

**SB**

**110**

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. CSSB 110 (RLS) am

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Environmental Conservation</u>
Title <u>"An Act relating to liability for the release of hazardous substances involving certain property . . ."</u>	BRU <u>Spill Prevention and Response</u>
Sponsor <u>Senator Wilken</u>	Component <u>Contaminated Sites Remediation Program</u>
Requester <u>House Community and Regional Affairs</u>	Component Serial No. <u>1431</u>

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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 EXPENDITURES</b>	*	*	*	*	*	*
<b>CHANGE IN REVENUES ( )</b>	*	*	*	*	*	*

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	*	*	*	*	*	*
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
**Indeterminate Fiscal Note See Attached Explanation**

Prepared by <u>Larry Dietrick</u>	Phone <u>465-5250</u>
Division <u>Spill Prevention and Response</u>	Date/Time <u>5/10/99 2:38 PM</u>
Approved by <u>Commissioner Michele Brown</u> <i>Michele Brown</i>	Date <u>5/10/99</u>
Agency <u>Department of Environmental Conservation</u>	

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**CSSB 110 (RLS) am (version S.a) – Attachment to Fiscal Note**  
**Department of Environmental Conservation**  
**May 10, 1999**

This bill leaves the state open to very large and immeasurable fiscal liability. Section 2, subsection (m) changes the liability scheme of AS 46.03.822 in a manner that is difficult to precisely quantify because the language is ambiguous. More specifically, it appears to relieve spillers from liability for damages and costs when hazardous substances spread after being "first introduced into the environment". Language referring to the "initial release" is also unclear and ambiguous and causes uncertainty. The section may have the illogical consequence of insulating the person or persons causing the spill from liability for cleanup costs or damages for the spread or migration of the hazardous substance after it enters the environment.

Given the substantial sums of money at stake in cleanup costs and damages in major marine oil spills or the release of hazardous substances, litigation will be the likely way the ambiguities created by subsection (m) of the amendments are resolved. The bill imposes significant and unquantifiable fiscal burdens on the State (and on the public) with respect to cleanup costs and damages. These fiscal burdens would result in the draw-down of the State's Oil and Hazardous Substance Release Prevention and Response Fund (AS 46.08.005). As the Response Fund is depleted, the Oil Conservation Surcharge in AS 43.55.201 imposed on the producers of crude oil would be triggered. With diminished recovery to the Fund and additional cleanup costs, the Fund would likely remain out of balance and as a consequence the Conservation Surcharge would remain in place.

I-LS0360\SA.1 ✓  
Cook  
5/10/99

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE HALCRO

TO: CSSB 110(RLS) am

- 1 Page 1, lines 2 and 3:
- 2 Delete "relating to making a determination as to when a hazardous substance
- 3 release has occurred;"
  
- 4 Page 1, line 9:
- 5 Delete "and (m)"
  
- 6 Page 2, line 9:
- 7 Delete "new subsections"
- 8 Insert "a new subsection"
  
- 9 Page 3, lines 3 - 10:
- 10 Delete all material.

(m) For purposes of determining liability in an action to recover damages or costs under this section, a release shall be considered to have occurred when a hazardous substance is first introduced into the environment. A party person, other than the party responsible a person liable under this section for the initial release of a hazardous substance on, in or at a facility, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility, who neither caused nor contributed to a release or threatened release of the hazardous substance, and who has acted responsibly upon discovering contamination in accordance with (b)(2) of this section may not be held liable under this section for the spread or migration of the hazardous substance except by an act of intentional misconduct or gross negligence.



Post-It™ brand fax transmittal memo 7671 # of pages 1

To	Matthew	From	MWD
Co.		Co.	
Dept.		Phone #	
Fax #	2418	Fax #	



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907)588-1325, Fax (907)-483-5480

April 9, 1999

Senator Gary Wilken  
State Capitol, Room 510  
Juneau, Alaska 99801

Re: SB 110

Dear Senator Wilken:

The Alaska Municipal League supports passage of SB 110, "An act relating to liability involving certain property acquired by a governmental entity; and providing for an effective date."

This bill expands the technical definition of land acquired by a governmental entity to include land acquired by "bankruptcy, foreclosure, tax delinquency, and abandonment". It is consistent with Alaska Municipal League Policy Statement "Utilities and Environment" Section D.2. "Liability for Releases of Hazardous Substances".

