

SB

64

<TARGET><BILL>SB 64</BILL><SUBJECT>SB
64</SUBJECT><COMM>HRLS30</COMM></TARGET>

30-LS0446N
Nauman
5/4/18

HOUSE CS FOR SENATE BILL NO. 64(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR MICCICHE

REPRESENTATIVE Kito

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting the Uniform Environmental Covenants Act; relating to environmental**
2 **real property covenants and notices of activity and use limitation at contaminated sites**
3 **to ensure the protection of human health, safety, and welfare, and the environment; and**
4 **providing for an effective date."**

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

6 *** Section 1.** AS 46.04 is amended by adding new sections to read:

7 **Article 2A. Uniform Environmental Covenants Act.**

8 **Sec. 46.04.300. Environmental covenant.** (a) An environmental covenant is
9 required if the department makes a remedial decision as part of an environmental
10 response project and that environmental response project results in

11 (1) residual contamination remaining in the environment in
12 concentrations that are safe for some, but not all, uses; or

13 (2) an engineered feature or structure that requires monitoring,
14 maintenance, or operation, or that will not function as intended if disturbed.

15 (b) An environmental covenant may be held by one or more holders. A holder

1 may own an interest in the real property subject to an environmental covenant. The
2 interest of a holder is an interest in real property.

3 (c) A right of the department under AS 46.04.300 - 46.04.390 or under an
4 environmental covenant, other than a right as a holder, is not an interest in real
5 property.

6 (d) The department is bound by any obligation it specifically assumes in an
7 environmental covenant, but the department does not assume obligations merely by
8 signing an environmental covenant. A person other than the department that signs an
9 environmental covenant is bound by the obligations the person assumes in the
10 environmental covenant, but signing the environmental covenant does not change
11 obligations, rights, or protections granted or imposed under law other than under
12 AS 46.04.300 - 46.04.390 unless otherwise provided in the environmental covenant.

13 (e) The following apply to interests in real property in existence at the time an
14 environmental covenant is created or amended:

15 (1) an interest that has priority under other law is not affected by an
16 environmental covenant unless the person that owns the interest subordinates that
17 interest to the environmental covenant;

18 (2) AS 46.04.300 - 46.04.390 do not require a person that owns a prior
19 interest to subordinate that interest to an environmental covenant or to agree to be
20 bound by the environmental covenant;

21 (3) an environmental covenant may contain a subordination agreement,
22 or a subordination agreement may be contained in a separate record;

23 (4) the department may decide not to sign an environmental covenant
24 unless each person holding an interest in the land or any part of the land, including
25 each mortgagee, lessee, lienor, and encumbrancer, irrevocably subordinates the
26 interest to the environmental covenant; the department may waive the requirement in
27 this paragraph;

28 (5) an agreement by a person to subordinate a prior interest to an
29 environmental covenant affects the priority of that person's interest but does not by
30 itself impose any affirmative obligation on the person with respect to the
31 environmental covenant;

1 (6) if the environmental covenant covers commonly owned property in
2 a common interest community, the record may be signed by any person authorized by
3 the governing board of the owners' association.

4 **Sec. 46.04.305. Contents of environmental covenant.** (a) An environmental
5 covenant must

6 (1) state that the interest is an environmental covenant executed under
7 AS 46.04.300 - 46.04.390;

8 (2) contain a legally sufficient description of the real property subject
9 to the environmental covenant;

10 (3) describe the activity and use limitations on the real property;

11 (4) identify every holder;

12 (5) be signed by the commissioner of the department, every holder,
13 and, unless waived by the department, every owner of the fee simple of the real
14 property subject to the environmental covenant except that for an environmental
15 covenant affecting a land or mineral interest of the Department of Natural Resources,
16 the signature of the commissioner of natural resources may not be waived; and

17 (6) identify the name and location of any administrative record for the
18 environmental response project reflected in the environmental covenant.

19 (b) In addition to the information required under (a) of this section, an
20 environmental covenant may contain other information, restrictions, and requirements
21 agreed to by the persons who signed it or required by the department, including

22 (1) requirements for notice following transfer of a specified interest in,
23 or concerning proposed changes in use of, applications for building permits for, or
24 proposals for any site work affecting the contamination on, the property subject to the
25 environmental covenant;

26 (2) requirements for periodic reporting describing compliance with the
27 environmental covenant;

28 (3) rights of access to the property granted in connection with
29 implementation or enforcement of the environmental covenant;

30 (4) a brief narrative description of the contamination and remedy,
31 including the contaminants of concern, the pathways of exposure, limits on exposure,

1 and the location and extent of the contamination;

2 (5) a limitation on the amendment or termination of the environmental
3 covenant that is in addition to the limitations contained in AS 46.04.300 - 46.04.390;
4 and

5 (6) rights of the holder in addition to the right of the holder to enforce
6 the environmental covenant under AS 46.04.335.

7 (c) In addition to other conditions for the department's approval of an
8 environmental covenant, the department may require a specified person who has an
9 interest in the real property that is the subject of the environmental covenant to sign
10 the environmental covenant.

11 **Sec. 46.04.310. Validity of environmental covenant; effect on other**
12 **instruments.** (a) An environmental covenant entered into in accordance with
13 AS 46.04.300 - 46.04.390 runs with the land.

14 (b) An environmental covenant is valid and enforceable even if

15 (1) it is not appurtenant to an interest in real property;

16 (2) it can be or has been assigned to a person other than the original
17 holder;

18 (3) it is not of a character that has been traditionally recognized at
19 common law;

20 (4) it imposes a negative burden;

21 (5) it imposes an affirmative obligation on a person having an interest
22 in the real property or on the holder;

23 (6) the benefit or burden does not touch or concern real property;

24 (7) there is no privity of estate or contract;

25 (8) the holder dies, ceases to exist, resigns, or is replaced; or

26 (9) the owner of an interest subject to the environmental covenant and
27 the holder are the same person.

28 (c) An instrument that creates restrictions or obligations with respect to real
29 property that would qualify as activity and use limitations except for the fact that the
30 instrument was recorded before the effective date of AS 46.04.300 - 46.04.390 is not
31 invalid or unenforceable because of any of the limitations on enforcement of interests

1 described in (b) of this section or because it was identified as an easement, servitude,
2 deed restriction, or other interest. Except as provided in this section, AS 46.04.300 -
3 46.04.390 do not apply to an instrument described in this subsection.

