

SB

164

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 4/2/03

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4-9-03

Resources Committee considered SENATE BILL NO. 164

**SB 164 EXTEND BOARD OF STORAGE TANK ASSISTANCE**

"An Act extending the termination date of the Board of Storage Tank Assistance; and providing for an effective date."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DEC	4/8/03	✓		

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Ralph Seckins</i>	✓			
<i>Ben Stumm</i>	✓			
<i>Theresa H. Warner</i>	✓			
<i>Paul Knight</i>	✓			
<i>Debra J. ...</i>	✓			
CHAIR: <i>Scott Ogan</i>			X	

# **LEGISLATIVE BUDGET & AUDIT COMMITTEE**

**REPRESENTATIVE RALPH SAMUELS, CHAIR**

**To: Senator Scott Ogan  
Chair, Senate Resources Committee**

**From: Representative Ralph Samuels** 

**Date: April 2, 2003**

**RE: Hearing for Senate Bill 164**

**Please schedule a hearing for Senate Bill 164, "Extend Board of Storage Tank Assistance," in the Senate Resources Committee at your earliest convenience.**

**I have attached the following:**

- **Sponsor statement**
- **Current copy of the bill**
- **Conclusion from the Legislative Audit sunset audit report (complete audit can be provided on request)**
- **Fiscal note from the companion House Bill 187**

**If you have any questions, please contact Laura Achee in my office at extension 6590.**

**Email: Representative\_Ralph\_Samuels@legis.state.ak.us**

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**LEGISLATIVE BUDGET & AUDIT COMMITTEE**  

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**REPRESENTATIVE RALPH SAMUELS, CHAIR**

**Sponsor Statement for Senate Bill 164**  
**Extend Board of Storage Tank Assistance**

Under AS 46.03.010(18), the Board of Storage Tank Assistance will sunset on June 30, 2003 unless the Legislature acts to extend the board. House Bill 187 would extend the board to June 30, 2007.

The board (BSTA) was created in 1990 to help the owners and operators of underground storage tanks (UST's) comply with state and federal regulations enacted in response to nationwide concern over possible contamination of drinking water from leaking tanks. These new regulations covered areas including the design, construction and installation of new tanks, and tightened standards for the retrofitting of existing tanks.

Board members have extensive UST knowledge and experience, allowing the board to act as a valuable liaison between the Department of Environmental Conservation and UST owner/operators. BSTA helped the DEC draft reasonable regulations and has helped owner/operators interpret and comply with regulations, saving the State the cost of seizing and cleaning up contaminated sites caused by non-compliance.

The DEC provides financial assistance to UST owner/operators, previously through grant programs, and now through a revolving loan fund, the Storage Tank Assistance Loan Fund. BSTA has been instrumental in mediating disputes between DEC and UST owner/operators over financial assistance determinations and allowable costs, helping avoid the need for formal appeals in some cases.

The Board of Storage Tank Assistance has a proven value, and it is in the best interest of UST owner/operators, the State and the general public to extend the board's sunset date for four years.

**SENATE BILL NO. 164**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT  
COMMITTEE

Introduced: 4/2/03  
Referred: Resources, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act extending the termination date of the Board of Storage Tank Assistance; and  
2 providing for an effective date."

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

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

5 (18) Board of Storage Tank Assistance (AS 46.03.360) - June 30, 2007  
6 [2003];

7 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

## REPORT CONCLUSIONS

In our opinion, the Board of Storage Tank Assistance (BSTA) should be reestablished. The board plays a significant role in promoting compliance throughout the State with regulations and specifications for underground storage tanks (USTs). Such compliance is important in promoting public health in that it protects underground drinking water supplies from pollution, and provides funding necessary to remediate pollution caused by leaking USTs owned and operated by private sector interests.

As an independent board, BSTA has been instrumental in mediating disputes between the Department of Environmental Conservation (DEC) and UST owners/operators. The board appeal procedures are currently more streamlined and efficient than DEC's procedures for hearing appeals, and consequently, less expensive for the State as well as for tank owners/operators. In addition, the board has been afforded the ability to be more creative and flexible in resolving issues based on the intent of the law, rather than strict adherence to regulation. This has allowed the board to apply "common sense" to appeal rulings in instances where DEC felt they were bound by the letter of the law.