While this is in large part a housekeeping bill to expand a definition to similar circumstances, it will be of significant protection to municipalities and taxpayers. Thank you for the opportunity to comment.

Sincerely,

Kevin Ritchie  
Executive Director



# Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1000

February 24, 1999

Senator Gary Wilken  
State Capitol  
Juneau, Alaska 99801

Dear Senator *Gary Wilken*:

The Fairbanks North Star Borough appreciates your consideration of legislation amending AS 46.03.822 to extend liability protection to the Borough in its tax foreclosure process. Without this legislation we are concerned that we may be held liable for pre-existing contamination on foreclosed land with significant environmental remediation costs.

Payment of taxes is the obligation of every property owner, regardless of the condition of their property. If one group of property owners avoids the payment of taxes because of the condition of their property, and no action is taken to collect the taxes due, that "shortfall" is placed on the shoulders of the other taxpayers.

In the Fairbanks North Star Borough, there are fourteen properties with delinquent taxes that may be contaminated, with a total assessed value of almost \$1.5 million dollars. Their taxes, penalties and interest due total \$503,688.67. Up until this past year, three of these properties contained active, ongoing commercial businesses. Avoidance of their property taxes appeared to give them an unfair competitive edge over their competitors. The borough has been concerned about taking these properties through tax foreclosure because of the risk of liability for any existing contamination. With the additional protection that this bill will provide, the borough will be able to complete the foreclosure process.

Passage of this legislation will allow us to enforce our tax collection obligations uniformly throughout the borough.

Thank you for your support.

Sincerely,

Hank Hove, Mayor



**MUNICIPALITY OF ANCHORAGE**

**MEMORANDUM**

**Real Estate Services**

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**DATE:** May 7, 1999

**TO:** Senator Wilkens

**FROM:** Gladys Wilson, Manager, Real Estate Services

A handwritten signature in cursive script, appearing to read "G. Wilson".

**RE:** SB 110: AN ACT RELATING TO LIABILITY INVOLVING CERTAIN PROPERTY  
ACQUIRED BY A GOVERNMENTAL ENTITY AND PROVIDING FOR AN  
EFFECTIVE DATE.

We support this legislation.



**KENAI PENINSULA BOROUGH**

144 N. BINKLEY · SOLDOTNA, ALASKA · 99669-7599  
BUSINESS (907) 262-4441 FAX (907) 262-1892

MIKE NAVARRE  
MAYOR

May 6, 1999

Senator Gary Wilkens  
FAX 465-4714

Re: CSSB 110 (RLS)

Dear Senator Wilkens:

The Kenai Peninsula Borough supports the Rules version of SB 110. This bill would save municipalities and taxpayers from incurring significant expenses and losing revenues associated with contaminated properties subject to tax foreclosure. It also would allow us to equally administer the statutory taxing authority among all our citizens.

Sincerely,

Mike Navarre  
Mayor

# KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Erichsen  
Borough Attorney

(907) 228-6635

Fax: (907) 247-6625

May 6, 1999

Senator Gary Wilken  
State Capitol, Room 510  
Juneau, Alaska 99801-1182

Re: CSSB 110 (RLS)-

Dear Senator Wilken:

I was contacted by Kenai Peninsula Borough Attorney Collette Thompson on May 6<sup>th</sup>, 1999, with respect to the reconsideration of CSSB 100 (RLS). Ms. Thompson indicated that the bill had passed the Senate, but that a request for reconsideration had been filed by Senator Taylor.

I have reviewed the bill and discussed the underlying policy objective with the Ketchikan Borough Manager. My recommendation to the Ketchikan Gateway Borough Manager is that Ketchikan support the bill as it provides an important protection to local taxpayers. She verbally concurred with my recommendation and authorized me to write a letter supporting the bill.

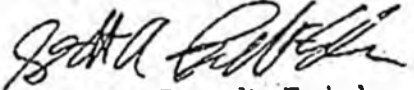
This issue was one of concern in the municipal attorney's office in Anchorage four or five years ago but to date has not effectively been dealt with. CSSB 110 (RLS) would assist municipalities by helping them avoid becoming unwitting "deep pockets" in the event that property to be foreclosed upon is later found to be contaminated.

The only improvement which I would suggest would be to define "involuntary." The issue I would see is if the provisions in AS 29.45.320(a) calling for "annual foreclosure unless otherwise provided by ordinance" would be sufficient to render a foreclosure voluntary. My preference would be that a foreclosure required to protect the public purse be considered involuntary.

