscal Analysis**  
**CSSB 41 (FIN)**

**CSSB 41 (FIN) creates a privilege from disclosure and use in evidence for information contained in an environmental audit in certain civil actions or administrative proceedings. If a person or entity asserts the privilege, the opposing party would need to request an in-camera review of the information, in order to determine if the information is not privileged and must be disclosed.**

**An in-camera review of this nature can be extremely time consuming; many environmental audits (a term broadly defined in the legislation) are composed of tens of thousands of pages of documents. Cases in which an in-camera review is requested will require large amounts of time for pretrial proceedings. According to the Department of Law, the privilege could be litigated in approximately three to six cases involving contaminated property each year. These are complex cases in which an environmental audit was probably performed. Law estimates that it will take an average of 50 hours to litigate the privilege issue in those contamination cases in which a privilege is asserted. Contaminated property cases are but one example; the privilege can be expected to be claimed in a handful of contested DEC permit cases, as well as in other cases. Law has also advised that in some cases, the court system will need to retain scientific and technical experts to assist in evaluating audit reports.**

**Due to the complexity of the legislation and the ambiguity of several of its provisions, Law anticipates substantial litigation and appeals resulting from passage of CSSB 41 (FIN), particularly regarding the privilege. It has also indicated a need for additional attorney resources to handle the state involvement in the litigation and appeals. Note, however, that many privilege cases not involving the state will also be litigated, such as cases in which the plaintiff is a private citizen, an environmental organization, or a municipality. Accordingly, the court system will actually see far more cases than the cases which impact Law and DEC. This fiscal note reflects contractual costs for a discovery master to handle the in-camera review of documents, as well as the greater clerical costs associated with cases involving extremely large amounts of documents. It does not reflect costs for increased litigation and appeals resulting from the complexity and ambiguity of the bill.**

**Alaska Court System  
Fiscal Analysis  
CSSB 41 (FIN)**

**Personal Services**

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Records Clerk, range 10A, Anchorage, PPT, 2 months	\$4,210	\$1,085	\$5,295

**Contractual**

Discovery master for 375 hours at \$75 an hour.			28,125
Fees of experts to assist discovery master in technical and scientific matters			<u>2,500</u>
<b>Total Contractual</b>			<u><b>30,625</b></u>
 <b>Total Estimated Cost</b>			 <u><b>335,820</b></u>

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HCS CSSB 41 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to environmental audits to BRU: Civil Division  
determine compliance with certain laws, permits, and regulations." Component: Environmental Law  
 Sponsor: Senator Leman  
 Requester: House Finance Committee COMPONENT SERIAL NO. 2092

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	8.8	8.8	8.8	8.8	8.8	8.8
TRAVEL	0.1	0.1	0.1	0.1	0.1	0.1
CONTRACTUAL	1.3	1.3	1.3	1.3	1.3	1.3
SUPPLIES	0.2	0.2	0.2	0.2	0.2	0.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.4	10.4	10.4	10.4	10.4	10.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>	<b>10.4</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

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

This bill creates a new evidentiary privilege that allows environmental audits to be kept confidential in civil and administrative (not criminal) cases. It also grants immunity from civil and administrative penalties for persons who voluntarily disclose a violation of an environmental law or who disclose information that leads to the disclosure of a violation of an environmental law. "Environmental law" is defined to include federal and state environmental laws implemented by the Department of Environmental Conservation and related municipal ordinances.

**Audit Privilege.** To be privileged, the audit reports must be voluntary, confidential, internal, and retrospective. Information required to be reported under a law, permit, contract or lease, or information gathered independently of the audit are not covered. In addition, if the state can prove that one of the bill's exceptions apply, then a court may require disclosure.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370  
 Division: Administrative Services Division Date: 4/11/97  
 Approved by Commissioner: Bruce M. Butelho, Attorney General *Bruce M. Butelho* Date: 4/11/97  
 Agency: Department of Law

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ANALYSIS CONTINUATION:

Immunity. A person who voluntarily discloses a violation of an environmental law, or who discloses facts that constitute a violation, would be immune from administrative or civil penalties. The violation must be corrected within 90 days, or pursuant to a compliance agreement that allows for correction within a reasonable time, for immunity to apply. Immunity is not available for violations that result in substantial personal injury on site, or substantial personal, property, or environmental injury offsite. The term "substantial" is not defined. This bill allows for the mitigation of penalties for people who do not qualify for immunity.

**Legal Issues Resulting in Fiscal Impact**

This is a new area of law, and it will be necessary to provide advice to state agencies and officials regarding implementation. We anticipate additional legal assistance will be required for affected agencies, such as the Departments of Environmental Conservation, Natural Resources, Fish and Game, and Transportation and Public Facilities to negotiate, draft, and review permits, leases, contracts regulations, and other documents to ensure that adequate compliance information is being gathered and maintained to meet the state's regulatory and proprietary responsibilities. The agencies will also require advice about what information is privileged and about public records requirements. We also anticipate providing advice to the Department of Environmental Conservation on the bill's impacts on programs that require federal approval, including the air quality and drinking water programs. For example, we expect that the Attorney General's Office will be called upon to prepare written legal opinions to respond to inquiries and concerns by the United States Environmental Protection Agency. We estimate that HCS CSSB 41 (JUD) will result in an increased 120 hours of attorney time per year in aid-to-agency matters.

Using the department's standard attorney cost schedule (\$87/hour), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the anticipated increase in aid-to-agency costs would be \$10,440 (\$87 x 120 hours).

Questions about the scope of the privilege and immunity may also arise in disputed matters. An agency may have to defend the exercise of legitimate governmental functions against a claim that the agency is improperly using privileged information. It is not possible to accurately quantify the increased cost to litigate the audit privilege and immunity provisions of this bill, in part because the privilege may be asserted in all types of civil and administrative proceedings, with the exception of workers' compensation and pipeline tariff proceedings, and no estimate is included in this fiscal note. Nonetheless, if it becomes necessary to litigate questions regarding the privilege, we expect a minimum of \$10,000 in increased attorney time per case. In addition, where scientific or technical information is involved, it may be necessary to retain experts to assist in the litigation.