4 (d) AS 46.04.300 - 46.04.390 do not invalidate or render unenforceable any
5 interest, whether designated as an environmental covenant or other interest, that is
6 otherwise enforceable under the law of this state.

7 **Sec. 46.04.315. Notice of environmental covenant.** (a) A copy of the
8 environmental covenant shall be provided by the persons and in the manner required
9 by the department to

10 (1) each person that signed the environmental covenant;

11 (2) each person holding a recorded interest in the real property subject
12 to the environmental covenant;

13 (3) each person in possession of the real property subject to the
14 environmental covenant;

15 (4) each municipality or other unit of local government in which real
16 property subject to the environmental covenant is located; and

17 (5) any other person the department requires.

18 (b) The validity of an environmental covenant is not affected by failure to
19 provide a copy of the environmental covenant as required under this section.

20 **Sec. 46.04.320. Recording of environmental covenant.** (a) An environmental
21 covenant and an amendment or termination of the environmental covenant must be
22 recorded in every recording district in which any portion of the real property subject to
23 the environmental covenant is located. For purposes of indexing, a holder shall be
24 treated as a grantee.

25 (b) An owner of land may not record an environmental covenant unless the
26 owner simultaneously records any subordination documentation required under
27 AS 46.04.300(e).

28 (c) Except as otherwise provided in AS 46.04.325(f), an environmental
29 covenant is subject to state law governing recording and priority of interests in real
30 property.

31 (d) A holder shall provide a copy of the final recorded environmental

1 covenant, an amendment made to the environmental covenant, termination
2 documentation, and documentation of other matters related to the environmental
3 covenant to the department.

4 **Sec. 46.04.325. Duration; modification or termination of environmental**
5 **covenant by administrative or court action.** (a) An environmental covenant is
6 perpetual unless it is

7 (1) by its terms, limited to a specific duration or terminated by the
8 occurrence of a specific event;

9 (2) terminated by consent under AS 46.04.330;

10 (3) terminated under (b) or (e) of this section;

11 (4) terminated by foreclosure of an interest that has priority over the
12 environmental covenant; or

13 (5) terminated or modified in an eminent domain proceeding, but only
14 if

15 (A) the department is a party to the proceeding;

16 (B) every person whose consent is required under
17 AS 46.04.330(a) is given notice of the pendency of the proceeding; and

18 (C) the court determines, after hearing, that the activity and use
19 limitations subject to termination or modification are no longer required to
20 protect human health, safety, or welfare, or the environment.

21 (b) The department may terminate or reduce the burden on the real property of
22 an environmental covenant if the department finds that some or all of the activity and
23 use limitations under the environmental covenant are no longer required to protect
24 human health, safety, or welfare, or the environment, or modify the environmental
25 covenant if the department determines that modification is required adequately to
26 protect human health, safety, or welfare, or the environment.

27 (c) The department shall provide notice of any proposed action under (b) of
28 this section to each person with a current recorded interest in the real property subject
29 to the environmental covenant, each holder, all other persons who originally signed
30 the environmental covenant, or their successors or assigns, and any other person with
31 rights or obligations under the environmental covenant. The department shall provide

1 60 days for comment on the proposed action by parties entitled to notice. A
2 determination by the department under this subsection is a final agency decision. Any
3 person entitled to notice under this subsection may request an adjudicatory hearing
4 under the procedures established by the department under AS 46.04.890.

5 (d) A person entitled to notice under (c) of this section may apply in writing to
6 the department for a determination under (b) of this section that an existing
7 environmental covenant be terminated, that the burden of an environmental covenant
8 be reduced, or that an environmental covenant be modified. The application must
9 specify the determination sought by the applicant, the reasons why the department
10 should make the determination, and the information that would support it. If the
11 department fails to begin a proceeding under (b) of this section within 90 days after
12 receiving the application, the applicant may bring a civil action in superior court for
13 termination, reduction of burden, or modification of the environmental covenant under
14 (e) of this section.

15 (e) The superior court for a recording district in which the real property
16 subject to an environmental covenant is located may, in a de novo action, under the
17 doctrine of changed circumstances, terminate an environmental covenant, reduce an
18 environmental covenant's burden on the real property, or modify the terms of an
19 environmental covenant if the department fails to begin a proceeding within 90 days as
20 provided under (d) of this section. The applicant under (d) of this section, a holder of
21 the environmental covenant, or another person identified in (c) of this section may
22 begin an action under this subsection. The person beginning the action shall serve
23 notice of the action on the department and any person entitled to notice under (c) of
24 this section. The person bringing the action shall make the department a party to the
25 action. The court shall terminate, reduce the burden of, or modify an environmental
26 covenant if the court determines that the person bringing the action shows that some or
27 all of the activity and use limitations under the environmental covenant do not or are
28 no longer required to protect human health, safety, or welfare, or the environment.

29 (f) An environmental covenant may not be extinguished, limited, or impaired
30 through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine
31 of adverse possession, prescription, abandonment, waiver, lack of enforcement,

1 acquiescence, or a similar doctrine.

2 **Sec. 46.04.330. Amendment or termination of environmental covenant by**
3 **consent.** (a) An environmental covenant may be amended or terminated if the
4 amendment or termination is consented to and signed

5 (1) by the department;

6 (2) unless waived by the department, by the current owner of the fee
7 simple of the real property subject to the environmental covenant;

8 (3) by each person that originally signed the environmental covenant,
9 unless the person

10 (A) waived the right to consent to termination or modification
11 in the environmental covenant or in another signed and acknowledged
12 instrument recorded with the recording district;

13 (B) fails to object to the amendment or termination within 60
14 days after a party to the covenant mails, by certified mail, return receipt
15 requested, to the person's last known address, a notice requesting the person's
16 consent to amendment or termination and the return receipt is signed by the
17 person; or

18 (C) cannot be found, as determined by a court, because the
19 person no longer exists or cannot be located or identified with the exercise of
20 reasonable diligence; and

21 (4) except as otherwise provided in (d)(2) of this section, by the holder.

22 (b) If an interest in real property is subject to an environmental covenant, the
23 interest is not affected by an amendment of the environmental covenant unless the
24 current owner of the interest consents to the amendment or has waived in a signed
25 record the right to consent to amendments.

