

SB

128

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 15, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/17/99

The FINANCE Committee considered:

CSSB 128(FIN) am

CS FOR SENATE BILL NO. 128(FIN) am

STORAGE TANK ASSISTANCE FUND

"An Act moving the termination date of the Board of Storage Tank Assistance to June 30, 1999; relating to the storage tank assistance fund, to financial assistance for owners and operators of underground petroleum storage tank systems, and to discharges from underground petroleum storage tank systems; and providing for an effective date."

recommends it be replaced with the following committee substitute

HCS CS SB 128 (FIN)

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) HFC

fiscal note(s) none 5/15/99

zero fiscal note(s)

zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Alan Bunde</u> mulder			<input checked="" type="checkbox"/>	
<u>Alan Bunde</u> Bunde		<input checked="" type="checkbox"/>		
<u>Alan Bunde</u> Austinman			<input checked="" type="checkbox"/>	
<u>Alan Bunde</u> J. DAVIS			<input checked="" type="checkbox"/>	
<u>Alan Bunde</u> Grussendorf			<input checked="" type="checkbox"/>	
<u>Alan Bunde</u> MOSES	<input checked="" type="checkbox"/>			
<u>Alan Bunde</u> G. DAVIS			<input checked="" type="checkbox"/>	
<u>Alan Bunde</u> Williams			<input checked="" type="checkbox"/>	
<u>Alan Bunde</u> Foster			<input checked="" type="checkbox"/>	

(1) (1) (7)

CHAIR'S SIGNATURE

Alan Bunde

FISCAL NOTE

Bill Version: HCSCSSB 128 (RES)
(H) Publish Date: 5/15/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to the storage tank assistance BRU Civil Division
fund, to financial assistance for owners and operators of ..." Component Commercial; Environmental Law
 Sponsor Senate Finance Committee
 Requester House Resources Committee Component Serial No. 2211; 2092

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	84.2	56.2	56.2	56.2	56.2	56.2
Travel	0.3	0.2	0.2	0.2	0.2	0.2
Contractual	14.6	9.8	9.8	9.8	9.8	9.8
Supplies	1.3	0.9	0.9	0.9	0.9	0.9
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	106.9	67.0	67.0	67.0	67.0	67.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1079 Storg Tank	106.9	67.0	67.0	67.0	67.0	67.0
TOTAL	106.9	67.0	67.0	67.0	67.0	67.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 128 (FIN) AM changes the storage tank assistance fund from a predominately grant program to a predominately loan program with limited grants available only to small businesses. This change would take effect July 1, 1999.

The changes to the storage tank assistance grant and loan program would create both initial startup costs and ongoing costs for the Department of Law. During the first year under the new provisions, Department of Law expenses would involve development of regulations and forms dealing with loan and grant program eligibility and administration. We would expect that some entities that would have qualified for a grant under the old program will not be able to qualify for either a grant or a loan under the new program, and that other entities will not qualify for the full amounts for which they could have qualified under the old program. These entities may find it difficult or impossible to bring their facilities into compliance; therefore, an increase in the demand for environmental enforcement actions and compliance

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 5/6/99, 10:39 AM
 Date 5/6/99

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

ANALYSIS CONTINUATION

agreements is expected. We would also expect a high default rate among loan recipients resulting in a continuing need for collection efforts. Collection efforts will be complicated by liability issues because the loan collateral may still be contaminated at the time of loan default.

The new workload generated by this bill would be split between the Civil Division's Commercial and Environmental Law sections, with Commercial handling loan issues and Environmental Law the environmental compliance issues. In the first year, three-quarters of an attorney position would be required, with the work equally divided between the sections. In the second, and subsequent years, once regulations development and other initial start-up work is complete, a half-time position is expected to be sufficient, with the workload continuing to be split equally between the sections.

