

SB

110

FISCAL NOTE

No. 1
 Bill Version: SB 110
 (S) Publish Date: 4-29-99

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected DOT&PF
 Title Property Acquired by Govt. Entity BRU Commissioners Office
 Component _____
 Sponsor Senator Wilken
 Requester (S) JUD Component Serial No. _____

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

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)

Prepared by Dennis Poshard, Legislative Liaison Phone 465-3904
 Division Office of the Commissioner Date/Time 4/12/99 12:27 PM
 Approved by Commissioner *Joseph L. Dubno* Date _____
 Agency Department of Transportation and Public Facilities

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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 <u>Environmental Conservation</u>
Title <u>An Act relating to liability involving certain</u>	BRU <u>Spill Prevention and Response</u>
property aquired by a governmental entity.	Component <u>Contaminated Sites Remediation</u>
Sponsor <u>Senator Wilken</u>	Program <u>Program</u>
Requester <u>Judiciary Committee</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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/18/99

FURTHER:

Date of 5-Day Notice: 4-8-99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 110

"An Act relating to liability involving certain property acquired by a governmental entity; and providing for an effective date."

and recommends:

- be replaced with _____ CS CS SB 110 (N) (Jud)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Progen</i>	✓		
		<i>John Donly</i>	✓		
		<i>J. Ellis</i>		X	
CHAIR: <i>Chris L. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>DEC</i>	<i>4/8</i>	✓	
<i>DOT</i>	<i>4/12</i>	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

1-LS0360\S.1
Cook/
5/7/99

20-0

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 110(RLS)

1 Page 1, lines 1 - 2:

2 Delete all material and insert:

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

8 Page 1, following line 3:

9 Insert a new bill section to read:

10 **** Section. 1. AS 46.03.822(d) is amended to read:**

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

17 (1) any specialized knowledge or experience the person has;

18 (2) the relationship of the purchase price to the value of the property
19 if it were uncontaminated;

20 (3) commonly known or reasonably ascertainable information about
21 the property;

22 (4) the obviousness of the presence or likely presence of contamination
23 at the property; and

24 (5) the ability to detect contamination by appropriate inspection."

1-LS0360\S.1

1 Page 1, line 4:

2 Delete "* Section 1."

3 Insert "* Sec. 2."

4 Delete "a new subsection"

5 Insert "new subsections"

6 Renumber the following bill sections accordingly.

7 Page 2, following line 14:

8 Insert a new subsection to read:

9 "(m) For purposes of determining liability in an action to recover damages or
10 costs under this section, a release shall be considered to have occurred when a
11 hazardous substance is first introduced into the environment. A party, other than the
12 party responsible for the initial release, who had no reason to know that a hazardous
13 substance was disposed of on, in, or at the facility and who has acted responsibly
14 upon discovering contamination in accordance with (b)(2) of this section may not be
15 held liable for the spread or migration of the hazardous substance except by an act of
16 intentional misconduct or gross negligence."

17 Page 2, line 15:

18 Delete "sec. 1"

19 Insert "sec. 2"

1 Virgil
amends
~~Amends~~

1-LS0360\G.4
Cook/
5/7/99

AMENDMENT

OFFERED IN THE SENATE
TO: SB 110

BY SENATOR TAYLOR

1 Page 1, lines 1 and 2:

2 Delete all material and insert:

3 **""An Act relating to liability for the release of hazardous substances; and providing for**
4 **an effective date.""**

5 Page 2, following line 13:

6 Insert new bill sections to read:

7 **** Sec. 2. AS 46.03.822 is amend by adding a new subsection to read:**

8 (l) For purposes of determining liability in an action to recover damages or
9 costs under this section, a release shall be considered to have occurred when a
10 hazardous substance is first introduced into the environment. A party, other than the
11 party responsible for the initial release, who has acted responsibly upon discovering
12 contamination in accordance with (b)(2) of this section may not be held liable for the
13 spread or migration of the hazardous substance except by an act of intentional
14 misconduct or gross negligence.