26 (c) Except for an assignment undertaken under a governmental reorganization,
27 assignment of an environmental covenant to a new holder is an amendment.

28 (d) Except as otherwise provided in an environmental covenant,

29 (1) a holder may not assign its interest without consent of the other
30 parties specified in (a) of this section;

31 (2) a holder may be removed and replaced by agreement of the other

1 parties specified in (a) of this section; and

2 (3) a court of competent jurisdiction may fill a vacant holder position.

3 **Sec. 46.04.335. Enforcement of environmental covenant.** (a) The department
4 is the administrating agency for AS 46.04.300 - 46.04.390 and is empowered to
5 administer and enforce AS 46.04.300 - 46.04.390 using the civil or administrative
6 authority granted to it in AS 46.03. However, the department may, but is not required
7 to, assume any administration or enforcement functions other than those directly
8 related to the environmental covenant.

9 (b) A civil action for injunctive or other equitable relief for violation of an
10 environmental covenant may be maintained by

11 (1) a party to the environmental covenant;

12 (2) the department;

13 (3) a person that the environmental covenant expressly grants the
14 power to enforce the environmental covenant;

15 (4) a person whose interest in the real property or whose collateral or
16 liability may be affected by the alleged violation of the environmental covenant; or

17 (5) a municipality or other unit of government that governs the real
18 property subject to the environmental covenant.

19 (c) AS 46.04.300 - 46.04.390 do not limit the regulatory authority of the
20 department in an environmental response project.

21 (d) A person is not responsible for or subject to liability for environmental
22 remediation solely because the person has the right to enforce an environmental
23 covenant.

24 **Sec. 46.04.340. Notice of activity and use limitation.** (a) If a legal
25 impediment prevents an environmental covenant from being entered into, an owner of
26 real property shall, after receiving authorization from the department, record a notice
27 of an activity and use limitation into the appropriate public land records. Failure to
28 record a notice of an activity and use limitation may result in disapproval of the
29 environmental response project.

30 (b) Once the owner or other person assumes an obligation under a notice of
31 activity and use limitation, that owner or person shall comply with those obligations in

1 accordance with AS 46.04.300 - 46.04.390.

2 (c) The enactment, modification, or termination of a notice of activity and use
3 limitation is not valid until it is approved by the department. A notice of activity and
4 use limitation does not convey or constitute an interest in real property.

5 (d) A notice of activity and use limitation must remain in place for current and
6 subsequent landowners unless it is terminated under (e) of this section.

7 (e) A person who proposes to create, modify, or terminate a notice of activity
8 and use limitation shall provide written notice of the person's intention to the
9 department, to all persons holding an interest of record in the real property that will be
10 subject to the notice of activity and use limitation, to all persons known to the person
11 to have an unrecorded interest in the property, and to all affected persons in possession
12 of the property before the creation, modification, or termination, and shall provide the
13 department with

14 (1) a copy of the notice provided;

15 (2) a list of the persons to whom notice was given and the address or
16 other location to which the notice was directed; and

17 (3) title information required by the department.

18 (f) Before unilaterally issuing a notice of activity and use limitation, the
19 department shall provide a copy of the proposed notice of activity and use limitation to
20 all persons holding an interest of record in the real property subject to the notice of
21 activity and use limitation, all persons known to the department to have an unrecorded
22 interest in the property, and all affected persons in possession of the property, and
23 shall offer the persons a minimum of 30 days to comment on the proposed notice of
24 activity and use limitation, unless notice has already been provided under (e) of this
25 section. In determining whether to issue the notice of activity and use limitation
26 unilaterally, the department shall consider any comments received. For a notice of
27 activity and use limitation affecting a land or mineral interest of the Department of
28 Natural Resources, concurrence from the Department of Natural Resources is
29 required.

30 (g) The department shall review and make a determination regarding all
31 requests to create, modify, or terminate a notice of activity and use limitation within

1 90 days after receiving a request that includes all the information described in (a) of
2 this section.

3 (h) Upon issuance or approval of a notice of activity and use limitation, the
4 department shall record the notice in every recording district in which a portion of the
5 real property that is subject to the activity and use limitation is located. For approved
6 notices, the department may allow the owner of the property to record the notice. A
7 person may not record a notice without the department's written approval.

8 (i) The department may authorize any notice of activity and use limitation
9 created in accordance with this section to be replaced by an environmental covenant
10 on the property that is subject to the notice of activity and use limitation. The
11 department may condition its authorization and approval of the termination of the
12 notice of activity and use limitation on the terms of the notice of activity and use
13 limitation, department approval and acceptance, and the effective recording of the
14 environmental covenant.

15 (j) Modification or termination of a notice of activity and use limitation shall
16 be recorded as provided in (h) of this section. A person may not record a modification
17 or termination of a notice of activity and use limitation without the department's
18 written approval.

19 (k) A determination by the department to issue, approve, modify, or terminate
20 a notice of activity and use limitation is subject to appeal under the procedures
21 described in AS 46.04.890.

22 (l) A notice of activity and use limitation is not

23 (1) a servitude arising from an environmental response project; or

24 (2) an interest in real property.

25 **Sec. 46.04.345. Relationship to other land-use law.** AS 46.04.300 -
26 46.04.390 do not authorize a use of real property that is otherwise prohibited under
27 AS 29.40 or AS 38.05.037, by law other than AS 46.04.300 - 46.04.390 regulating use
28 of real property, or by a recorded instrument that has priority over the environmental
29 covenant or a notice of activity and use limitation. An environmental covenant or a
30 notice of activity and use limitation may prohibit or restrict uses of real property that
31 are authorized by zoning or by law other than AS 46.04.300 - 46.04.390.

1 **Sec. 46.04.350. Registry.** The department shall maintain a registry that
2 contains all environmental covenants and notices of activity and use limitation and any
3 amendment or termination of those instruments. The registry may also contain any
4 other information concerning environmental covenants and notices of activity and use
5 limitation and the real property subject to them that the department considers
6 appropriate.

7 **Sec. 46.04.355. Uniformity of application and construction.** In applying and
8 construing AS 46.04.300 - 46.04.390, consideration must be given to the need to
9 promote uniformity of the law with respect to its subject matter among states that
10 enact similar provisions.