# FISCAL NOTE

No. 5

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Bill Version: CSSB 41(TUD)

(S) Publish Date: 3/13/97

Revision Date: \_\_\_\_\_  
 Title: Relating to environmental audits to determine compliance with certain laws, permits, and regulations.  
 Sponsor: Leman  
 Requestor: Senate Judiciary

Dept. Affected: Health and Social Services  
 BRU: Medical Assistance  
 Component: Medicaid Facilities  
 COMPONENT SERIAL NO. 230  
 See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGES IN REVENUES</b>						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost:                     \$0.0

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

The Judiciary Committee Substitute for SB 41 eliminates any reference to health and safety or the Department of Health and Social Services, so there is no longer any potential impact on the Medicaid Program.

Prepared by: Nancy Weller  
 Division: Medical Assistance  
 Approved by Commissioner: Karen Petersen, Commissioner  
 Agency: Department of Health & Social Services

Phone: 465-3355  
 Date: 03/10/97  
 Date: 3/10/97

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# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

No. 9  
 Bill Verson: CSSB 41 (FIN)  
 (S) Publish Date: 9-18-97

Revision Date: \_\_\_\_\_  
 Title: Environmental & health/safety audits  
 Sponsor: Senator Laman  
 Requestor: Senate JUD

Department Affected: Labor  
 BRU: Labor Standards & Safety  
 Component: Occupational Safety & Health  
 COMPONENT SERIAL NO. 970

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
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>

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE</b>						
<b>FUND SOURCE #</b>						

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
<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						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: \$ None

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

Since the Department of Labor was removed from this bill, there will be no fiscal impact.

Prepared by: Alan W. Dwyer, Director *Alan W. Dwyer* Phone: 465-4855  
 Division: Labor, Standards & Safety Date: 3/7/97  
 Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*  
 Agency: Department of Labor Date: 3/7/97

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# SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

## Sponsor Statement -- SB 41

### "An Act relating to environmental audits to determine compliance with certain laws, permits, and regulations."

Senate Bill 41 establishes two incentives for businesses and other regulated entities to conduct voluntary self-audits of internal operations, in an effort to secure full compliance with environmental laws and regulations.

The first incentive is limited immunity. Entities that conduct voluntary self-audits will be immune from civil and administrative penalties for violations discovered, provided several conditions are met. The instances of noncompliance must be discovered through a self-audit, and reported promptly to the appropriate regulatory agency. The regulated entity must take action to correct the identified problem and prevent its future recurrence. Immunity is not available for violations causing substantial off-site damage or serious on-site injury. In addition, no immunity is available for violations that are knowingly committed or that result from recklessness. Immunity can be denied to regulated entities with a history of similar violations, or a pattern of disregard for environmental laws.

The second incentive is qualified privilege. Certain portions of the reports generated from voluntary self-audits will be considered privileged and therefore not admissible as evidence or subject to discovery in civil or administrative proceedings. This provision recognizes that the evaluative portion of an audit report is, by its very nature, self-incriminating: it discovers problems, identifies what personnel or management deficiencies are responsible, and recommends corrective action. Studies show that many businesses opt not to perform audits out of fear that the resulting reports will be used by agencies or hostile third parties as a "road map to prosecution". As with the immunity benefit, the privilege has limitations. Privilege can be overcome if asserted for a fraudulent purpose, or if the regulated entity has failed to take required actions to correct areas of noncompliance.

As the budgets of regulatory agencies are reduced at both the federal and state level, the importance of encouraging self-policing becomes ever more important. Senate Bill 41 creates incentives for companies and individuals acting in good faith to police themselves and maintain full compliance with highly complex regulations. This in turn allows government regulators to focus increasingly scarce resources toward investigating and prosecuting the small minority of genuinely "bad actors".

Environmental auditing has become increasingly popular in the past two decades. More than 1,000 of the world's largest companies have self-audit programs in place. In the U.S., 20 states have enacted self-audit laws similar to SB 41, offering privilege and/or immunity benefits to participating businesses, individuals, and municipalities.



Rick Mystrom,  
Mayor

# Municipality of Anchorage

## Municipal Health and Human Services Commission

825 "L" Street

P.O. Box 196650 Anchorage, Alaska 99519-6650



Telephone:  
(907) 343-6718

April 9, 1997

APR 14 1997

Senator Loren Leman  
Alaska Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Leman,

The Health and Human Services Commission for the Municipality of Anchorage is charged with advising the Mayor of Anchorage and the Municipal Assembly on issues that affect the health of its citizens. In that capacity, the Environmental Health Committee of the Commission has reviewed Senate Bill 41, "An act relating to environmental audits to determine compliance with certain laws, permits, and regulations."

The commission believes that the concept of an environmental self audit contained in the bill is good public policy. The self audit provision gives regulated entities an incentive to find and correct potential environmental problems.

We also appreciate the caution being used to assure that the law and implementing regulations are very clear in defining what reporting requirements are and what immunities may or may not be available to those performing a self audit.

Sincerely,

Susan Heuer



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd. Suite 203, Anchorage, Alaska 99503 FAX. (907) 275-7997 Telephone. (907) 276-0347

April 14, 1997

Honorable Mark Hanley  
Honorable Gene Therriault  
Co-Chairmen, House Finance Committee  
Capitol Building  
Juneau, AK 99801

RE: SB-41, Relating to Environmental Self-Audits

Dear Representatives Hanley & Therriault,

The Alaska Miners Association wishes to go on record in support of Senate Bill 41. This bill involving voluntary self audits is a positive step for the State, for industry and for the public.

For the State and industry, this bill will help foster an atmosphere that is conducive to open communication and help remove a structural impediment that now exists to open communication. It will allow the State and industry to better work together to solve the real problems. Too many laws, both federal and state, force the State to operate as a "police patrol" in its dealing with industry. When this is the case, industry will and must be constantly watching for the legal/suit/liability potential in everything it says and does. This bill will help to remove a portion of the built-in structural forces that cause this contentious relationship.