Fiscal note costs are based on the department's FY00 standard full-time equivalent attorney cost schedule (\$133,926), and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. An additional \$6,500 for one-time equipment purchases, costs that cannot be included in the rate as overhead, are added in FY00 only, and as a practical matter, placed in Commercial with the new part time position. These costs would be split between the separate components as follows:

	FY00	FY01-FY05	PPT
Commercial	\$56.7	\$33.5	1
Environmental Law	\$50.2	\$33.5	
	<u>\$106.9</u>	<u>\$67.0</u>	

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HCSCSSB 128(FIN)

Title: Storage Tank Assistance Fund
Sponsor: Senate Finance
Requestor: House Finance

Dept. Affected: Environmental Conservation
BRU: Spill Prevention and Response
Components: Contaminated Sites Program
Serial # _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY J0	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	58.2	58.2	58.2	58.2	58.2	58.2
Travel						
Contractual	200.0	130.0	145.0	160.0	175.0	190.0
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	258.2	188.2	203.2	218.2	233.2	248.2
CAPITAL	5427.9	FRONT SECTION TRANSFER				
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
CIP Receipts	58.2	58.2	58.2	58.2	58.2	58.2
Storage Tank Fund	200.0	130.0	145.0	160.0	175.0	190.0
TOTAL	258.2	188.2	203.2	218.2	233.2	248.2

POSITIONS:

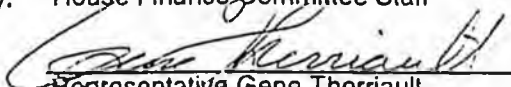
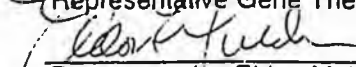
Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

See attached sheet for additional details.

This fiscal note provides the funds necessary for the Department of Environmental Conservation to hire the number of staff authorized by HB 50 Conference Committee for this component. The fiscal note also adds contractual funding to be transferred to DCED for incremental loan management costs resulting from passage of SB 128. In addition, the note also calculates the front section transfer necessary from the Oil and Hazardous Substance Spill Prevention Release and Response Fund to the Storage Tank Assistance Fund.

Prepared by: House Finance Committee Staff


Representative Gene Therriault

Representative Eldon Mulder

Date: 05/16/99

Phone: 465-4797

Phone: 465-2647

CALCULATION OF SB 128 FISCAL NOTE

	<u>House</u>	<u>Current Senate</u>	<u>Desired Balance</u>	<u>Fiscal Note (All to personal Service)</u>
OPERATING				
Federal receipts	775.4	775.4	775.4	-
O/H Funds	266.0	38.8	38.8	-
CIP Receipts	616.5	31.8	481.8	450.0
Storage Tank Assistance Fund	854.7	854.7	654.7	(200.0)
	<u>2,512.6</u>	<u>1,700.7</u>	<u>1,950.7</u>	<u>250.0</u>

\$250. Increase due to Division of Investments management of loans

CAPITAL

Upgrade/Closure (Private)	5,000.0	5,000.0	4,870.0
State-owned UST's (Closure)	2,500.0	2,500.0	2,500.0
State-owned UST's (Upgrade)	1,200.0	1,200.0	1,200.0
	<u>8,700.0</u>	<u>8,700.0</u>	<u>8,570.0</u>

CALCULATION OF FRONT SECTION AMT

	<u>Per Governor</u>	<u>Current Needs</u>
CIP Request	5,000.0	4,870.0
Storage Tank Request	717.6	517.6
Funding to administrative services	136.6	136.6
Statewide Public Services	0.5	0.5
	<u>5,854.70</u>	<u>5,524.7</u>
Less Projected Balance 7/1/99	(365.0)	(365.0)
	<u>5,489.7</u>	<u>5,159.7</u>

FISCAL NOTE

STATE OF ALASKA
1999 Legislative Session

NO. 4
Bill Version: CS3B128(FIN)
(S) Publish Date: 5-4-99

Revision Date: 05/04/99
Title: Storage Tank Assistance Fund
Sponsor: Senate Finance Committee
Requester: Senate Finance Committee

Dept. Affected Environmental Conservation
BRU Spill Prevention and Response
Component Storage Tank Assistance Fund

Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY01	FY02	FY03	FY04	FY05
Personal Services	0.0					
Travel	0.0					
Contractual	250.0					
Supplies	0.0					
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	250.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	5,159.7					
----------------------	---------	--	--	--	--	--