15 *** Sec. 3. AS 46.03.826(9) is amended to read:**

16 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
18 environment, including the abandonment or discarding of barrels, containers, and other
19 closed receptacles containing any hazardous substance, but excluding

20 (A) any release that results in exposure to persons solely within
21 a workplace, with respect to a claim that those persons may assert against the
22 persons' employer; [AND]

23 (B) emissions from the engine exhaust of a motor vehicle,
24 rolling stock, aircraft, or vessel; and

1 (C) an act of nature occurring after the release of a
2 hazardous substance into the environment;"

3 Renumber the following bill sections accordingly.

*all amends.
Wilden
Virgil*

1-LS0360\G.2
Cook✓
5/7/99

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TAYLOR

TO: SB 110

1 Page 1, lines 1 - 2:

2 Delete all material and insert:

3 **""An Act relating to liability for the release of hazardous substances; and providing for**
4 **an effective date.""**

5 Page 2, following line 13:

6 Insert new bill sections to read:

7 **** Sec. 2. AS 46.03.822 is amended by adding new subsections to read:**

8 (l) A unit of state or local government that acquired ownership or control of
9 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
10 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
11 authority by purchase or condemnation, or circumstances in which the governmental
12 unit involuntarily acquired title by virtue of its function as a sovereign is not liable
13 as an owner or operator under this section unless the governmental unit has caused
14 or contributed to the release or threatened release of a hazardous substance at or from
15 the facility or vessel, in which case, the governmental unit is subject to liability under
16 this section in the same manner and to the same extent, both procedurally and
17 substantively, as any nongovernmental entity. For purposes of this subsection,
18 "caused or contributed to the release or threatened release of a hazardous substance"

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

23 (2) does not include the exercise or failure to exercise regulatory or
24 enforcement authority;

1 (3) after the ownership or control of the facility or vessel has been
2 acquired by the governmental unit, includes

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

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

8 (m) For purposes of determining liability in an action to recover damages or
9 costs under this section, a release shall be considered to have occurred when a
10 hazardous substance is first introduced into the environment. A party, other than the
11 party responsible for the initial release, who has acted responsibly upon discovering
12 contamination in accordance with (b)(2) of this section may not be held liable for the
13 spread or migration of the hazardous substance except by an act of intentional
14 misconduct or gross negligence.

15 * Sec. 3. AS 46.03.826(9) is amended to read:

16 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
18 environment, including the abandonment or discarding of barrels, containers, and other
19 closed receptacles containing any hazardous substance, but excluding

20 (A) any release that results in exposure to persons solely within
21 a workplace, with respect to a claim that those persons may assert against the
22 persons' employer; [AND]

23 (B) emissions from the engine exhaust of a motor vehicle,
24 rolling stock, aircraft, or vessel; and

25 (C) an act of nature occurring after the release of a
26 hazardous substance into the environment;"

27 Renumber the following bill sections accordingly.

Virgil amend.
Sec. 2
Release

1-LS0360\G.1
Cook ✓
5/7/99

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TAYLOR

TO: SB 110

1 Page 1, lines 1 and 2:

2 Delete all material and insert ""An Act relating to liability for the release of
3 hazardous substances; and providing for an effective date.""

4 Page 2, following line 13:

5 Insert a new bill section to read:

6 ""* Sec. 2. AS 46.03.826(9) is amended to read:

7 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
8 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
9 environment, including the abandonment or discarding of barrels, containers, and other
10 closed receptacles containing any hazardous substance, but excluding

11 (A) any release that results in exposure to persons solely within
12 a workplace, with respect to a claim that those persons may assert against the
13 persons' employer; [AND]

14 (B) emissions from the engine exhaust of a motor vehicle,
15 rolling stock, aircraft, or vessel; and

16 (C) an act of nature occurring after the release of a
17 hazardous substance into the environment."

18 Renumber the following bill sections accordingly.

*Wicken Amend.
only*

1-LS0360\G.3
Cook
5/7/99

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TAYLOR

TO: SB 110

1 Page 1, line 4, through page 2, line 17:

2 Delete all material and insert:

3 **** Section 1.** AS 46.03.822 is amended by adding a new subsection to read:

4 (l) A unit of state or local government that acquired ownership or control of
5 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
6 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
7 authority by purchase or condemnation, or circumstances in which the governmental
8 unit involuntarily acquired title by virtue of its function as a sovereign is not liable
9 as an owner or operator under this section unless the governmental unit has caused
10 or contributed to the release or threatened release of a hazardous substance at or from
11 the facility or vessel, in which case, the governmental unit is subject to liability under
12 this section in the same manner and to the same extent, both procedurally and
13 substantively, as any nongovernmental entity. For purposes of this subsection,
14 "caused or contributed to the release or threatened release of a hazardous substance"