For the public, this bill will mean that problems will be handled better and if there are real problems these will become known. The energies of the people from both the State and industry working on an issue will be focused to solve actual problems, rather than guarding their respective legal options.

Thank you for this opportunity to comment. If there is any way we can help move this bill to passage and signing into law please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Senator Loren Leman



# SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

April 15, 1997

Rep. Gene Therriault  
Co-Chairman, House Finance Committee  
State Capitol, Room 511  
Juneau, Alaska 99801

**RE: SB 41 and "whistleblower" protection laws**

Dear Rep. Therriault:

On April 9 the House Judiciary Committee reported Senate Bill 41, "An Act relating to environmental audits to determine compliance with certain laws, permits, and regulations." I introduced this bill to encourage Alaskan businesses, individuals, and public institutions to conduct self-critical environmental compliance audits.

One issue that arose during the Judiciary hearings related to what impact, if any, SB 41 will have on protections currently provided to "whistleblowers" under state law. Several environmental lobby groups have argued that certain provisions in SB 41 will constrain the ability or willingness of whistleblowers to call attention to violations of environmental law. While I appreciate the intentions underlying this criticism, I believe a close reading of SB 41 shows these concerns to be unfounded. In the interest of clarifying my intent, I request that the committee note the following three points in its hearing records:

First, SB 41 neither adds or takes away any rights or protections currently provided to whistleblowers under applicable state law. Nothing in SB 41 changes, either directly or by inference, the provisions of the Alaska Whistleblower Act at AS 39.90.100.

Second, in several places the text of SB 41 clearly anticipates the positive role whistleblowers may sometimes play in calling attention to environmental problems. For example, in Section 09.25.450(d) [page 3, line 28, draft 0-LS0299\L], it states...

"A person who conducts or participates in the preparation of an audit report and who actually observed or participated in conditions or events being reviewed for compliance may testify about those conditions or events but may not... be compelled to testify about or produce documents consisting of confidential self-evaluation and analysis."

This provision strikes a balance between the rights of employees to testify about what they have witnessed, and the rights of employers to preserve the confidentiality of audit documents which are typically very sensitive, self-critical, and costly to produce.

Rep. Gene Therriault  
April 15, 1997  
Page 2

Another provision relevant to the issue of whistleblowers is found in Section 09.25.460(a)(3) [page 6, line 20]. This paragraph provides that no privilege exists for that part of an audit report containing...

" (3) information that a government agency obtains from a source that was not involved in compiling, preparing, or conducting the environmental audit report;"

Although the information referred to in paragraph (3) might originate with a variety of different sources, clearly a whistleblower would be one such possibility.

Third, SB 41 provides a mechanism through which any party -- including a whistleblower -- can petition to have privileged audit documents disclosed for serious reasons. Some have suggested that an audit report might contain evidence required by a whistleblower to prove that an employer took retaliatory action against the employee, based upon the employee's involvement in conducting an environmental compliance audit. As a practical matter, such a development would appear highly unlikely; in the 20 states which have passed similar legislation, I am not aware of a single case involving such circumstances. Nevertheless, SB 41 provides at Section 09.25.465(a)(5) [page 7, line 27] the option of a court ordering disclosure of privileged information if the court determines that...

(5) privilege would result in a miscarriage of justice or the denial of a fair trial to the party challenging the privilege.

I believe this language is sufficiently broad to cover many different scenarios, provided there are reasons to require disclosure. Certainly if an employer violated the law by taking retaliatory action against an employee, and an audit document contained evidence to substantiate this fact, it would qualify as the type of scenario envisioned under AS 09.25.465(a)(5).

I trust this explanation will clear up any confusion or misunderstandings that may exist on SB 41 and its impact on whistleblowers and whistleblower protection laws. I ask that this letter be included in the committee records so the legislative intent will be clear.

Sincerely,

  
Loren Leman  
Senator

# Sectional Analysis -- House CS for CSSB 41 (JUD)

**"An Act relating to environmental audits to determine compliance with certain laws, permits, and regulations."**

Prepared by: Mike Pauley, Staff to Sponsor SENATOR LOREN LEMAN  
Last updated: Saturday, April 12, 1997

## **Section 1: Statement of legislative findings and intent.**

- Performance-based standards are increasingly replacing the traditional command-and-control approach of enforcing environmental regulations; this shift will lead to the integration of environmental protections with normal operating procedures.
- The legislature intends to foster this integration by creating a responsible incentive program that will encourage voluntary, critical self-evaluations by regulated entities.
- The public has a strong interest in promoting routine self-audits by regulated entities. This can best be achieved by recognizing a qualified privilege that will help preserve the free flow of information generated by self-audits. Additionally, self-auditing can be encouraged by extending limited immunity to those entities which voluntarily report and correct regulatory noncompliance.

## **Section 2: Establishes privileges and immunities for certain self-audits.**

**Sec. 09.25.450**      Establishes a qualified audit report privilege.

- The parts of an audit report consisting of confidential self-evaluation and analysis of compliance with environmental laws are privileged. These privileged materials are generally not admissible as evidence or subject to discovery in civil or administrative proceedings.
- To qualify for the privilege under this section, as well as the limited immunity under Section 09.25.475, regulated entities must provide 15 days advance notice to the department before commencing a self-audit. The audit must be completed within 30 days unless a longer period of time is negotiated.
- The person claiming the audit privilege has the burden of proving its applicability.
- All audit report documents containing confidential self-evaluation and analysis must be labeled "AUDIT REPORT: PRIVILEGED DOCUMENT".
- Regulatory agencies and their employees cannot require an owner or operator to waive privilege as a condition of a permit, license, or approval.
- Regulatory agencies and their employees generally may not review or use the parts of an audit report consisting of confidential self-evaluation and analysis during an inspection of a regulated facility, operation, or property.

- This section does not prevent a regulatory agency from conducting necessary inspections, taking appropriate enforcement actions, etc., except as provided in AS 09.25.475.
- No privilege is authorized for uninterrupted or continuous environmental audits.
- There is no privilege for documents or communications in a criminal proceeding.