CHANGE IN REVENUES []						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1061 CIP Receipts	450.0					
1079 Storage Tank Assistance Fund	(200.0)					
TOTAL	250.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) costs: 0.0

POSITIONS

POSITIONS	FY 00	FY01	FY02	FY03	FY04	FY05
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

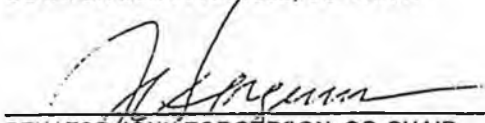
See Attached Sheet

\$250,000 operating expense for anticipated RSA to division of investments for the management of the loan portfolio.

Prepared By: SENATE FINANCE COMMITTEE


SENATOR SEAN PARNELL, CO-CHAIR

Date: 5/4/99
Phone: 465-2995


SENATOR JOHN TORGERSON, CO-CHAIR

Date: 5/4/99
Phone: 465-2828

IMPACT OF CONFERENCE COMMITTEE ACTIONS ON DEC SERVICES

include facilities such as meat and seafood markets, delis, bakeries, beverage manufacturers, elementary schools, adult residential care facilities, and hot tubs. Several of these types of facilities had reoccurring problems in the past that had been corrected with inspections. The risk to vulnerable populations (the young and the elderly) will increase. This decreased inspection frequency may jeopardize international sales of fresh/frozen seafood during a year when a processor is not inspected. Inspections of some meat processing facilities may be turned back to the USDA and subject to federal standards, not "Alaskanized" for our unique conditions.

Response to some consumer complaints will be delayed. This may have serious consequences if a food borne illness is not detected and stopped immediately.

The impact of this cut could be mitigated if the funding for this program was reclassified to statutory designated program receipts in SB 111.

STORAGE TANK PROGRAM \$583,700 REDUCTION IN NON GENERAL FUNDS

DEC will not continue state financial assistance for storage tank clean up, nor will DEC provide technical assistance and site cleanup oversight to 65% of the remaining 864 sites contaminated by leaking underground storage tanks. Fewer sites will be cleaned up and contamination will grow and migrate, creating larger areas of contamination and significantly higher costs for future cleanups for small operators. "No further action" letters to property owners who have completed site clean ups will be eliminated or delayed, and it is that final sign off that lending institutions require for property transfers.

There will be no funds for staff or travel to maintain the Board of Storage Tank Assistance to settle any disputes, prioritize funding, or modify regulations.

DEC will continue the prevention program to prevent releases from underground storage tanks, including the financial assistance program for upgrade and closure of grants, which is in its final year. Failure to complete this aspect would lead to substantial fines to operators.

DEC will continue the above ground storage tank program which prevents releases at small capacity above ground tanks; ensures compliance at facilities threatened with closure by the federal government; and decreases the likelihood that releases will pollute nearby surface and drinking water supplies.

Amended -
Pg 8, line 5

1-LS0624\S
Lauterbach
5/16/99

Adopted 5/16/99

HOUSE CS FOR CS FOR SENATE BILL NO. 128(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATE FINANCE COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act moving the termination date of the Board of Storage Tank Assistance
2 to June 30, 1999; relating to the storage tank assistance fund, to financial
3 assistance for owners and operators of underground petroleum storage tank
4 systems, and to discharges from underground petroleum storage tank systems; and
5 providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 44.66.010(a)(18) is amended to read:

8 (18) Board of Storage Tank Assistance (AS 46.03.360) - June 30, 1999
9 [2000];

10 * **Sec. 2.** AS 46.03.360(e) is amended to read:

11 (e) Under AS 44.62 (Administrative Procedure Act), the board shall adopt
12 regulations under which the department shall

13 (1) [DETERMINE WHICH COSTS OF TIGHTNESS TESTING AND

1 SITE ASSESSMENT ARE ELIGIBLE COSTS UNDER AS 46.03.415;

2 (2)] rank requests for assistance under AS 46.03.420 and 46.03.422;

3 (2) [(3)] determine which costs of risk assessment, containment,
4 corrective action, and cleanup are eligible costs under AS 46.03.420 and 46.03.422;

5 (3) [(4)] determine which costs of upgrading and closure are eligible
6 costs under AS 46.03.430.