15 (1) does not include the failure to prevent the passive leaching at or
16 from a facility or vessel of a hazardous substance in the air, land, or water that had
17 first been released to the environment by a person other than the governmental unit
18 that acquired the facility or vessel;

19 (2) does not include the exercise or failure to exercise regulatory or
20 enforcement authority;

21 (3) after the ownership or control of the facility or vessel has been
22 acquired by the governmental unit, includes

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

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

3 * **Sec. 2. APPLICABILITY.** AS 46.03.822(1), as added in sec. 1 of this Act, applies to
4 a vessel or facility acquired by a governmental entity on or after the effective date of this
5 Act. For purposes of this section, when foreclosure by a municipality is involved, the
6 property is acquired on the date it is deeded to the municipality under AS 29.45.450."

1-1.S0360VG.6
Cook/
5/7/99

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TAYLOR

TO: SB 110

- 1 Page 2, lines 12 and 13:
- 2 Delete "and the state acquired the facility under Public Law 85-508 (Alaska Statehood
- 3 Act)"
- 4 Insert "[AND THE STATE ACQUIRED THE FACILITY UNDER PUBLIC LAW 85-
- 5 508 (ALASKA STATEHOOD ACT)]"

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 110 (JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Environmental Conservation</u>
Title <u>An Act relating to liability involving certain</u>	BRU <u>Spill Prevention and Response</u>
<u>property acquired by a governmental entity.</u>	Component <u>Fiscal impact is to the "Response</u>
Sponsor <u>Senator Wilken</u>	<u>Fund"</u>
Requester <u>Judiciary Committee</u>	Component Serial No. _____

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (See analysis)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1052 Response Fund	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++
TOTAL	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill leaves the state open to very large and immeasurable fiscal liability. The amendments would impose 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. See the attached explanation.

Prepared by <u>Larry Dietrick</u>	Phone <u>465-5250</u>
Division <u>Spill Prevention and Response</u>	Date/Time <u>4/30/99 1:17 PM</u>
Approved by <u>Commissioner Michele Brown</u>	Date <u>4/30/99</u>
Agency <u>Department of Environmental Conservation</u>	

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CSSB 110 (JUD) – Attachment to Fiscal Note
Department of Environmental Conservation
April 30, 1999

The exact impact of these changes to the liability scheme of AS 46.03.822 is difficult to precisely quantify since many of the terms in the Committee Substitute are not defined. 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 section 2 and new subsection (m) of the amendments are resolved.

Section 2 and subsection (m) of CSSB 110 (JUD) make fundamental and far-reaching changes to the state's strict liability scheme by amending the definition of what constitutes a "release" of oil or hazardous substances. Section 2 excludes from the definition of release "an act of nature occurring after the release of a hazardous substance into the environment." An act of nature is not defined but would presumably include such things as rain, wind, currents, and the natural flow of surface and groundwater. The result is to limit the liability of a spiller under AS 46.03.822 to the initial entry of the oil or hazardous substance into the environment. Under the new definition, the law would have the illogical consequence of insulating the initial spiller from liability for cleanup costs or damages for the spread or migration of the hazardous substance after it enters the environment.

For example, if this bill was enacted before the Exxon Valdez oil spill, once the Exxon spill was affected by tides, currents and winds, the spread of the spill could be defined as an "act of nature" for which Exxon would no longer be liable under AS 46.03.822. If such an exception was in place, Exxon could have used the "act of nature" clause as a defense against paying for the State, local government's or private party's cleanup costs and damages for the portion of the spill that spread out of the immediate vicinity, through Prince William Sound and into Cook Inlet, Kodiak and the Shelikof Straits.

Other, examples of the potential fiscal impacts of this bill include:

1. A Department of Defense tank farm located near the perimeter of the federal facility has released benzene, petroleum, and solvents via leaking valves and spills over the last 20 to 30 years. The benzene, petroleum and solvents soaked into the ground until reaching groundwater. Groundwater flow, an act of nature, carried these hazardous substances downgradient and impacted drinking water wells at a church and business immediately outside the facility. Due to the high levels of benzene and petroleum substances in these wells, DoD is providing bottled drinking water to the church and business, and will continue to do so until the groundwater is safe to use again. Under this new state law, the federal government will no longer be liable under AS 46.03.822 for State or private cleanup costs or damages to public or private parties as a result of the contamination of the drinking water wells.
2. A home heating oil tank failed and the rain caused the oil to run into the neighbor's yard. Under this bill, because the spread of this release was due to an act of nature, the spiller (the owner of the home heating oil tank) is not responsible to clean up the neighbor's yard or to pay for the damages to the neighboring party. This situation is not likely to be a high enough priority to warrant a state response and the neighbor has no recourse under AS 46.03.822 to have his property cleaned up.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 110 (JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Environmental Conservation</u>
Title <u>An Act relating to liability involving certain</u>	BRU <u>Spill Prevention and Response</u>
<u>property acquired by a governmental entity.</u>	Component <u>Fiscal impact is to the "Response</u>
Sponsor <u>Senator Wilken</u>	<u>Fund"</u>
Requester <u>Judiciary Committee</u>	Component Serial No. _____

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TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (See analysis)						
--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1052 Response Fund	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++
TOTAL	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill leaves the state open to very large and immeasurable fiscal liability. The amendments would impose 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. See the attached explanation.

Prepared by <u>Larry Dietrick</u>	Phone <u>465-5250</u>
Division <u>Spill Prevention and Response</u>	Date/Time <u>4/30/99 1:17 PM</u>
Approved by <u>Commissioner Michele Brown</u>	Date <u>4/30/99</u>
Agency <u>Department of Environmental Conservation</u>	

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CSSB 110 (JUD) – Attachment to Fiscal Note
Department of Environmental Conservation
April 30, 1999

The exact impact of these changes to the liability scheme of AS 46.03.822 is difficult to precisely quantify since many of the terms in the Committee Substitute are not defined. 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 section 2 and new subsection (m) of the amendments are resolved.

Section 2 and subsection (m) of CSSB 110 (JUD) make fundamental and far-reaching changes to the state's strict liability scheme by amending the definition of what constitutes a "release" of oil or hazardous substances. Section 2 excludes from the definition of release "an act of nature occurring after the release of a hazardous substance into the environment." An act of nature is not defined but would presumably include such things as rain, wind, currents, and the natural flow of surface and groundwater. The result is to limit the liability of a spiller under AS 46.03.822 to the initial entry of the oil or hazardous substance into the environment. Under the new definition, the law would have the illogical consequence of insulating the initial spiller from liability for cleanup costs or damages for the spread or migration of the hazardous substance after it enters the environment.

For example, if this bill was enacted before the Exxon Valdez oil spill, once the Exxon spill was affected by tides, currents and winds, the spread of the spill could be defined as an "act of nature" for which Exxon would no longer be liable under AS 46.03.822. If such an exception was in place, Exxon could have used the "act of nature" clause as a defense against paying for the State, local government's or private party's cleanup costs and damages for the portion of the spill that spread out of the immediate vicinity, through Prince William Sound and into Cook Inlet, Kodiak and the Shelikof Straits.

Other, examples of the potential fiscal impacts of this bill include:

1. A Department of Defense tank farm located near the perimeter of the federal facility has released benzene, petroleum, and solvents via leaking valves and spills over the last 20 to 30 years. The benzene, petroleum and solvents soaked into the ground until reaching groundwater. Groundwater flow, an act of nature, carried these hazardous substances downgradient and impacted drinking water wells at a church and business immediately outside the facility. Due to the high levels of benzene and petroleum substances in these wells, DoD is providing bottled drinking water to the church and business, and will continue to do so until the groundwater is safe to use again. Under this new state law, the federal government will no longer be liable under AS 46.03.822 for State or private cleanup costs or damages to public or private parties as a result of the contamination of the drinking water wells.
2. A home heating oil tank failed and the rain caused the oil to run into the neighbor's yard. Under this bill, because the spread of this release was due to an act of nature, the spiller (the owner of the home heating oil tank) is not responsible to clean up the neighbor's yard or to pay for the damages to the neighboring party. This situation is not likely to be a high enough priority to warrant a state response and the neighbor has no recourse under AS 46.03.822 to have his property cleaned up.