**Sec. 09.25.455      Establishes an exception to the privilege through the use of waivers.**

- The audit privilege can be waived in writing by the owner or operator who prepared the audit report or caused it to be prepared.
- Disclosure of the part of an audit report consisting of confidential self-evaluation and analysis does not cause the privilege to be waived if the disclosure is made to an employee, contractor, lawyer, or other person involved in addressing or correcting any matter raised in the audit.
- Disclosure does not cause the privilege to be waived if it is made under terms of a confidentiality agreement with an insurer or underwriter, a partner or potential partner, a lender or potential lender, etc.
- Disclosure does not cause the privilege to be waived if it is made under terms of a written claim of confidentiality with a government agency or official.

**Sec. 09.25.460      Describes materials not protected by privilege.**

- Privilege does not apply to documents or other information required by an agency to be reported or maintained as part of an existing environmental law.
- Privilege does not apply to information a regulatory agency obtains from its own observation or monitoring, or from a party not involved in preparing the audit report.
- Privilege does not apply to documents or information that are independent of the audit; nor does privilege apply to documents or information developed or maintained in the course of a regularly conducted business activity.

**Sec. 09.25.465      Establishes an exception to the privilege through disclosure required by a court or an administrative hearing officer.**

- A court or administrative hearing officer may conduct an *in camera* review of audit report documents for which privilege is claimed. Disclosure can be required if it is determined that the privilege is asserted for a criminal or fraudulent purpose, or if the audit report reveals evidence of noncompliance which was not corrected promptly.

- Disclosure may also be required if the information for which privilege is claimed constitutes evidence of a substantial injury to one of more persons at the site audited, or to persons, property, or the environment offsite.
- Disclosure may be required if the privilege would result in a miscarriage of justice or the denial of a fair trial to the party challenging the privilege.
- The party seeking an *in camera* review must provide a factual basis adequate to support a good faith belief by a reasonable person that the documents are likely to reveal evidence to establish that an exception to the privilege applies.
- After an *in camera* review is granted, the party seeking disclosure has the burden of proving that an exception to the privilege applies.

**Sec. 09.25.475      Establishes limited immunity for voluntarily reported violations.**

- An entity voluntarily disclosing violations identified through a self-audit will be immune from civil and administrative penalties, provided that action is promptly taken to correct the noncompliance and prevent its future recurrence. Noncompliance must be corrected within 90 days unless a longer period of time is provided for in a compliance agreement.
- Disclosure of noncompliance must be reported in writing by certified mail to the appropriate regulatory agency. Disclosure must occur promptly after discovery of the noncompliance.
- Immunity is not available for violations independently detected by an agency prior to disclosure.
- Immunity is not available for violations resulting in substantial injury at the site audited or to persons, property, or the environment offsite.
- Agencies may not initiate an inspection or other investigative activity based solely on the receipt of an audit notice.

**Sec. 09.25.480      Exceptions to Immunity & Mitigation of Penalties**

- Immunity under 09.25.475 is not available if a court finds that the owner or operator claiming immunity has intentionally, knowingly, or recklessly committed or authorized the violation.
- Immunity is not available if the owner or operator has in the previous 36 months committed a pattern of violations which are the same or closely related to those for which immunity is sought, nor is immunity available for an owner or operator who has failed to achieve compliance and that failure constitutes a pattern of disregard for environmental laws.
- Penalties for violations that are voluntarily reported but which are not eligible for immunity may nevertheless be mitigated by attempts at remediation, cooperation with government officials investigating the disclosed violation, the nature of the violation, and other relevant considerations.
- There is no immunity for violating the terms or conditions of an administrative or court order.

**Sec. 09.25.485 Relationship to other recognized privileges.**

- This section clarifies that the act has no effect in limiting or abrogating any other existing privilege in statute or common law, such as the work product doctrine or attorney-client privilege.

**Sec. 09.25.490 Definition of terms.**

- "audit report" is a report that includes documents and communications produced from an environmental audit, including an implementation plan or tracking system to correct past noncompliance and prevent future noncompliance.
- "environmental audit" means a voluntary audit an owner or operator conducts or causes to be conducted that is designed to assess compliance with environmental laws; the audit is a systematic and objective review that reflects the owner's or operator's due diligence in preventing, detecting, and correcting violations.
- "confidential self-evaluation and analysis" means the part of an audit report that consists of memoranda and documents that evaluate or analyze all or part of the material described in the audit report, including implementation issues or an audit implementation plan or tracking system to correct past noncompliance, improve current compliance, or prevent future noncompliance with environmental laws.

**Section 3: Applicability.**

- Clarifies that the privilege and immunity created in Section 2 of the act apply only to audits conducted on or after the effective date.

# Why should we encourage self-auditing?

## *Lessons from the Price Waterhouse Survey*

In February 1995, Price Waterhouse surveyed **369 companies** nationwide, representing 14 different manufacturing and service sectors of the economy, for the purpose of gathering information on the practice of environmental audits.

(Survey was sponsored by the Compliance Management and Policy Group, which includes members such as AT&T, General Electric, American Petroleum Institute, Browning-Ferris Industries, etc.)

### *Significant findings:*

- **75 percent** of companies say they currently conduct self-audits.
- **Two-thirds** of the companies now conducting environmental self-audits say they "would expand such programs if penalties were eliminated for problems that the companies themselves identified, reported, and corrected."
- Among companies *not* performing audits, **20 percent** "fear that audit information could somehow be used against the company."
- Among companies now conducting audits, **25 percent** report that outside parties have attempted to obtain audit data, and these third parties succeeded in obtaining this information from **15 percent** of the companies.
- Among companies currently performing audits, **12 percent** said audit results had been used for enforcement purposes against them.
- **70 percent** of companies conducting audits stated that "audits have significantly improved the company's regulatory compliance" and **50 percent** stated that auditing "improved employee awareness, diligence, and compliance with company policies and procedures."