By copy of this letter to Senator Taylor, I am requesting that he support the bill.

Sincerely,

KETCHIKAN GATEWAY BOROUGH

  
Scott A. Brandt-Erichsen  
Borough Attorney

SB/1/bill.110

cc: Borough Manager  
Senator Taylor  
Representative Bill Williams

## GARY WILKEN

SENATOR  
Districts 29 & 30  
West Fairbanks

### Senate Standing Committees

Member Finance  
Member Health, Education, &  
Social Services (HESS)  
Member Legislative Budget & Audit  
Member State Affairs



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Tel: (907) 465-3709 (outside Fbks)  
Fax: (907) 465-4714  
Website: [www.garywilken.com](http://www.garywilken.com)  
E-Mail: [Senator\\_Gary\\_Wilken@legis.state.ak.us](mailto:Senator_Gary_Wilken@legis.state.ak.us)

Interim:  
1851 Fox Ave  
Fairbanks, Alaska 99701  
Tel: (907) 451-5501  
Fax: (907) 451-0438

### CSSB 110 (RLS) am

**"An Act relating to liability for the release of hazardous substances involving certain property acquired by a governmental entity; relating to making a determination as to when hazardous substance has occurred; relating to liability of a party other than the party responsible for the initial release of a hazardous substance; and providing for an effective date."**

### Sponsor Statement

This bill will assist municipalities in performing their statutory duty to enforce liens for delinquent real property taxes. Tax foreclosure is a mandatory process leading to the taking of a tax deed that places the title to a tax delinquent property in the municipality's name. Some properties with delinquent taxes are contaminated. Municipalities are concerned that they may be held liable for pre-existing contamination of foreclosed land with significant environmental remediation costs.

The federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) exempts by definition state and local governments who acquire property through "bankruptcy, foreclosure, tax delinquency, abandonment, or similar means." However, the state law which addresses liability for damage caused by the release of hazardous substances, AS 46.03.822, does not precisely mirror the federal law. SB 110 will amend AS 46.03.822 to ensure that federal and state laws are similar in this respect. The municipality may therefore have title to the contaminated property without involuntary exposure to cleanup.

Changes in the Senate also recognized the need to extend this courtesy to innocent third parties, which are not directly responsible for contaminating the property they have acquired. Subsection (m) clarifies state law to say that "a party, other than the party responsible for the initial release, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility and who has acted responsibly upon discovering contamination...may not be held liable for the spread or migration of the hazardous substance except by an action of intentional misconduct or gross negligence."

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

No. 2  
Bill Version: SB 110  
(S) Publish Date: 4-29-99

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Environmental Conservation  
 Title An Act relating to liability involving certain BRU Spill Prevention and Response  
property acquired by a governmental entity. Component Contaminated Sites Remediation  
 Sponsor Senator Wilken Program \_\_\_\_\_  
 Requester Judiciary Committee Component Serial No. 1431

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

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<b>CAPITAL EXPENDITURES</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>CHANGE IN REVENUES ( )</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>

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Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

SB 110 is a clarification of existing statutes and does not have a fiscal impact on the state.

Prepared by Larry Dietrick Phone 465-5250  
 Division Spill Prevention and Response Date/Time 4/8/99 8:37 AM  
 Approved by Commissioner Michele Brown Date 4/8/99  
 Agency Department of Environmental Conservation

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Interim:  
1851 Fox Ave  
Fairbanks, Alaska 99701  
Tel: (907) 451-5501  
Fax: (907) 451-0438

May 7, 1999

Dear Andrew:

My bill, SB 110, "An Act relating to liability involving certain property acquired by a governmental entity," passed the Senate today and will soon be transferred to the House. This bill will benefit and is supported by the municipalities of Anchorage, Fairbanks, Kenai, Mat-Su, and Ketchikan.

It has a zero fiscal note. Therefore, in the interest of time, I have asked Speaker Porter to give this bill one referral to the Community and Regional Affairs Committee. I would appreciate your noticing SB 110 pending referral.

Please feel free to contact Ms. Beth Hagevig, in my office, at 465-3018 if you have any questions about the bill.

Thank you for your assistance in this matter.

Sincerely,

Gary Wilken  
Senator, West Fairbanks