1-LS0360K

Cock ✓

4/23/99

*amend
w/ 4/23/99*

CS FOR SENATE BILL NO. 110()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR WILKEN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability involving certain property acquired by a governmental**
2 **entity; and providing for an effective date."**

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

4 *** Section 1. AS 46.03.822 is amended by adding a new subsection to read:**

5 (1) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

1 or contributed to the release or threatened release of a hazardous substance"

2 (1) does not include the failure to prevent the passive leaching at or
3 from a facility or vessel of a hazardous substance in the air, land, or water that had
4 first been released to the environment by a person other than the governmental unit
5 that acquired the facility or vessel;

6 (2) does not include the exercise or failure to exercise regulatory or
7 enforcement authority;

8 (3) after the ownership or control of the facility or vessel has been
9 acquired by the governmental unit, includes

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

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

15 * Sec. 2. APPLICABILITY. AS 46.03.822(1), as added in sec. 1 of this Act, applies to a
16 vessel or facility acquired by a governmental entity on or after the effective date of this Act.
17 For purposes of this section, when foreclosure by a municipality is involved, the property is
18 acquired on the date it is deeded to the municipality under AS 29.45.450.

19 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

VIRGIL NORTON & ASSOCIATES

P. O. BOX 141796
Anchorage, AK 99514-1796
Telephone: (907) 776-5481 or (907) 258-0722 ✓
Fax: (907) 278-6291 ✓

Senator Robin Taylor
Attn: Senate Judiciary Committee
Re: SB110 - Liability For Clean-up of
Contaminated Property under A.S. 46.03.822

I testified via teleconference on April 12, 1999 concerning SB110, sponsored by Senator Gary Wilken at the request of the Fairbanks North Star Borough. This correspondence is to explain in greater detail my concerns with SB110, as currently drafted, and to request several clarifications of the language in A.S. 46.03.822 as the statute currently exist without revision. Also, while I support the sponsor's intent in SB110, wish to suggest several revisions that would better serve the private sector/general public by clarifying and strengthening the original intent of the strict liability statute as it effects the innocent landowner defense.

The intent of SB110, as defined by the sponsor, is to relieve a local government entity from liability in a taking of property that is known to be or has the potential to be contaminated.

A.S.46:03:822, Alaska's strict liability statute, requires an owner of property to take responsibility to prevent the spread or migration of contamination and to clean up the property. If the person acquired the property without knowing of the contamination the statute currently exempts this person from liability if they act responsibly (see (2) (A) and (B) of the innocent landowner defense) by discovering and beginning clean-up operations. This person is then allowed to seek cost recovery from the person responsible for the release. This is, essentially, the innocent landowner defense.

The cost recovery effort should always be directed against the person who first released the contamination into the environment. However, this is not how the Department of Environmental Conservation currently operates. The D.E.C. does not have a standard operating procedure for identifying a responsible party, other than the current owner, and in many occasions' events obstructs efforts to recover cost from a responsible party.

I propose the following amendment, which would add a new subsection to A.S. 46.03.822 that would read as follows:

Keep

(b) For purposes of determining liability in an action to recover damages or costs under A.S. 46.03.822, a release shall be deemed to have occurred when a hazardous substance is first introduced into the environment. A party, other than the party responsible for the initial release, who has acted responsibly upon discovering contamination in accordance with (2), (A), & (B) of this section may not be held liable for the spread or migration of the hazardous substance except by an act of intentional misconduct or gross negligence.

Ref. back to 2/2/99

I also propose the following amendment to the definition of release in A.S. 46.03.826, which would read as follows:

Keep

- (9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding
 - (A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and
 - (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

Page 2

(C) An act of nature occurring after the release of a hazardous substance into the environment.

The above revision to the definition of release in A.S. 46.03.826 would mirror the current definition of release in A.S. 46.09.900, which deals with Hazardous Substance Release Control. This would clearly place liability upon the guilty party responsible for the release. Lastly, I would suggest the following revision (which would be even better than the revision I previously proposed in this correspondence) and possibly serve the intent of SB110.

*Sec. 4. Adding a new subsection to read amends A.S. 46.03.822:

(b) Notwithstanding other provisions of this section and notwithstanding the definition of "release" in A.S. 46.03.826, for purposes of this section, a release is considered to have occurred when a hazardous substance is first introduced into the environment, and a person is not liable for the spread or migration of the hazardous substance after its initial release if

- (1) The person was not responsible for the initial release;
- (2) The person has satisfied the requirements of (2), (A), & (B) by acting responsibly after discovery of the release and
- (3) Has not caused or increased the spread or migration through intentional misconduct or gross negligence.
- (4) The person is a governmental entity that acquired the facility.