11 **Sec. 46.04.390. Definitions.** In AS 46.04.300 - 46.04.390,

12 (1) "common interest community" means a condominium, cooperative,
13 or other real property with respect to which a person, by virtue of the person's
14 ownership of a parcel of real property, is obligated to pay property taxes or insurance
15 premiums, or pay for maintenance, or improvement of other real property described in
16 a recorded environmental covenant that creates the common interest community;

17 (2) "environmental covenant" means a servitude arising under an
18 environmental response project that imposes activity and use limitations;

19 (3) "environmental response project" means a plan or work performed
20 or maintenance of work performed under a federal or state program

21 (A) including this chapter, AS 46.03, AS 46.09, 42 U.S.C.
22 9601 - 9675 (Comprehensive Environmental Response, Compensation and
23 Liability Act), as amended, and 42 U.S.C. 6901 - 6992k (Resource
24 Conservation and Recovery Act), as amended, governing environmental
25 remediation and management of contaminated real property; or

26 (B) governing maintenance, closure, or corrective action of a
27 solid waste disposal facility or hazardous waste management unit;

28 (4) "holder" means the grantee of an environmental covenant as
29 specified in AS 46.04.300(b);

30 (5) "notice of activity and use limitation" means a notice of a
31 restriction on or obligation concerning an activity on or use of real property, in

1 accordance with AS 46.04.300 - 46.04.390;

2 (6) "record" has the meaning given in AS 40.17.900.

3 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: REGULATIONS. The Department of Environmental Conservation
6 and the Department of Natural Resources may adopt regulations necessary to implement this
7 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
8 before the effective date of the law implemented by the regulation.

9 * **Sec. 3.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE



HOUSE RULES COMMITTEE CHAIR

State Capitol Room 216, Juneau, AK 99801-1182 (907) 465-4998
1500 W. Benson Blvd. Anchorage, AK 99501 Phone: (907) 269-0216

Explanation of Changes for the House Committee Substitute (HCS) to Senate Bill 64 (RLS) – Adopt Uniform Environmental Covenants Act Version N

The House Rules Committee substitute (CS) for SB64 (version N) clarifies that the Notice of Activity and Use Limitation that would be utilized on Department of Defense (DoD) property are not interests in real property. This is consistent with the Department of Environmental Conservation (DEC)'s interpretation of the original version of the bill. The proposed CS does not change the bill's intent but provides clarity for DoD on this issue. The Notice would provide the needed notification of remaining contamination which is the department's goal.

HOUSE CS FOR SENATE BILL NO. 64(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR MICCICHE

REPRESENTATIVE Kito

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting the Uniform Environmental Covenants Act; relating to environmental**
2 **real property covenants and notices of activity and use limitation at contaminated sites**
3 **to ensure the protection of human health, safety, and welfare, and the environment; and**
4 **providing for an effective date."**

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

6 *** Section 1.** AS 46.04 is amended by adding new sections to read:

7 **Article 2A. Uniform Environmental Covenants Act.**

8 **Sec. 46.04.300. Environmental covenant.** (a) An environmental covenant is
9 required if the department makes a remedial decision as part of an environmental
10 response project and that environmental response project results in

11 (1) residual contamination remaining in the environment in
12 concentrations that are safe for some, but not all, uses; or

13 (2) an engineered feature or structure that requires monitoring,
14 maintenance, or operation, or that will not function as intended if disturbed.

15 (b) An environmental covenant may be held by one or more holders. A holder

1 may own an interest in the real property subject to an environmental covenant. The
2 interest of a holder is an interest in real property.

3 (c) A right of the department under AS 46.04.300 - 46.04.390 or under an
4 environmental covenant, other than a right as a holder, is not an interest in real
5 property.

6 (d) The department is bound by any obligation it specifically assumes in an
7 environmental covenant, but the department does not assume obligations merely by
8 signing an environmental covenant. A person other than the department that signs an
9 environmental covenant is bound by the obligations the person assumes in the
10 environmental covenant, but signing the environmental covenant does not change
11 obligations, rights, or protections granted or imposed under law other than under
12 AS 46.04.300 - 46.04.390 unless otherwise provided in the environmental covenant.

13 (e) The following apply to interests in real property in existence at the time an
14 environmental covenant is created or amended:

15 (1) an interest that has priority under other law is not affected by an
16 environmental covenant unless the person that owns the interest subordinates that
17 interest to the environmental covenant;

18 (2) AS 46.04.300 - 46.04.390 do not require a person that owns a prior
19 interest to subordinate that interest to an environmental covenant or to agree to be
20 bound by the environmental covenant;

21 (3) an environmental covenant may contain a subordination agreement,
22 or a subordination agreement may be contained in a separate record;

23 (4) the department may decide not to sign an environmental covenant
24 unless each person holding an interest in the land or any part of the land, including
25 each mortgagee, lessee, lienor, and encumbrancer, irrevocably subordinates the
26 interest to the environmental covenant; the department may waive the requirement in
27 this paragraph;

28 (5) an agreement by a person to subordinate a prior interest to an
29 environmental covenant affects the priority of that person's interest but does not by
30 itself impose any affirmative obligation on the person with respect to the
31 environmental covenant;

1 (6) if the environmental covenant covers commonly owned property in
2 a common interest community, the record may be signed by any person authorized by
3 the governing board of the owners' association.

4 **Sec. 46.04.305. Contents of environmental covenant.** (a) An environmental
5 covenant must

6 (1) state that the interest is an environmental covenant executed under
7 AS 46.04.300 - 46.04.390;

8 (2) contain a legally sufficient description of the real property subject
9 to the environmental covenant;

10 (3) describe the activity and use limitations on the real property;

11 (4) identify every holder;

12 (5) be signed by the commissioner of the department, every holder,
13 and, unless waived by the department, every owner of the fee simple of the real
14 property subject to the environmental covenant except that for an environmental
15 covenant affecting a land or mineral interest of the Department of Natural Resources,
16 the signature of the commissioner of natural resources may not be waived; and

17 (6) identify the name and location of any administrative record for the
18 environmental response project reflected in the environmental covenant.