7 * Sec. 3. AS 46.03.360(f) is amended to read:

8 (f) If the department determines that an owner or operator is not eligible for
9 assistance under AS 46.03.410 - 46.03.430 or that a cost is not eligible under
10 AS 46.03.415 - 46.30.430 and the affected owner or operator disputes that
11 determination, or if an owner or operator disputes the ranking assigned to a request for
12 assistance under AS 46.03.420 or 46.03.422, the owner or operator may apply to the
13 board for resolution of the dispute. The board may issue a decision in a dispute
14 brought to it under this subsection. The decision is binding on the owner, operator,
15 and department.

16 * Sec. 4. AS 46.03.410(a) is amended to read:

17 (a) There is established the storage tank assistance fund. It consists of money
18 appropriated to it by law. The department shall deposit earnings on money in the fund
19 in the general fund. The legislature may use the estimated balance in the account
20 maintained by the commissioner of administration under AS 37.05.142 to make
21 appropriations to the fund. The legislature may appropriate unencumbered money
22 from the fund for the cost of risk assessment, containment, corrective action, and
23 cleanup relating to an underground petroleum storage tank system owned or
24 operated by the state, the University of Alaska, a public corporation, a school
25 district, or another political subdivision or instrumentality of the state. The
26 legislature may also appropriate unencumbered money from the fund for state
27 legal and regulatory expenses associated with underground petroleum storage
28 tanks. An application for funds under AS 46.03.420, 46.03.422, and 46.03.430 is
29 not considered an encumbrance for purposes of this subsection.

30 * Sec. 5. AS 46.03.410(b) is amended to read:

31 (b) The commissioner may use money in the fund to pay for

1 (1) [TANK TIGHTNESS TESTS OR SITE ASSESSMENTS UNDER
2 AS 46.03.415;

3 (2)] grants and loans under AS 46.03.420 and 46.03.422 for risk
4 assessment, containment, corrective action, and cleanup costs; and

5 (2) [(3)] grants under AS 46.03.430 for tank system upgrading and
6 closure.

7 * Sec. 6. AS 46.03.420(a) is amended to read:

8 (a) The commissioner may make a grant from the storage tank assistance
9 fund to an [SUBJECT TO (b) - (i) OF THIS SECTION, APPLICATION MAY BE
10 MADE TO THE DEPARTMENT BY THE] owner or operator of an underground
11 petroleum storage tank system, other than the state or federal government, [FOR
12 GRANTS AND LOANS FROM THE STORAGE TANK ASSISTANCE FUND TO
13 PAY] for the costs of risk assessment, containment, corrective action, and cleanup
14 resulting from a release of petroleum from or associated with an underground
15 petroleum storage tank system if the owner or operator meets the requirements of
16 this section. Applications for assistance under this section must be submitted to the
17 department before July 1, 1994. Under regulations of the board, the department shall
18 rank requests under this section in order of priority, giving greatest priority to those
19 tank systems that present the greatest threat or potential threat to human health.

20 * Sec. 7. AS 46.03.420(b) is amended to read:

21 (b) A grant [GRANTS] made by the department under this section must
22 [SHALL] exclude a portion of the risk assessment, containment, corrective action, and
23 cleanup costs. The portion of these costs not payable as a grant by the department
24 under this section is 10 percent of total costs, up to a maximum of \$25,000 not
25 payable by the department; this portion of the costs shall be loaned at no interest by
26 the department to the owner or operator on request with repayment to be made
27 according to a schedule agreed to by the parties. The department may require security
28 or collateral for a loan made under this subsection and may charge a fee for a late loan
29 repayment equal to five percent of the amount of the late payment. At the
30 department's discretion, a loan or grant under this section may be disbursed in partial
31 payments according to a schedule related to costs anticipated to be incurred during

1 specified time periods.