During FY 01 and FY 02, the board heard two official appeals which were related to eligible cleanup grant costs. In one appeal, the board upheld DEC's denial of some disputed cleanup costs and overturned DEC's denial of others. In the second appeal, the board upheld DEC's denial of the disputed cleanup costs, but identified and corrected DEC's misinterpretation of the cleanup grant cap ceiling.

The board's executive director and chair person have been on the board since its creation in the early 1990s. Additionally, the engineer, contractor, and large tank owner seats have been held by the same individuals since the early to mid 1990s. Through the member's tenure and professional knowledge, they provide a valuable resource to not only tank owners and operators, but also to DEC at little cost to the State.

As a trusted intermediary with tank owners and operators, the board has been able to facilitate the cooperation of tank owners and operators with DEC regulations. This has been accomplished in part through the resolving of disputes and concerns on an informal basis, before they are elevated to appeal status. Facilitating compliance with DEC regulations assists in achieving the overall public policy objective, bringing UST owners/operators into compliance with regulations.

The board actively participates in the making of statutes and regulations pertaining to USTs. The board is statutorily required to adopt regulations to be used by DEC to administer the UST financial assistance program. The board reviews all DEC regulation proposals related to USTs. The board also acts as an information conduit to tank owners/operators, providing regulation explanations in terms understandable to the particular owner/operator. Without the board, these questions would fall on DEC, resulting in an increased workload for DEC employees and possibly higher costs for the State.

The board has extensive support from the UST tank owner and operator community. AUTOO has, and continues to express a fervent need to maintain BSTA.

Overall, BSTA has enhanced cooperation between tank owners/operators and DEC. The board continues to promote compliance with underground storage tank regulations and (ultimately) a safer environment through:

- Its role in hearing appeals.
- Writing financial assistance regulations.
- Reviewing and approving UST regulations.
- Being a trusted intermediary and information conduit between DEC and tank owners/operators.

In addition, the board's contribution to tank owners/operators compliance with regulations and the financial assistance program, have prevented the State from having to take over UST sites. As a result, the State has been saved from the costs of cleaning up contaminated sites.

BSTA can facilitate a smooth transition between the repeal of the cleanup grant program on June 30, 2004, and the fine-tuning of cleanup loan regulations and procedures. After these events, the only board roles left will be the hearing of disputes related to "no further action" letters, and UST regulation review and approval. At such time the continued justification for the board would be questionable.

The board is currently experiencing a downturn in activity. However, the termination of the cleanup grant program, coupled with the implementation of the new loan program, should result in an increase in activity in future years. Given the expectation of future activity, and the institutional knowledge of the board, we recommend the legislature extend the board's termination date until June 30, 2007.

## ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

*Determine the extent to which the board, commission or program has operated in the public interest.*

### Board Resolves Disputes

One of the board's statutory duties is to hear appeals from owners and operators who disagree with DEC's financial assistance determinations. The board had adopted regulations on the appeal process. Once an appeal is requested, regulations require a hearing to be held at the next scheduled board meeting, and a decision to be issued within ten days.

The board is in compliance with regulations. The board heard two appeals in the last two years. Both of these were related to eligibility of cleanup costs. In one appeal, the board ruling provided satisfaction to both DEC and the appellant by allowing some of the costs, and upholding the disallowance of other disputed costs.

In the second appeal, the board upheld DEC's disallowance of the disputed costs. Through the appeal process, the board was made aware of an issue which effected many grantees. DEC was considering the cleanup grant cap to effectively be \$225,000 (\$250,000 less \$25,000 out-of-pocket costs). The board disagreed, and stated that the statute indicated that \$250,000 in grant funds should be available. While the board disallowed the costs being disputed, they made available additional grant funds for other allowable cleanup costs of the appellant.

According to the board, it has worked with multiple UST owners and operators who have disagreed with DEC's actions, but due to the board's intervention, did not request an appeal. Often an explanation or clarification of procedures by the board's executive director has eliminated the need for a formal appeal. The executive director estimates that approximately four to five potential appeals were averted in the prior year.

### Information provided to interested parties

The board utilizes several mediums to ensure that owners and operators are informed of federal and state regulations.

- The board, when applicable, contributes articles to DEC's newsletter *Alaska Tank News*. Articles address board activities or changes in regulations or policies. This newsletter is distributed to tank owners and operators, and is available on DEC's website.