19 (b) In addition to the information required under (a) of this section, an
20 environmental covenant may contain other information, restrictions, and requirements
21 agreed to by the persons who signed it or required by the department, including

22 (1) requirements for notice following transfer of a specified interest in,
23 or concerning proposed changes in use of, applications for building permits for, or
24 proposals for any site work affecting the contamination on, the property subject to the
25 environmental covenant;

26 (2) requirements for periodic reporting describing compliance with the
27 environmental covenant;

28 (3) rights of access to the property granted in connection with
29 implementation or enforcement of the environmental covenant;

30 (4) a brief narrative description of the contamination and remedy,
31 including the contaminants of concern, the pathways of exposure, limits on exposure,

1 and the location and extent of the contamination;

2 (5) a limitation on the amendment or termination of the environmental
3 covenant that is in addition to the limitations contained in AS 46.04.300 - 46.04.390;
4 and

5 (6) rights of the holder in addition to the right of the holder to enforce
6 the environmental covenant under AS 46.04.335.

7 (c) In addition to other conditions for the department's approval of an
8 environmental covenant, the department may require a specified person who has an
9 interest in the real property that is the subject of the environmental covenant to sign
10 the environmental covenant.

11 **Sec. 46.04.310. Validity of environmental covenant; effect on other**
12 **instruments.** (a) An environmental covenant entered into in accordance with
13 AS 46.04.300 - 46.04.390 runs with the land.

14 (b) An environmental covenant is valid and enforceable even if

15 (1) it is not appurtenant to an interest in real property;

16 (2) it can be or has been assigned to a person other than the original
17 holder;

18 (3) it is not of a character that has been traditionally recognized at
19 common law;

20 (4) it imposes a negative burden;

21 (5) it imposes an affirmative obligation on a person having an interest
22 in the real property or on the holder;

23 (6) the benefit or burden does not touch or concern real property;

24 (7) there is no privity of estate or contract;

25 (8) the holder dies, ceases to exist, resigns, or is replaced; or

26 (9) the owner of an interest subject to the environmental covenant and
27 the holder are the same person.

28 (c) An instrument that creates restrictions or obligations with respect to real
29 property that would qualify as activity and use limitations except for the fact that the
30 instrument was recorded before the effective date of AS 46.04.300 - 46.04.390 is not
31 invalid or unenforceable because of any of the limitations on enforcement of interests

1 described in (b) of this section or because it was identified as an easement, servitude,
2 deed restriction, or other interest. Except as provided in this section, AS 46.04.300 -
3 46.04.390 do not apply to an instrument described in this subsection.

4 (d) AS 46.04.300 - 46.04.390 do not invalidate or render unenforceable any
5 interest, whether designated as an environmental covenant or other interest, that is
6 otherwise enforceable under the law of this state.

7 **Sec. 46.04.315. Notice of environmental covenant.** (a) A copy of the
8 environmental covenant shall be provided by the persons and in the manner required
9 by the department to

10 (1) each person that signed the environmental covenant;

11 (2) each person holding a recorded interest in the real property subject
12 to the environmental covenant;

13 (3) each person in possession of the real property subject to the
14 environmental covenant;

15 (4) each municipality or other unit of local government in which real
16 property subject to the environmental covenant is located; and

17 (5) any other person the department requires.

18 (b) The validity of an environmental covenant is not affected by failure to
19 provide a copy of the environmental covenant as required under this section.

20 **Sec. 46.04.320. Recording of environmental covenant.** (a) An environmental
21 covenant and an amendment or termination of the environmental covenant must be
22 recorded in every recording district in which any portion of the real property subject to
23 the environmental covenant is located. For purposes of indexing, a holder shall be
24 treated as a grantee.

25 (b) An owner of land may not record an environmental covenant unless the
26 owner simultaneously records any subordination documentation required under
27 AS 46.04.300(e).

28 (c) Except as otherwise provided in AS 46.04.325(f), an environmental
29 covenant is subject to state law governing recording and priority of interests in real
30 property.

31 (d) A holder shall provide a copy of the final recorded environmental

1 covenant, an amendment made to the environmental covenant, termination
2 documentation, and documentation of other matters related to the environmental
3 covenant to the department.

4 **Sec. 46.04.325. Duration; modification or termination of environmental**
5 **covenant by administrative or court action.** (a) An environmental covenant is
6 perpetual unless it is

7 (1) by its terms, limited to a specific duration or terminated by the
8 occurrence of a specific event;

9 (2) terminated by consent under AS 46.04.330;

10 (3) terminated under (b) or (e) of this section;

11 (4) terminated by foreclosure of an interest that has priority over the
12 environmental covenant; or

13 (5) terminated or modified in an eminent domain proceeding, but only
14 if

15 (A) the department is a party to the proceeding;

16 (B) every person whose consent is required under
17 AS 46.04.330(a) is given notice of the pendency of the proceeding; and

18 (C) the court determines, after hearing, that the activity and use
19 limitations subject to termination or modification are no longer required to
20 protect human health, safety, or welfare, or the environment.

21 (b) The department may terminate or reduce the burden on the real property of
22 an environmental covenant if the department finds that some or all of the activity and
23 use limitations under the environmental covenant are no longer required to protect
24 human health, safety, or welfare, or the environment, or modify the environmental
25 covenant if the department determines that modification is required adequately to
26 protect human health, safety, or welfare, or the environment.

27 (c) The department shall provide notice of any proposed action under (b) of
28 this section to each person with a current recorded interest in the real property subject
29 to the environmental covenant, each holder, all other persons who originally signed
30 the environmental covenant, or their successors or assigns, and any other person with
31 rights or obligations under the environmental covenant. The department shall provide

1 60 days for comment on the proposed action by parties entitled to notice. A
2 determination by the department under this subsection is a final agency decision. Any
3 person entitled to notice under this subsection may request an adjudicatory hearing
4 under the procedures established by the department under AS 46.04.890.

5 (d) A person entitled to notice under (c) of this section may apply in writing to
6 the department for a determination under (b) of this section that an existing
7 environmental covenant be terminated, that the burden of an environmental covenant
8 be reduced, or that an environmental covenant be modified. The application must
9 specify the determination sought by the applicant, the reasons why the department
10 should make the determination, and the information that would support it. If the
11 department fails to begin a proceeding under (b) of this section within 90 days after
12 receiving the application, the applicant may bring a civil action in superior court for
13 termination, reduction of burden, or modification of the environmental covenant under
14 (e) of this section.