2 * Sec. 8. AS 46.03.420(c) is amended to read:

3 (c) An owner or operator of an underground petroleum storage tank system is
4 not eligible for a grant or loan under this section for activities related to a release
5 unless the release occurs before December 22, 1993, and the owner or operator

6 (1) establishes the following to the department's reasonable satisfaction:

7 (A) the owner or operator reported the release to the department
8 in compliance with state and federal law before July 1, 1994, for a release that
9 the owner or operator establishes first occurred on or after September 5, 1990,
10 and before December 22, 1993;

11 (B) the owner or operator promptly reported the release to the
12 department in compliance with applicable regulations;

13 (C) the tank or tank system from which the release occurred
14 was installed before December 22, 1988;

15 (D) the owner and operator have, within six months after
16 September 5, 1990, been in compliance with all state and federal laws
17 applicable to underground petroleum storage tank systems and releases from
18 them, including notification and registration laws, but excluding financial
19 responsibility requirements;

20 (E) the release was not a result of the owner's or operator's
21 gross negligence, recklessness, or intentional conduct;

22 (2) agrees to

23 (A) upgrade all underground petroleum storage tanks located at
24 the facility from which the release occurred to the standards set by state and
25 federal regulations according to a time line established by the department;
26 notwithstanding (g) of this section and AS 46.03.365(c), the department may
27 require upgrading under this subparagraph that is required earlier than that
28 required under federal law; or

29 (B) remove and properly dispose of all liquids and sludges from
30 the underground petroleum storage tanks located at the facility from which the
31 release occurred, conduct a site assessment, and either fill the tanks with inert

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

solid material or properly dismantle, remove, and dispose of the tanks in accordance with applicable state and federal regulations; [AND]

(3) agrees to submit a plan for risk assessment, containment, corrective action, and cleanup to the department for its review and approval; if the department and the owner or operator cannot reach agreement on a plan or on later changes in the plan, the owner or operator may apply to the board to review the dispute; the board may issue a recommendation to the department in a dispute brought to it under this paragraph; and

(4) certifies under oath and subject to penalty for perjury, on a form required by the department, that the tangible net worth of the operator is \$1,000,000 or less as of the effective date of this section and, unless the tank is owned by the state or a municipality, that the net worth of the owner is \$1,000,000 or less as of the effective date of this bill section.

* Sec. 9. AS 46.03.420(e) is amended to read:

(e) A request for a grant under this section, and a grant payment made under this section, may not exceed \$250,000 [\$1,000,000 PER OCCURRENCE], less the amount not payable as a grant under (b) of this section. Furthermore, a grant payment under this section

(1) when combined with a grant payment under AS 46.03.430 to the same owner or operator, may not exceed \$250,000; and

(2) when combined with grants and loans to the same owner or operator under AS 46.03.422 and 46.03.430, may not exceed \$500,000.

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.422. Tank cleanup loan program. (a) The commissioner may make a loan from the storage tank assistance fund to an owner or operator of an underground petroleum storage tank system for the costs of risk assessment, containment, corrective action, and cleanup resulting from a release of petroleum from or associated with an underground petroleum storage tank system if the owner or operator submitted a timely application for a grant under AS 46.03.420 and agrees

(1) to accept a loan in the same or lesser amount instead of a grant for the same project;

1 (2) to provide additional security or collateral for the loan if requested
2 by the department

3 (3) either to

4 (A) upgrade all underground petroleum storage tanks located at
5 the facility from which the release occurred to the standards set by state and
6 federal regulations according to a time line established by the department; or

7 (B) remove and properly dispose of all liquids and sludges from
8 the underground petroleum storage tanks located at the facility from which the
9 release occurred, conduct a site assessment, and either fill the tanks with inert
10 solid material or properly dismantle, remove, and dispose of the tanks in
11 accordance with applicable state and federal regulations; and

12 (4) to submit a plan for risk assessment, containment, corrective action,
13 and cleanup to the department for its review and approval; if the department and the
14 owner or operator cannot reach agreement on a plan or on later changes in the plan,
15 the owner or operator may apply to the board to review the dispute; the board may
16 issue a recommendation to the department in a dispute brought to it under this
17 paragraph.