# **Supporters of Senate Bill 41**

**"An Act relating to environmental audits to determine compliance with certain laws, permits, and regulations."**

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- **Alaska Chapter, International Association of Drilling Contractors**
- **Alaska Chapter, National Federation of Independent Business**
- **Alaska Forest Association**
- **Alaska Hotel & Motel Association**
- **Alaska Miners Association**
- **Alaska Oil & Gas Association**
- **Alaska Rural Electric Cooperative Association**
- **Alaska State Chamber of Commerce**
- **Alaska Support Industry Alliance**
- **Council of Alaska Producers**
- **Resource Development Council**
- **Trident Seafoods Corporation**

A L A S K A



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## **NFIB/Alaska Key Vote**

### **Vote Yes on Senate Bill 41**

#### **Environmental Audits**

The Alaska Chapter of the National Federation of Independent Business has 4,400 members, making it the largest small-business advocacy group in the state. NFIB represents the entire spectrum of independent businesses, from one person "cottage" operations to quite substantial enterprises.

This bill allows a company who voluntarily audits their business for environmental compliance to be immune from penalty for regulatory violations that are discovered, promptly reported and corrected.

As companies are increasingly subject to new and complicated compliance regulations, the self audit procedure presents a workable solution to identifying problem areas and achieving compliance without fear of penalties for violations. This procedure does not allow a company to continue with non-compliance once a problem is identified. The program would be an encouragement for self-review and compliance.

NFIB/Alaska asks for support of SB 41.

Submitted by Thyes Shaub, NFIB Lobbyist

**ALASKA OIL AND GAS ASSOCIATION  
POSITION ON  
SB 41, ENVIRONMENTAL AND HEALTH & SAFETY SELF-AUDITS**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 18 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports the intent of SB 41. The majority of our members currently conduct self-audits as a means of ensuring compliance and see value in this legislation. Over the past 25 years health, safety and environmental regulations have become increasingly complex. Not incidentally, interpretation of these regulations has become correspondingly difficult. In response to this, self-auditing identifies areas of inadvertent non-compliance, and leads to subsequent corrective action. We encourage others in all industries to utilize self-auditing, not just to ensure compliance but to generally improve health, safety and environmental performance. This legislation also encourages greater utilization of self-audits by providing immunity and ensuring confidentiality.

Immunity from penalties should be offered as an incentive for companies to identify, disclose, correct and prevent the reoccurrence of non-compliant behavior. Self-auditing, to be effective, should be undertaken without fear of consequences from regulatory agencies and without concern for final outcome. Providing immunity from penalties for deficiencies that are discovered through self-auditing and subsequently disclosed recognizes earnest efforts by companies to comply as opposed to penalizing them for such efforts. Immunity should not, however, extend to those who would knowingly and willfully commit violations and subsequently audit in order to shield themselves from just and appropriate consequences.

Privilege further protects companies from inappropriate and unnecessary repercussions of disclosing audit results to agencies (e. g. third party action). Privilege also ensures that the auditing process is not compromised. The issue is not one of "secrecy" it is a matter of being able to conduct candid interviews with personnel. To remain effective, it is necessary to preserve the integrity of the audit process and maintain the trust and cooperation of employees. Traditional legal privileges limit the flexibility that is important to the self auditing process. For example, attorney-client privilege does not provide for open, internal communication of audit results with employees. However, as with immunity there are reasonable limits to the application of privilege. Privilege should protect the products of an audit, such as the audit report, auditor working papers, and action plans. Privilege should not be a vehicle to hide the underlying facts.

SB 41 moves health, safety and environmental compliance in a positive direction through its encouragement of self-auditing. We are hopeful that legislation based on the intent of SB 41 can be passed and to that end we would be happy to work with the Department of Environmental Conservation, the Department of Law, State OSHA and the bill's sponsor on this legislation.

Looking for deficiencies, identifying them, disclosing them to the appropriate agencies and correcting them is what self-auditing is about. It is an important tool for voluntary compliance. Without privilege and immunity, voluntary self-audits can put a company at a competitive disadvantage relative to companies that do not audit. With privilege and immunity the state is saying self-auditing is in the best interest of the state as well as industry.

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2325 FAX 463-5515



March 19, 1997

Senator Loren Lemam  
State Capitol Room 113  
Juneau, Alaska 99801

Dear Senator Lemam:

Today Senate Bill 41, Environmental and Health/Safety Audits, will be on the Senate Floor for your consideration. We would appreciate your support of this legislation.

This legislation provides businesses with an opportunity to conduct self-audits in an effort to assure they are in compliance with environmental, health and safety laws. We believe this creates an incentive for businesses who find they have inadvertently been out of compliance with a law or regulation to voluntarily correct their actions without fear of penalty and strive to operate in the acceptable and prescribed manner. This law would not allow continued non-compliance once a problem has been identified.

We believe that government should be supportive of business activity wherever possible, and SB 41 fosters the attitude of partnership we believe government and business should strive to attain.

Thank you for your consideration of our position.

Sincerely,

A handwritten signature in cursive script that reads "Pam La Bolle". The signature is written in dark ink and is positioned above the typed name and title.

Pamela La Bolle  
President



# Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035  
(907) 276-0700 Fax: (907) 276-3887 e-mail: rdc@aonline.com

Founded 1975

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- Congressman Don Young
- Governor Tony Knowles

March 28, 1997

Senator Loren Leman  
Alaska State Senate  
Juneau, AK 99801

APR 02 1997

Dear Senator Leman:

I am happy to report the Executive Committee of the Resource Development Council unanimously passed a motion supporting CSSB 41, environmental and health/safety audits.

RDC appreciates your efforts to work in a cooperative manner to develop legislation that achieves the goals of industry, the administration and the legislature. CSHB 41 has come a long ways from its original draft and has gained broad support from the private sector.

RDC appreciates your hard work and leadership effort to advance CSSB 41. This bill is a move in the right direction in securing full compliance with environmental laws and regulations. It will encourage greater utilization of self-audits by providing immunity and privilege.