15 (e) The superior court for a recording district in which the real property
16 subject to an environmental covenant is located may, in a de novo action, under the
17 doctrine of changed circumstances, terminate an environmental covenant, reduce an
18 environmental covenant's burden on the real property, or modify the terms of an
19 environmental covenant if the department fails to begin a proceeding within 90 days as
20 provided under (d) of this section. The applicant under (d) of this section, a holder of
21 the environmental covenant, or another person identified in (c) of this section may
22 begin an action under this subsection. The person beginning the action shall serve
23 notice of the action on the department and any person entitled to notice under (c) of
24 this section. The person bringing the action shall make the department a party to the
25 action. The court shall terminate, reduce the burden of, or modify an environmental
26 covenant if the court determines that the person bringing the action shows that some or
27 all of the activity and use limitations under the environmental covenant do not or are
28 no longer required to protect human health, safety, or welfare, or the environment.

29 (f) An environmental covenant may not be extinguished, limited, or impaired
30 through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine
31 of adverse possession, prescription, abandonment, waiver, lack of enforcement,

1 acquiescence, or a similar doctrine.

2 **Sec. 46.04.330. Amendment or termination of environmental covenant by**
3 **consent.** (a) An environmental covenant may be amended or terminated if the
4 amendment or termination is consented to and signed

5 (1) by the department;

6 (2) unless waived by the department, by the current owner of the fee
7 simple of the real property subject to the environmental covenant;

8 (3) by each person that originally signed the environmental covenant,
9 unless the person

10 (A) waived the right to consent to termination or modification
11 in the environmental covenant or in another signed and acknowledged
12 instrument recorded with the recording district;

13 (B) fails to object to the amendment or termination within 60
14 days after a party to the covenant mails, by certified mail, return receipt
15 requested, to the person's last known address, a notice requesting the person's
16 consent to amendment or termination and the return receipt is signed by the
17 person; or

18 (C) cannot be found, as determined by a court, because the
19 person no longer exists or cannot be located or identified with the exercise of
20 reasonable diligence; and

21 (4) except as otherwise provided in (d)(2) of this section, by the holder.

22 (b) If an interest in real property is subject to an environmental covenant, the
23 interest is not affected by an amendment of the environmental covenant unless the
24 current owner of the interest consents to the amendment or has waived in a signed
25 record the right to consent to amendments.

26 (c) Except for an assignment undertaken under a governmental reorganization,
27 assignment of an environmental covenant to a new holder is an amendment.

28 (d) Except as otherwise provided in an environmental covenant,

29 (1) a holder may not assign its interest without consent of the other
30 parties specified in (a) of this section;

31 (2) a holder may be removed and replaced by agreement of the other

1 parties specified in (a) of this section; and

2 (3) a court of competent jurisdiction may fill a vacant holder position.

3 **Sec. 46.04.335. Enforcement of environmental covenant.** (a) The department
4 is the administrating agency for AS 46.04.300 - 46.04.390 and is empowered to
5 administer and enforce AS 46.04.300 - 46.04.390 using the civil or administrative
6 authority granted to it in AS 46.03. However, the department may, but is not required
7 to, assume any administration or enforcement functions other than those directly
8 related to the environmental covenant.

9 (b) A civil action for injunctive or other equitable relief for violation of an
10 environmental covenant may be maintained by

11 (1) a party to the environmental covenant;

12 (2) the department;

13 (3) a person that the environmental covenant expressly grants the
14 power to enforce the environmental covenant;

15 (4) a person whose interest in the real property or whose collateral or
16 liability may be affected by the alleged violation of the environmental covenant; or

17 (5) a municipality or other unit of government that governs the real
18 property subject to the environmental covenant.

19 (c) AS 46.04.300 - 46.04.390 do not limit the regulatory authority of the
20 department in an environmental response project.

21 (d) A person is not responsible for or subject to liability for environmental
22 remediation solely because the person has the right to enforce an environmental
23 covenant.

24 **Sec. 46.04.340. Notice of activity and use limitation.** (a) If a legal
25 impediment prevents an environmental covenant from being entered into, an owner of
26 real property shall, after receiving authorization from the department, record a notice
27 of an activity and use limitation into the appropriate public land records. Failure to
28 record a notice of an activity and use limitation may result in disapproval of the
29 environmental response project.

30 (b) Once the owner or other person assumes an obligation under a notice of
31 activity and use limitation, that owner or person shall comply with those obligations in

1 accordance with AS 46.04.300 - 46.04.390.

2 (c) The enactment, modification, or termination of a notice of activity and use
3 limitation is not valid until it is approved by the department.

4 (d) A notice of activity and use limitation must remain in place for current and
5 subsequent landowners unless it is terminated under (e) of this section.

6 (e) A person who proposes to create, modify, or terminate a notice of activity
7 and use limitation shall provide written notice of the person's intention to the
8 department, to all persons holding an interest of record in the real property that will be
9 subject to the notice of activity and use limitation, to all persons known to the person
10 to have an unrecorded interest in the property, and to all affected persons in possession
11 of the property before the creation, modification, or termination, and shall provide the
12 department with

13 (1) a copy of the notice provided;

14 (2) a list of the persons to whom notice was given and the address or
15 other location to which the notice was directed; and

16 (3) title information required by the department.

17 (f) Before unilaterally issuing a notice of activity and use limitation, the
18 department shall provide a copy of the proposed notice of activity and use limitation to
19 all persons holding an interest of record in the real property subject to the notice of
20 activity and use limitation, all persons known to the department to have an unrecorded
21 interest in the property, and all affected persons in possession of the property, and
22 shall offer the persons a minimum of 30 days to comment on the proposed notice of
23 activity and use limitation, unless notice has already been provided under (e) of this
24 section. In determining whether to issue the notice of activity and use limitation
25 unilaterally, the department shall consider any comments received. For a notice of
26 activity and use limitation affecting a land or mineral interest of the Department of
27 Natural Resources, concurrence from the Department of Natural Resources is
28 required.

29 (g) The department shall review and make a determination regarding all
30 requests to create, modify, or terminate a notice of activity and use limitation within
31 90 days after receiving a request that includes all the information described in (a) of

1 this section.

