

SB

110

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



During Session:
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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."



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



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



MUNICIPALITY OF ANCHORAGE

MEMORANDUM

Real Estate Services

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 6th, 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.

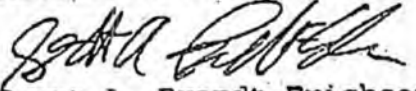
This issue was one of concern in the municipal attorney's office in Anchorage four or five years ago but to date has not effectively been dealt with. CSSB 110 (RLS) would assist municipalities by helping them avoid becoming unwitting "deep pockets" in the event that property to be foreclosed upon is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

ss/l/bill.110

cc: Borough Manager
Senator Taylor
Representative Bill Williams

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which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 — 1629c (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85 — 508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

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5/12

AMENDMENT #1

adopted

OFFERED IN THE HOUSE

TO: CSSB 110(RLS) am

1 Page 2, line 19, following "entity":

2 Insert "A hazardous substance release shall be determined to have occurred as
3 provided in this section."

4 Page 2, line 21, following "leaching":

5 Insert "or migration"

6 Page 3, lines 4 - 10:

7 Delete all material.

8 Insert

9 "costs under this section, a person who acquires a facility and who, upon discovering
10 a release or threatened release on, in, or at the facility that occurred before acquisition
11 of the facility, who had no reason to know that a hazardous substance was disposed
12 of on, in, or at the facility, and who, upon discovering the release or threatened
13 release, acted in accordance with (b)(2) of this section to begin operations to contain
14 and clean up the hazardous substance, may not be held liable under this section unless
15 the person has caused or contributed to the release or threatened release of the
16 hazardous substance, in which case, the person is subject to liability under this section
17 in the same manner as any other person. For purposes of this subsection, "caused or
18 contributed to the release or threatened release of the hazardous substance"

19 (1) does not include the failure to prevent the passive leaching or
20 migration at or from a facility of a hazardous substance in the air, land, or water that
21 had first been released into the environment by a person other than the person that
22 acquired the facility;

23 (2) after the ownership or control of the facility has been acquired by

1 the person includes

2 (A) the spilling, leaking, pumping, pouring, emptying, injecting,
3 escaping, or dumping of a hazardous substance from barrels, tanks, containers,
4 or other closed receptacles; or

5 (B) the abandonment or discarding of barrels, tanks, containers,
6 or other closed receptacles containing a hazardous substance."