Let us know how we can help you move forward with this important piece of legislation.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

Scott Thorson  
RDC President 1996-97

cc: Alaska Legislature



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 276-7997 Telephone: (907) 276-0347

March 18, 1997

Honorable Tim Kelly  
Chairman, Senate Rules Committee  
Capitol Building  
Juneau, AK 99801

RE: SB-41, Relating to Environmental Self-Audits

Dear Senator Kelly,

The Alaska Miners Association wishes to go on record in support of Senate Bill 41. This bill involving voluntary self audits is a positive step for the State, for industry and for the public.

For the State and industry, this bill will help foster an atmosphere that is conducive to open communication and help remove a structural impediment that now exists to open communication. It will allow the State and industry to better work together to solve the real problems. Too many laws, both federal and state, force the State to operate as a "police patrol" in its dealing with industry. When this is the case, industry will and must be constantly watching for the legal/suit/liability potential in everything it says and does. This bill will help to remove a portion of the built-in structural forces that cause this contentious relationship.

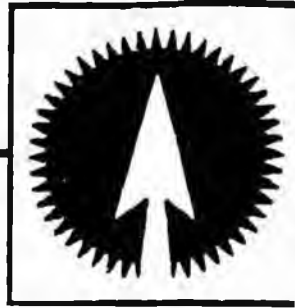
For the public, this bill will mean that problems will be handled better and if there are real problems these will become known. The energies of the people from both the State and industry working on an issue will be focused to solve actual problems, rather than guarding their respective legal options.

Thank you for this opportunity to comment. If there is any way we can help move this bill to passage and signing into law please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Senator Loren Leman



**Testimony of Jack E. Phelps, Executive Director  
In support of SB 41  
Offered to the Senate Labor & Commerce Committee  
January 30, 1997**

Mr. Chairman, members of the committee:

My name is Jack Phelps and I am Executive Director of the Alaska Forest Association, the forest products industry trade group for Alaska. The timber industry and the Association support the concept of environmental and safety self audits, now embodied in Senate Bill 41.

The Association believes that environmental laws do not exist to provide job security and a source of income for bureaucrats. Their purpose is not to maintain the flow of federal dollars to the state. Rather, their true purpose is to protect the environment. Likewise, the true purpose of safety laws is to protect people. Self audits promote these true purposes. It is the legislature's responsibility to ensure that environmental and safety laws do not overreach these purposes and become unnecessary impediments to economic development. SB 41 is a good step in that direction.

Too often, companies, especially smaller companies, can ill afford to contact agencies regarding known or suspected problems. They fear the result of such contacts will be crippling fines or the discovery of new, unsuspected problems which could put them out of business. With the self audit concept embodied in law, companies will be given new incentive to work towards compliance, and the assurance that agencies will truly be available to help them achieve compliance without the threat of bankruptcy.

The concepts developed in SB 41 are not untried. 20 other states, notably Texas, have implemented environmental self audits with a good measure of success. While it may require a shift of emphasis for some state agencies, similar laws can work equally well in Alaska.

The AFA appreciates the 20th Legislature's commitment to developing practical efficiencies in government's interaction with private industry. SB 41 is a prime example of those efforts. The AFA also appreciates the sponsor's willingness to work with companies in Alaska's resource development industries to ensure the present bill reflects their needs in the real world. Please move SB 41 out of committee today so that the Judiciary Committee can consider it as soon as possible.

Thank you for the opportunity to testify on this important piece of legislation.

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4220 'B' Street, Suite 200 • Anchorage, Alaska 99503-5911  
 Phone (907) 563-2226 • Fax (907) 561-8870

March 19, 1997

Senator Loren Leman  
 Chairman, Senate Labor and Commerce Committee  
 Alaska State Legislature  
 State Capitol (MS3100)  
 Juneau, Alaska 99801-1182

RE: Alliance Position - Senate Bill # 41.

Dear Senator Leman:

The Alaska Support Industry Alliance (Alliance) is a trade association representing over 300 members engaged in business within the oil, gas and mining industries. Our mission is to foster and promote the safe and environmentally sound development of natural resources, and to enhance and stimulate the business climate for our members.

The Alliance supports the intent of SB 41. This proposed legislation moves health, safety and environmental compliance in a positive direction through its encouragement of self-auditing. Further, the bill's concept is clear -- enhance regulatory compliance through incentives while reducing government and costs.

We are hopeful that legislation based on the intent of SB 41 can be passed and to that end we would be happy to work with you, the Department of Environmental Conservation, the Department of Law, and State OSHA.

Sincerely,

John Wheatley  
 Vice President, Policy



# Alaska Hotel & Motel Association

P.O. Box 104900 • Anchorage, AK 99510 • (907) 272-1229 • FAX (907) 278-4111  
Representing Alaska's Finest Hotels, Motels and Inns

MAR 08 1997

Senator Loren Leman  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

March 4, 1997

Dear Senator Leman:

I am writing on behalf of the Alaska Hotel & Motel Association in support of your efforts on SB 41. As we discussed in our meeting last month, our membership includes nearly 90 of the largest lodging properties in the state, employing over 6,000 Alaska residents.

It is our opinion, that the proposed legislation makes sense as it would serve to shift the responsibility of monitoring environmental and health and safety regulation compliance onto the individual organization, where it belongs. Essentially this legislation would turn individual organizations into their own compliance gatekeepers, providing for a window of immunity where prompt and appropriate corrective action was identified and executed.

We as an industry continually work to partner with the State of Alaska, to identifying solutions for budgetary decreases and revenue opportunities. This legislation would not only serve to enhance compliance procedures and non-compliance resolution, it would, by its own definition, reduce the costs of the current "command and control" approach to environmental and health and safety regulation compliance. We applaud such an effort as it will ultimately result in heightened, proactive compliance at a reduced cost.

If there are measures we can take within our industry to support this legislation please do not hesitate to call on me. We will do what we can to assist you in your efforts.