18 (b) The department may require more security or collateral for a loan made
19 under this section than was required under a previously approved grant application for
20 the same project.

21 (c) Under regulations of the board, the department shall rank requests under
22 this section in order of priority, giving greatest priority to those tank systems that
23 present the greatest threat or potential threat to human health.

24 (d) The department may deny a request for a loan under this section if

25 (1) other risk assessment, containment, corrective action, tank upgrading
26 or closure, and cleanup activities for which money may be used under AS 46.03.410
27 constitute a higher priority for fund expenditures;

28 (2) the work that would have been covered by the loan has already
29 been completed; or

30 (3) the loan is for reimbursement of expenses previously incurred.

31 (e) This section does not affect

1 (1) the liability under state or federal law of a person or entity that
2 receives assistance under this section for the costs of risk management, containment,
3 corrective action, and cleanup resulting from a release of petroleum; or

4 (2) the authority of the department to seek recovery from the owner or
5 operator of costs other than grants or loans actually made to an owner or operator
6 under this section.

7 (f) The rate of interest on a loan under this section is equal to the 12th Federal
8 Reserve District discount rate in effect on January 1 of the year in which the loan is
9 approved plus one-half percentage point. The department shall disburse a loan in
10 partial payments according to a schedule that allows reasonable oversight and
11 assessment during implementation of the plan approved under (a) of this section. The
12 interest rate applicable to a loan remains the same throughout the project for which the
13 loan was approved but begins accruing on each partial payment only after
14 disbursement of that payment.

15 (g) A loan payment under this section, when combined with loans and grants
16 to the same owner or operator under AS 46.03.420 and 46.03.430, may not exceed
17 \$500,000.

18 (h) The legislature may appropriate to the storage tank assistance fund
19 established under AS 46.03.410 the annual estimated balance of the account maintained
20 under AS 37.05.142 by the commissioner of administration to keep track of loan
21 repayments, including interest payments, under this section.

22 * Sec. 11. AS 46.03.430(c) is amended to read:

23 (c) A grant may not be awarded under this section

24 (1) for upgrading or closure activities that do not meet the requirements
25 of state and federal law;

26 (2) unless the owner or operator certifies under oath and subject
27 to penalty for perjury, on a form required by the department, that the tangible
28 net worth of the operator is \$250,000 or less as of the effective date of this section
29 and, unless the tank is owned by the state or a municipality, that the net worth
30 of the owner is \$250,000 or less as of the effective date of this bill section;

31 (3) if the grant, when combined with a grant to the same owner or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

operator under AS 46.03.420, exceeds \$250,000; or
(4) if the grant, when combined with grants and loans to the same
owner or operator under AS 46.03.420 and 46.03.422, exceeds \$500,000.

* Sec. 12. AS 46.03.450 is amended by adding a new paragraph to read:

(14) "tangible net worth" means the value of tangible assets, including
existing assets and probable future economic benefits that will be obtained or
controlled by the entity as a result of past transactions, minus liabilities associated with
bringing underground petroleum storage tank systems into compliance with state and
federal laws and liabilities associated with releases of petroleum from underground
petroleum storage tank systems; notwithstanding other provisions of this paragraph,
"tangible net worth" does not include the value of goodwill.

* Sec. 13. Section 4(a), ch. 96, SLA 1990, is amended to read:

(a) Notwithstanding AS 46.03.420(h), 46.03.422(e), 46.03.758, 46.03.760,
46.03.780, 46.03.790, and 46.03.822, a person, including a municipal school district,
regional educational attendance area, or municipality, is not civilly or criminally liable
to the state under those sections for a discharge covered by those sections if the person
demonstrates by a preponderance of the evidence that the person

(1) is the owner or operator of an underground petroleum storage tank
or tank system, as defined in AS 46.03.450 [ENACTED BY SEC. 2 OF THIS ACT.]
that was installed before December 22, 1988, and the discharge occurred from that
tank or tank system before December 22, 1992;

(2) acted in good faith to report, assess, and mitigate damage from the
discharge and to undertake corrective action in accordance with applicable state and
federal law and was in compliance with all applicable state and federal law before the
discharge occurred;

(3) is receiving or has been approved for state funds under
AS 46.03.420 - 46.03.430 [ENACTED BY SEC. 2 OF THIS ACT]; and

(4) did not intentionally cause the discharge.