(A) By escheat, bankruptcy, foreclosure, tax delinquency, or abandonment;

(B) [Or] through an [ANOTHER] involuntary transfer or acquisition; [,] or

(C) Through the exercise of eminent domain authority by purchase or condemnation;

(3) The person is a corporation organized under 43 U.S.C. 1601 - 1629e (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)

Thank you for your consideration in this matter. I know that your time during this period of legislator is valuable. Please understand that this issue affects every property owner in the state of Alaska, both local government and the private sector.

Sincerely,



Virgil Norton

Drop

1-LS0360\N
Cook
4/28/99

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATOR WILKEN**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for the release of hazardous substances; and
2 providing for an effective date."

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

4 * **Section 1.** AS 46.03.822 is amended by adding new subsections to read:

5 (l) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

1 or contributed to the release or threatened release of a hazardous substance"

2 (1) does not include the failure to prevent the passive leaching at or
3 from a facility or vessel of a hazardous substance in the air, land, or water that had
4 first been released to the environment by a person other than the governmental unit
5 that acquired the facility or vessel;

6 (2) does not include the exercise or failure to exercise regulatory or
7 enforcement authority;

8 (3) after the ownership or control of the facility or vessel has been
9 acquired by the governmental unit, includes

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

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

15 (m) For purposes of determining liability in an action to recover damages or
16 costs under this section, a release shall be considered to have occurred when a
17 hazardous substance is first introduced into the environment. A party, other than the
18 party responsible for the initial release, who has acted responsibly upon discovering
19 contamination in accordance with (b)(2) of this section may not be held liable for the
20 spread or migration of the hazardous substance except by an act of intentional
21 misconduct or gross negligence.

22 * Sec. 2. AS 46.03.826(9) is amended to read:

23 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
24 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
25 environment, including the abandonment or discarding of barrels, containers, and other
26 closed receptacles containing any hazardous substance, but excluding

27 (A) any release that results in exposure to persons solely within
28 a workplace, with respect to a claim that those persons may assert against the
29 persons' employer; [AND]

30 (B) emissions from the engine exhaust of a motor vehicle,
31 rolling stock, aircraft, or vessel; and

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 26, 1999

SUBJECT: Liability for the release of hazardous substances (CSSB 110(JUD))

TO: Senator Robin Taylor
Chair, Senate Judiciary Committee
Attn: Sue Mossgrove

FROM: Tamara Brandt Cook
Director *TBC*

Here is the draft committee substitute you requested. The added amendments, being broader in application than the original language added to AS 46.03.822 as subsection (l), do not seem to fit very well with that subsection. It may be that the new material (in sec. 1 of this draft as (m) and (n)) make much of subsection (l) unnecessary. The requested change in the definition of "release" is found in bill sec. 2.

It appears to me as though these changes to the state law may not comply with requirements of CERCLA (42 U.S.C. 9601 et seq.). For example, the "innocent landowner exception" to property owner liability under CERCLA is available only to defendants who meet all the federal tests, one of which is fulfillment of a duty to make appropriate inquiry at the time of acquisition into the previous ownership and use of property. (Westwood Pharmaceuticals, Inc. v. National Fuel Gas Distribution Corp., (CA2 NY 1992) 963 F.d. 85) I cannot see how (m) and (n) include that requirement of inquiry. Likewise, the newly added exclusion to the definition of "release" in sec. 2 is not found in the definition of "release" used in CERCLA (42 U.S.C. 9601 (22)) (contrast also the new (C) with the more limited definition of "Act of God" found in 42 U.S.C. 9601(1)).

T If these amendments to state law go beyond the "innocent landowner exception" to liability under CERCLA, then a property owner, even if not liable under state law, will be liable under federal law. (United States v. A & F Materials Co., (SD Ill 1984) 578 F.Supp 1249)

I have two questions about the material added as new subsection (n). Should the reference on page 2, line 23 to "section" be "subsection"? Should the references to "facility" also include references to "vessel"? I also don't understand the interaction between each of the new subsections (m) and (n). Note that (n) exonerates a person from liability for any one of the seven listed reasons.

TBC:lmb
99-059.lmb

Please review L

Enclosure

1-LS0360M
Cook ✓
4/26/99
TAYLOR
4/26
+ MEMO

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR WILKEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for the release of hazardous substances; and
2 providing for an effective date."