Yours Sincerely,

Frank Rose  
Chairman  
Alaska Hotel & Motel Association





**THE ALASKA CHAPTER  
OF THE  
INTERNATIONAL  
ASSOCIATION OF  
DRILLING CONTRACTORS**

Mailing Address: F.O. Box 240845  
Anchorage, Alaska 99524-0845

**VIA FACSIMILE  
(907) 465-2070**

March 6, 1997

The Honorable Bert Sharp  
Co-Chair, Senate Finance Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

Dear Senator Sharp:

SB 41, "An Act relating to environmental audits and health and safety audits to determine compliance with certain laws, permits and regulations," was passed out of the Senate Judiciary Committee on March 5, 1997, and now awaits a hearing before the Senate Finance Committee. I am writing today to encourage you to schedule SB 41 for a hearing in the Senate Finance Committee at the earliest possible date.

As I mentioned when we met in Juneau earlier this year, passage of "self-audit" legislation this session is critical to the members of the Alaska Chapter of the International Association of Drilling Contractors ("IADC"), and we feel that, as introduced and amended, this bill represents a good start toward the goal of developing a responsible, cost-effective incentive program that encourages voluntary compliance with environmental laws.

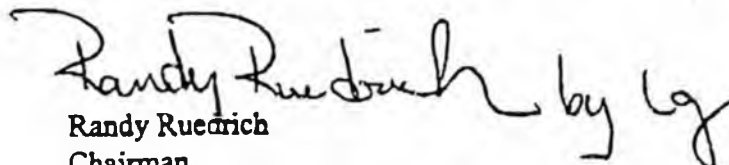
An increasingly common and salutary feature of the operator-drilling contractor relationship in Alaska involves the exchange of information between an independent contractor and its principal. SB 41 creates a privilege for voluntary environmental self-audits and establishes a qualified immunity for conditions that are discovered and reported in the course of those audits. The extension of this privilege and immunity to our industry, which was accomplished by the amendments adopted by the Senate Judiciary Committee at the request of the sponsor, will enable operators and drilling contractors to more readily share the results of self-evaluative reviews without having to worry that an enforcement agency or other litigant will use the results of such inquiries against them. For this reason, we believe that SB 41 would be extremely beneficial in that it would allow us to concentrate on the reduction of remaining deficiencies, rather than focusing on the legal nuances of protecting audits and restricting the sharing of those audits with other entities in the workplace.

The Honorable Bert Sharp  
3/6/97 LADC letter, page 2

I am available to meet with you at your convenience to discuss this legislation, and I am prepared to travel to Juneau to appear before the Senate Finance Committee and testify in support of the bill. I look forward to working with you and the members of the Finance Committee on this legislation.

Thank you again for your continued support.

Sincerely,

A handwritten signature in cursive script that reads "Randy Ruedrich by lg". The signature is written in dark ink and is positioned to the right of the typed name.

Randy Ruedrich  
Chairman  
IADC, Alaska Chapter  
(907) 563-5530 x-18

bcc: Senator Loren Leman



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703 W. Tudor Rd., #200  
Anchorage, AK 99503-6650  
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April 11, 1997

Sen. Loren Leman  
State Capitol  
Juneau, Alaska 99801-1182

Subject: SB 41 and Environmental, Health and Safety Audits

Dear Sen. Leman:

I am writing in support of your proposal to allow companies to perform confidential self-audits on environmental, health and safety matters to assure compliance with regulations.

The current potential financial burden of penalties and fines and legal fees connected with discovery of non-compliance problems through a self-audit is a disincentive to businesses to search out and correct these problems.

We believe it is in the public interest to encourage companies to perform such self-audits. Our members want to act responsibly with regard to these matters and also want to be sure that doing so does not adversely impact the cost of electricity to their consumer-owners. The provisions of SB 41 that allow businesses to take confidential action to bring themselves into regulatory compliance will assist our members in their efforts by removing a disincentive to doing the right thing.

We encourage the Legislature and the Governor to consider the benefits of this legislation.

Please call me if you have any questions about ARECA's position regarding this matter.

Sincerely,

Eric Yould,  
Executive Director

cc: Larry Markley

DEMOCRACY IN ACTION



**THE ALASKA CHAPTER  
OF THE  
INTERNATIONAL  
ASSOCIATION OF  
DRILLING CONTRACTORS**

Mailing Address: P.O. Box 240845  
Anchorage, Alaska 99524-0845

**HAND DELIVERED**

April 10, 1997

The Honorable Gene Therriault  
Co-Chair, House Finance Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

**RE: Hearing Schedule for SB 41, "An Act relating to environmental audits to determine compliance with certain laws, permits and regulations."**

Dear Representative Therriault:

SB 41, "An Act relating to environmental audits to determine compliance with certain laws, permits and regulations," was passed out of the House Judiciary Committee yesterday, and now awaits a hearing before the House Finance Committee. I am writing today to encourage you to schedule SB 41 for a hearing in the House Finance Committee at the earliest possible date.

As I mentioned when we met in your offices earlier this year, passage of "self-audit" legislation this session is critical to the members of the Alaska Chapter of the International Association of Drilling Contractors ("IADC"), and we feel that as introduced and amended, this bill represents a good start toward the goal of developing a responsible, cost-effective incentive program that encourages voluntary compliance with environmental laws.

An increasingly common and salutary feature of the operator-drilling contractor relationship in Alaska involves the exchange of information between an independent contractor and its principal. SB 41 creates a privilege for voluntary environmental self-audits and establishes a qualified immunity for conditions that are discovered and reported in the course of those audits. The extension of this privilege and immunity to our industry, which was accomplished by the amendments adopted by the Senate Finance Committee at the request of the sponsor, will enable operators and drilling contractors to more readily share the results of self-evaluative reviews without having to worry that an enforcement agency or other litigant will use the results of such audits against them. For this reason, we believe that SB 41 would be extremely beneficial in that it would allow us to concentrate on the reduction of remaining deficiencies, rather than focusing on the

4/10/97 Representative Therriault letter  
Re: SB 41, Environmental Self-Audits, . 2

legal nuances of protecting audits and restricting the sharing of those audits with other entities in the workplace.