* Sec. 14. AS 46.03.380(b)(2), 46.03.380(b)(3)(B)(ii), 46.03.415; and sec. 7, ch. 96, SLA
1990, are repealed.

* Sec. 15. APPLICABILITY. AS 46.03.420(e), as amended by sec. 9 of this Act:

1 AS 46.03.422(g), enacted by sec. 10 of this Act; and AS 46.03.430(c)(3) and (4), enacted by
2 sec. 11 of this Act, apply to financial assistance received on or after July 1, 1999.

3 * Sec. 16. TRANSITIONAL REGULATIONS. (a) The Department of Environmental
4 Conservation and the Board of Storage Tank Assistance may adopt regulations as authorized
5 by this Act and other statutory authority to implement changes made by this Act. Regulations
6 adopted under this section may not take effect until the corresponding enabling statute takes
7 effect under sec. 18 of this Act.

8 (b) Notwithstanding any provision of this Act, regulations in effect on June 30, 1999,
9 relating to the storage tank assistance fund that are not inconsistent with the provisions of this
10 Act remain in effect until amended or repealed by the Department of Environmental
11 Conservation or the Board of Storage Tank Assistance.

12 (c) AS 44.62 (Administrative Procedure Act) does not apply to the development of
13 the form for certification of net worth required under AS 46.03.420(c)(4), enacted by sec. 8
14 of this Act, and AS 46.03.430(c)(2), enacted by sec. 11 of this Act.

15 * Sec. 17. Sections 1 and 16 of this Act take effect immediately under AS 01.10.070(c).

16 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect July 1, 1999.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SECTIONAL ANALYSIS FOR CSSB 128(FIN)am

Section 1 puts the Board of Storage Tank Assistance in its "wind-down" year beginning June 30, 1999.

Section 2 removes a reference to the tank tightness and site assessment incentive program repealed in section 14 and adds a reference to the tank cleanup loan program enacted in section 10.

Section 3 adds a reference to the tank cleanup loan program.

Section 4 amends the storage tank assistance fund section in Title 46 by adding two statements about potential appropriations of money in the storage tank assistance fund. This section also clarifies that a pending application is not considered to be an encumbrance of the fund.

Section 5 deletes a reference to the repealed tank tightness and site assessment incentive program. Adds a reference to the newly-enacted tank cleanup loan program.

Sections 6 – 9 convert the loan program for cleanup relating to underground petroleum storage tank systems to a grant program for tanks whose owners have \$1,000,000 or less in tangible net worth. Section 9 contains limitations on total grants and loans. Grants may not exceed \$250,000 and a combination of grants and loans may not exceed \$500,000.

Section 10 establishes a new tank cleanup loan program

Section 11 limits grants for upgrading and closure of underground petroleum storage tanks to those whose owner has a tangible net worth of \$250,000 or less. Adds the same limitations on total grants and loans as established in section 9.

Section 12 defines "tangible net worth" as the total value of tangible assets minus liabilities associated with bringing underground petroleum storage tanks into compliance with state and federal laws.

Section 13 adds a reference to the newly-enacted tank cleanup loan program.

Section 14 repeals the program currently under AS 46.03.415, the tank tightness and site assessment program, and repeals references to that program. Also repeals a reimbursement program established in 1990.

Section 15 specifies that the limitations on grants, loans, and total financial assistance enacted by this Act apply to money received on or after July 1, 1999.

Sections 16 – 17 allows the board's regulations process to begin immediately and makes the change in the termination date of the board effective immediately.

Section 18 makes most of the bill take effect on July 1, 1999.

Proposed Amendments to HCS CSSB128 (RES)

Amendment #1: This amendment would modify the definition of "tangible net worth" to make it more consistent with the common meaning of the term as well as federal regulations at 40 C.F.R. 280.92. It would also lower the eligibility cap from \$1,500,000 to \$500,000 to prevent the new definition from greatly expanding the number of applicants eligible for grants.