2 (h) Upon issuance or approval of a notice of activity and use limitation, the
3 department shall record the notice in every recording district in which a portion of the
4 real property that is subject to the activity and use limitation is located. For approved
5 notices, the department may allow the owner of the property to record the notice. A
6 person may not record a notice without the department's written approval.

7 (i) Unless there is a legal impediment that prevents entering into an
8 environmental covenant, the department may authorize that any notice of activity and
9 use limitation created in accordance with this section be replaced by an environmental
10 covenant on the property that is subject to the notice of activity and use limitation. The
11 department may condition its authorization and approval of the termination of the
12 notice of activity and use limitation on the terms of the notice of activity and use
13 limitation, department approval and acceptance, and the effective recording of the
14 environmental covenant.

15 (j) Modification or termination of a notice of activity and use limitation shall
16 be recorded as provided in (h) of this section. A person may not record a modification
17 or termination of a notice of activity and use limitation without the department's
18 written approval.

19 (k) A determination by the department to issue, approve, modify, or terminate
20 a notice of activity and use limitation is subject to appeal under the procedures
21 described in AS 46.04.890.

22 (l) A notice of activity and use limitation, whether recorded or unrecorded, is
23 not

24 (1) a servitude arising from an environmental response project; or

25 (2) an interest in real property.

26 **Sec. 46.04.345. Relationship to other land-use law.** AS 46.04.300 -
27 46.04.390 do not authorize a use of real property that is otherwise prohibited under
28 AS 29.40 or AS 38.05.037, by law other than AS 46.04.300 - 46.04.390 regulating use
29 of real property, or by a recorded instrument that has priority over the environmental
30 covenant or a notice of activity and use limitation. An environmental covenant or a
31 notice of activity and use limitation may prohibit or restrict uses of real property that

1 are authorized by zoning or by law other than AS 46.04.300 - 46.04.390.

2 **Sec. 46.04.350. Registry.** The department shall maintain a registry that
3 contains all environmental covenants and notices of activity and use limitation and any
4 amendment or termination of those instruments. The registry may also contain any
5 other information concerning environmental covenants and notices of activity and use
6 limitation and the real property subject to them that the department considers
7 appropriate.

8 **Sec. 46.04.355. Uniformity of application and construction.** In applying and
9 construing AS 46.04.300 - 46.04.390, consideration must be given to the need to
10 promote uniformity of the law with respect to its subject matter among states that
11 enact similar provisions.

12 **Sec. 46.04.390. Definitions.** In AS 46.04.300 - 46.04.390,

13 (1) "common interest community" means a condominium, cooperative,
14 or other real property with respect to which a person, by virtue of the person's
15 ownership of a parcel of real property, is obligated to pay property taxes or insurance
16 premiums, or pay for maintenance, or improvement of other real property described in
17 a recorded environmental covenant that creates the common interest community;

18 (2) "environmental covenant" means a servitude arising under an
19 environmental response project that imposes activity and use limitations;

20 (3) "environmental response project" means a plan or work performed
21 or maintenance of work performed under a federal or state program

22 (A) including this chapter, AS 46.03, AS 46.09, 42 U.S.C.
23 9601 - 9675 (Comprehensive Environmental Response, Compensation and
24 Liability Act), as amended, and 42 U.S.C. 6901 - 6992k (Resource
25 Conservation and Recovery Act), as amended, governing environmental
26 remediation and management of contaminated real property; or

27 (B) governing maintenance, closure, or corrective action of a
28 solid waste disposal facility or hazardous waste management unit;

29 (4) "holder" means the grantee of an environmental covenant as
30 specified in AS 46.04.300(b);

31 (5) "notice of activity and use limitation" means a notice of a

1 restriction on or obligation concerning an activity on or use of real property, in
2 accordance with AS 46.04.300 - 46.04.390;

3 (6) "record" has the meaning given in AS 40.17.900.

4 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: REGULATIONS. The Department of Environmental Conservation
7 and the Department of Natural Resources may adopt regulations necessary to implement this
8 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
9 before the effective date of the law implemented by the regulation.

10 * **Sec. 3.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE



HOUSE RULES COMMITTEE CHAIR

State Capitol Room 216, Juneau, AK 99801-1182 (907) 465-4998
1500 W. Benson Blvd. Anchorage, AK 99501 Phone: (907) 269-0216

Explanation of Changes for the House Committee Substitute (HCS) to Senate Bill 64 (RLS) – Adopt Uniform Environmental Covenants Act Version T

The House Rules Committee substitute (CS) for SB64 (version T) clarifies that the Notice of Activity and Use Limitation that would be utilized on Department of Defense (DoD) property are not interests in real property. This is consistent with the Department of Environmental Conservation (DEC)'s interpretation of the original version of the bill. The proposed CS does not change the bill's intent but provides clarity for DoD on this issue. The Notice would provide the needed notification of remaining contamination which is the department's goal.

Between version N and version T the following changes were made:

On Page 10, Lines 2-4 (Section 46.04.340(c)) -- delete "A notice of activity and use limitation does not convey or constitute an interest in real property."

On Page 10, Lines 8-14 (Section 46.04.340(i)) – insert "for that property, except where a legal impediment prevents an environmental covenant from being entered into."

On Page 11, Line 22 adds the language "whether recorded or unrecorded"



DEPARTMENT OF THE AIR FORCE
REGIONAL ENVIRONMENTAL COORDINATOR, REGION 10
510 Hickam Ave., Bldg 250 Bay A,
Travis AFB, CA 94535

May 4, 2018

Representative LeDoux
State Capitol Room 216
Juneau, AK 99801

Subject: Department of Defense Proposed Changes to SB64

Representative LeDoux:

Thank you for the opportunity to comment on SB64. The Department of Defense (DoD) has discussed the proposed language with the Alaska Department of Environmental Conservation and would like to update the proposed changes to the bill that DoD had previously submitted. The DoD recommends the following edits to the proposed language of SB 64 in line-in/line-out format:

Sec. 46.04.340(c) The enactment, modification, or termination of a notice of activity and use limitation is not valid until it is approved by the department. ~~A notice of activity and use limitation is an agency action based on the state's police power.~~

Sec 46.04.340(d) A notice of activity and use limitation ~~is binding on~~ must remain in place for current and subsequent landowners of the affected land and any person using or possessing an interest in the land until otherwise addressed pursuant to AS 46.04.340(e).