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

4 * **Section 1.** AS 46.03.822 is amended by adding new subsections to read:

5 (l) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

1 or contributed to the release or threatened release of a hazardous substance"

2 (1) does not include the failure to prevent the passive leaching at or
3 from a facility or vessel of a hazardous substance in the air, land, or water that had
4 first been released to the environment by a person other than the governmental unit
5 that acquired the facility or vessel;

6 (2) does not include the exercise or failure to exercise regulatory or
7 enforcement authority;

8 (3) after the ownership or control of the facility or vessel has been
9 acquired by the governmental unit, includes

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

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

15 (m) For purposes of determining liability in an action to recover damages or
16 costs under this section, a release shall be considered to have occurred when a
17 hazardous substance is first introduced into the environment. A party, other than the
18 party responsible for the initial release, who has acted responsibly upon discovering
19 contamination in accordance with (b)(2) of this section may not be held liable for the
20 spread or migration of the hazardous substance except by an act of intentional
21 misconduct or gross negligence.

22 (n) Notwithstanding other provisions of this section and notwithstanding the
23 definition of "release" in AS 46.03.826, for purposes of this section, a release is
24 considered to have occurred when a hazardous substance is first introduced into the
25 environment, and a person is not liable for the spread or migration of the hazardous
26 substance after its initial release if the person

27 (1) was not responsible for the initial release;

28 (2) has satisfied the requirements of (b)(2) by acting responsibly after
29 discovery of the release;

30 (3) has not caused or increased the spread or migration through
31 intentional misconduct or gross negligence;

- 1 (4) is a governmental entity that acquired the facility
2 (A) by escheat, bankruptcy, foreclosure, tax delinquency, or
3 abandonment;
4 (B) through an involuntary transfer or acquisition; or
5 (C) through the exercise of eminent domain authority by
6 purchase or condemnation;
7 (5) is a corporation organized under 43 U.S.C. 1601 - 1629e (Alaska
8 Native Claims Settlement Act) that acquired the facility under those sections;
9 (6) acquired the facility by inheritance or bequest; or
10 (7) is a state governmental entity and the state acquired the facility
11 under Public Law 85-508 (Alaska Statehood Act).

12 * Sec. 2. AS 46.03.826(9) is amended to read:

- 13 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
14 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
15 environment, including the abandonment or discarding of barrels, containers, and other
16 closed receptacles containing any hazardous substance, but excluding
17 (A) any release that results in exposure to persons solely within
18 a workplace, with respect to a claim that those persons may assert against the
19 persons' employer; [AND]
20 (B) emissions from the engine exhaust of a motor vehicle,
21 rolling stock, aircraft, or vessel; and
22 (C) an act of nature occurring after the release of a
23 hazardous substance into the environment;

24 * Sec. 3. APPLICABILITY. AS 46.03.822(l), as added in sec. 1 of this Act, applies to a
25 vessel or facility acquired by a governmental entity on or after the effective date of this Act.
26 For purposes of this section, when foreclosure by a municipality is involved, the property is
27 acquired on the date it is deeded to the municipality under AS 29.45.450.

28 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

GARY WILKEN

SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees

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Member: Health, Education, &
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SB 110

An Act relating to liability involving certain property acquired by a governmental entity; 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. Each year municipalities publish a foreclosure list for the previous year's delinquent taxes and present a petition to the superior court for judgement. The final step in the process is the sale of the delinquent property if the delinquent taxpayer doesn't repurchase it from the municipality prior to sale. Municipalities are concerned that they may be held liable for pre-existing contamination of foreclosed land with significant environmental remediation costs.

Some properties with delinquent taxes are contaminated. Contaminated land is subject to both state and federal law, both of which establish strict liability (liability without regard to fault). 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(c)(2) to read "a governmental entity that acquired the facility by escheat, bankruptcy, foreclosure, tax delinquency, or abandonment" so 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.



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,

A handwritten signature in black ink that reads "Kevin Ritchie".

Kevin Ritchie
Executive Director

Member of the National League of Cities and the National Association of Counties



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  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.

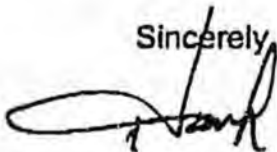
Payment of taxes is the obligation of every property owner, regardless of the condition of their property. If one group of property owners avoids the payment of taxes because of the condition of their property, and no action is taken to collect the taxes due, that "shortfall" is placed on the shoulders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