- The current definition of tangible net worth in the bill is inconsistent with generally accepted accounting principles (GAAP) because it does not take into account normal liabilities such as mortgages, loan notes, or accounts payable. A person with an actual net worth under GAAP of negative \$15,000 could easily have a net worth of over 1.5 million dollars under the current definition in this bill. It is hard to understand the rationale behind this provision which would allow someone with an actual positive net worth of 1.5 million dollars who owns their own facility free and clear to obtain a grant, but would deny a grant to someone who has a heavily financed facility and a negative net worth. It would make much more sense to lower the eligibility requirement but base it on a standard definition of net worth (total assets - total liabilities).
- It would be difficult to verify net worth certifications submitted under this bill because the definition is unique. It would also be difficult to obtain a conviction for perjury where an individual with an actual net worth well under 1.5 million dollars, but a "tangible net worth," as defined in this legislation, of over 1.5 million dollars, submits a certification indicating that they are eligible for a grant or loan because perjury is committed only if the individual does not believe the statement to be true.
- If this amendment is adopted, net worth will have the common meaning of "assets minus liabilities," and it would be possible to compare a certification of net worth against the net worth reported on financial statements or other loan applications.

Amendment #2: This amendment would modify the Transitional Regulations section of the bill in two respects.

- The first insertion would allow the Department of Environmental Conservation (ADEC) to begin the process of adopting regulations necessary for implementation of this bill prior to the effective date of the bill, July 1, 1999. Nearly all of the existing underground storage tank regulations, are adopted jointly by the Board of Storage Tank Assistance and ADEC because each, acting alone, has limited authority. The current version of the bill allows the Board to start regulations projects, but does not give ADEC the necessary authority to do so.
 - Without this provision, it will be impossible for ADEC and the Board of Storage Tank Assistance to put regulations into place before the end of the 1999 construction season.
 - Even an uncontroversial regulations project normally takes 4-6 months, and the fastest possible process under the Administrative Procedure Act is over two months. If regulations are not publicly noticed until July 1, 1999 they will not be effective before September and are unlikely to be effective before November.
 - If this amendment is adopted and ADEC and the Board issue a public notice for these regulations on May 30, 1999, Regulations could be in place in August, allowing over a month of UST cleanup and installation work prior to freeze-up.

- The second insertion simply reflects the fact that both the Board of Storage Tank Assistance and Department of Environmental Conservation have regulations that relate to the Storage Tank Assistance Fund. The current language suggests that existing regulations would remain in place until amended or repealed by the Board, but the regulatory authorities of the Board would not reach all of the regulations relating to the fund. While the Board has fairly broad authority to review and approve department regulations under AS 46.03.365(d) it has fairly limited authority for adoption of regulations under AS 46.03.360(e) and .360(g).
- Without this amendment, it could be argued that some of the existing regulations at 18 AAC 78.500 - 18 AAC 78.550 are made permanent by this bill. Many of these provisions are adopted jointly by the Board and the department, and many of these regulations contain provisions that the Board arguably does not have authority to adopt under its own authority. While it is unlikely that a court would hold that the transition provision in the bill would make the existing regulations permanent, it is preferable to close the door to the argument and potential litigation.

AMENDMENT # 1

OFFERED IN THE HOUSE

BY _____

TO: HCS CSSB 128 (RES)

1

Page 8, line ¹²7:

2

Following "liabilities":

3

Insert ", including liabilities"

4

Page 5, line 11:

5

Delete "\$1,000,000"

6

Insert "\$500,000"

7

Page 5, line 13:

8

Delete "\$1,000,000"

9

Insert "\$500,000"

AMENDMENT #2

OFFERED IN THE HOUSE

BY _____

TO: HCS CSSB 128 (RES)

1 Page 9, line 3:

2 Following "The":

3 Insert "Department of Environmental Conservation or the"

4 Page 9, line 9:

5 Following "the":

6 Insert "Department of Environmental Conservation or the"