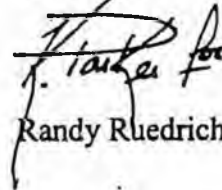
As I mentioned above, passage of "self-audit" legislation this session is critical to the members of the Alaska Chapter of the IADC. The drilling contractors in Alaska are in the process of re-negotiating our contracts with BPXA and ARCO; and, a new responsibility the operators have asked that we assume requires us to develop and implement our own health, safety and environmental programs. This is a responsibility we are happy to take on; however, in order for this new approach to work effectively, we will need to be able to review the implementation of our individual programs and share the results of those reviews with the operators and other oilfield contractors with whom we work. The operators and other oilfield contractors, in turn, will need to share their reviews with us. The privilege and immunity created by SB 41 will simplify this sharing of information.

Several drilling rigs operating on the slope already are working under these re-negotiated contracts -- I guess one might say that we have put the cart before the horse by completing these contracts prior to implementation of "self-audit" legislation. But, as you know, in the increasingly competitive, world-wide economy in which Alaska's oil industry must compete, we cannot always wait for government to lead the way when it comes to identifying better ways of doing business. In fact, in this instance, we are hopeful that government will take our lead and recognize that state law must be changed immediately to reflect the new realities of the workplace.

I am available to meet with you at your convenience to discuss this legislation, and I am prepared to travel to Juneau to appear before the House Finance Committee and testify in support of the bill. I look forward to working with you and the members of the Finance Committee on this legislation. Again, because this legislation is so critical to the industry, I hope that you will be able to make time in the Finance Committee's schedule to hear the bill sometime early next week.

Thank you again for your continued support, and I look forward to seeing you again sometime soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Ruedrich for". The signature is stylized and somewhat cursive.

Randy Ruedrich, Chairman



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April 7, 1997  
*Via Facsimile and US Mail*

Representatives Mark Hanley and Gene Therriault, Co-Chairs  
House Finance Committee  
State Capitol  
Juneau, AK 99801-1182

**RE: SB 41 -- Environmental, Health and Safety Self-Audits**

Dear Representatives Hanley and Therriault,

The purpose of this letter is to share with you and your committees the Alaska Forum for Environmental Responsibility's position on SB 41, Senator Leman's environmental audits bill. Attached are copies of our testimony to the Senate Judiciary Committee on January 24 as well as a follow-up letter sent to the chairs and members of the Senate Judiciary and Finance Committees.

The Alaska Forum's remains opposed to SB 41. We believe it is bad public policy and sends a chilling signal to conscientious workers in Alaska. We urge you to vote no on SB 41.

If you have any further questions, please call Mike Riley, Program Director, at (206) 628-9464.

Sincerely,

Stan Stephens  
President

enclosures: -- "Testimony on SB 41 before the Senate Judiciary Committee February 24, 1997," Alaska Forum  
-- Follow-up letter to Chairs of Senate Judiciary and Finance Committees; March 5, 1997

-- "Poisoning the Well: Whistleblower Disclosures of Illegal Hazardous Waste Disposal on Alaska's North Slope, Executive Summary," Alaska Forum, January 1997.

-- "Partnering Will Not Remove Poison from the Well," Stan Stephens, *Anchorage Daily News*, 2/6/97

cc:

House Finance Committee

Representative Mark Hanley, Co-Chair, FAX: (907)465-2418

Representative Gene Therriault, Co-Chair, FAX: (907)465-3884

Representative Eldon Mudler FAX: (907)465-3518

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# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

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## Twentieth Legislature - First Session

**HCS CSSB 41 (JJD): "An Act relating to environmental audits to determine compliance with certain laws, permits and regulations."**

While the Alaska Environmental Lobby whole-heartedly supports industry's efforts towards voluntarily compliance with environmental regulations, we strongly oppose HCS CSSB 41. Achieving compliance with regulations will require industry and government to work together. However, the broad language of HCS CSSB 41 cripples our ability to enforce protection of Alaska's environment and public welfare. This legislation greatly obstructs efforts to find the balance between incentives for responsible monitoring and effective enforcement of regulations. And while the removal of the language in the original bill that referenced health and safety laws can be commended, most of the environmental laws that are affected by this bill directly impact public protection. The Alaska Environmental Lobby opposes HCS CSSB 41 because:

- This is a bill of secrecy. It would keep information vital to the public's health and safety and environmental protection hidden from review by the agencies we depend upon to enforce our environmental laws and from the legal system we depend upon to remedy violations of these laws. It limits employees' right to know. It will have a chilling effect on employees' ability to defend their right to speak the truth about workplace activities without fear of reprisal. It limits the right to know of property owners near to potentially polluting industries. This bill allows secrecy to replace corporate responsibility and accountability.

- This is a bill of amnesty to industries that conceal or condone noncompliance. Immunity from civil and administrative penalties is bad public policy and effectively rewards non-compliance. Non-compliance can often result in economic gain. If a violation results in an economic gain over a non-violator, attempts should be made to recover the economic gain. Additionally, penalties and fines are the main tools that regulators have to encourage compliance. This bill lets crimes go unpunished and encourages violators to profit at the expense of law-abiding competitors.

OVER

• This is a full-employment bill for attorneys. This bill will create more confusion, litigation and expense regarding the enforcement of regulations. The fact that the Alaska Department of Law has proposed over a dozen amendments to this bill to help clarify its language is ample evidence of its ambiguity. Many questionable aspects of this bill will only be answered during litigation. The "construed broadly" language in the definitions will pull in all manner of federal, state, and municipal laws.

Environmental regulations are passed out of necessity; industry has a less than admirable record of self-regulating. The public's health and safety must continue to be protected, particularly in today's heated competitive climate when industry is more likely to cut corners for economic advantage. The Alaska Environmental Lobby suggests that the intent of HCS/CSSB 41 could be met by the Alaska Department of Environmental Conservation adopting a self-policing policy similar to EPA's that would provide clear incentives through leniency for self-disclosure and corrections without the unnecessary privilege and immunity provisions contained in this bill.

*Susan E. Schrader*

Susan E. Schrader, Executive Director

4/15/97