46.04.340(i) The department may authorize the notice of activity and use limitation to be replaced by an environmental covenant for that property, except where a legal impediment prevents an environmental covenant from being entered into. The department may condition its authorization and approval of the termination of the notice of activity and use limitation on the terms of the notice of activity and use limitation, department approval and acceptance, and the effective recording of the environmental covenant."

Sec 46.04.390(5) "notice of activity and use limitation" means ~~a restriction or obligation created under a notice of a restriction or obligation with respect to real property in accordance with AS 46.04.300 - AS 46.04.390 with respect to real property.~~ A notice of activity and use limitation does not constitute a servitude arising under an environmental response project and a recorded notice of activity and use limitation does not constitute a real property interest.

Thank you again for providing the opportunity to comment. Please feel free to contact my office if you have any questions, need any additional information, or would like to establish further coordination. I can be reached at (707) 424-8290, or by email at robert.shirley.2@us.af.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Shirley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

ROBERT SHIRLEY
DoD Regional Environmental Coordinator
Region 10

AMENDMENT #1

OFFERED IN THE HOUSE

TO: HCS SB 64(RLS), Draft Version "N"

by Rep Millett

1 Page 6, line 10:

2 Delete "(b) or (e)"

3 Insert "(b), (e), or (g)"

4

5 Page 8, following line 1:

6 Insert a new subsection to read:

7 "(g) The department shall terminate an environmental covenant if the
8 environmental covenant was required under AS 46.04.300 solely because of the level
9 or concentration of residual contamination on the property, and the department
10 determines that level or concentration of residual contamination does not endanger
11 human health, safety, or welfare, or the environment. The department shall provide
12 notice of a termination under this subsection to each person with a current recorded
13 interest in the real property subject to the environmental covenant, each holder, all
14 other persons who originally signed the environmental covenant, or their successors or
15 assigns, and any other person with rights or obligations under the environmental
16 covenant."

17

18 Page 10, line 6, following "(e)":

19 Insert "or (m)"

20

21 Page 11, following line 24:

22 Insert a new subsection to read:

23 "(m) The department shall terminate a notice of activity and use limitation for

1 real property if the notice of activity and use limitation was required solely because of
2 the level or concentration of residual contamination on the property, and the
3 department determines that level or concentration of residual contamination does not
4 endanger human health, safety, or welfare, or the environment. The department shall
5 provide notice of a termination under this subsection to all persons holding an interest
6 of record in the real property subject to the notice of activity and use limitation, all
7 persons known to the department to have an unrecorded interest in the property, and
8 all affected persons in possession of the property."

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEDOUX

TO: HCS SB 64(RLS), Draft Version "T"

1 Page 1, line 1, following "An Act":

2 Insert "relating to the liability of a person for the release or threatened release of
3 hazardous substances present on certain land;"

4

5 Page 1, following line 5:

6 Insert new bill sections to read:

7 **** Section 1. AS 46.03.822(a) is amended to read:**

8 (a) Notwithstanding any other provision or rule of law and subject only to the
9 defenses set out in (b) and (n) of this section, the exception set out in (i) of this
10 section, the exception set out in AS 09.65.240, and the limitation on liability provided
11 under AS 46.03.825, the following persons are strictly liable, jointly and severally, for
12 damages, for the costs of response, containment, removal, or remedial action incurred
13 by the state, a municipality, or a village, and for the additional costs of a function or
14 service, including administrative expenses for the incremental costs of providing the
15 function or service, that are incurred by the state, a municipality, or a village, and the
16 costs of projects or activities that are delayed or lost because of the efforts of the state,
17 the municipality, or the village, resulting from an unpermitted release of a hazardous
18 substance or, with respect to response costs, the substantial threat of an unpermitted
19 release of a hazardous substance:

20 (1) the owner of, and the person having control over, the hazardous
21 substance at the time of the release or threatened release; this paragraph does not apply
22 to a consumer product in consumer use;

23 (2) the owner and the operator of a vessel or facility, from which there

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

3 (3) any person who, at the time of disposal of any hazardous substance,
4 owned or operated any facility or vessel at which the hazardous substances were
5 disposed of, from which there is a release, or a threatened release that causes the
6 incurrence of response costs, of a hazardous substance;

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

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

18 * Sec. 2. AS 46.03.822(d) is amended to read:

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

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

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

31 (3) commonly known or reasonably ascertainable information about

1 the property;

2 (4) the obviousness of the presence or likely presence of contamination
3 at the property; and

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

5 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

6 (n) In an action to recover damages or costs, a person otherwise liable under
7 this section for a release or threatened release of a hazardous substance on the person's
8 land is relieved from liability under this section if the person proves that the

9 (1) person did not know and had no reason to know that the hazardous
10 substance was present on the land at the time the ownership of the land was transferred
11 to the person; and

12 (2) hazardous substance was present on the land at the time the
13 ownership of the land was transferred to the person."
14

15 Page 1, line 6:

16 Delete "Section 1"

17 Insert "Sec. 4"

18

19 Renumber the following bill sections accordingly.

20

21 Page 13, line 10:

22 Delete "Section 2"

23 Insert "Section 5"

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 5, 2018

SUBJECT: Single subject rule
Amendment 30-LS0446\T.1 to HCS SB 64(RLS)

TO: Representative Gabrielle LeDoux
Chair of the House Rules Committee
Attn: Courtney Enright

FROM: Alpheus Bullard *TLAB*
Legislative Counsel

This memorandum accompanies the amendment described above. You asked whether the amendment, if adopted, would cause HCS SB 64(RLS), draft version "T," (SB 64) to violate the requirement, under art. II, sec. 13, Constitution of the State of Alaska, that a bill be confined to one subject.

The amendment would add provisions relating to the liability of a person for the release or threatened release of hazardous substances present on certain lands to SB 64, which adopts a Uniform Environmental Covenants Act and relates to environmental real property covenants and notices of activity and use limitation at contaminated sites to ensure the protection of human health, safety, and welfare, and the environment.

While I can't predict with certainty how a court would rule if that question is litigated, it is my opinion that if the amendment is adopted, the provisions of SB 64, as amended, would fit under the single subject of "environmental contamination."

If you have questions, please do not hesitate to contact me.

TLAB:boo
18-363.boo

Attachment