

SB

64

<TARGET><BILL>SB 64</BILL><SUBJECT>SB
64</SUBJECT><COMM>SCRA30</COMM></TARGET>

Senator Peter A. Micciche

Alaska State Legislature

Session Address:

Alaska State Capitol, Rm. 508
Juneau, Alaska 99801-1182
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SB 64: Uniform Environmental Covenants Act (UECA)

A primary interest of this office is to streamline and remove obstacles that inhibit business, commerce or the transfer of property without reducing expectations for public health, safety and a healthy environment. SB 64 achieves that.

In 2003, the Uniform Law Commissioners created a Uniform Environmental Covenants Act to overcome inadequate common law rules. An environmental covenant allows for the sale of property with use limitations to mitigate risk. Alaska is one of only seven states that does not have an environmental covenant law.

SB 64 protects the buyer and seller of contaminated property while allowing the fullest and best use of the property until the contamination reaches safe levels. The bill creates a legal mechanism to safely transfer contaminated property through an environmental covenant.

An environmental covenant is a specific recordable interest in real estate that will be tracked through a Department of Environmental Conservation (DEC) database. The covenant is specific to the risks at a particular site and restricts activities that could result in exposure while allowing other uses to occur. Such a process is often all that is necessary to make property transferable, as well as economically and functionally viable.

Use restrictions imposed by the covenant are developed by the responsible party and DEC - exactly as they are now for Institutional Controls - utilizing risk assessments and scientific principles.

A covenant provides transparency throughout the life of the property and provides assurances to buyers and sellers that risks will be safely managed. Other states have found that covenants help communities transform blighted property into marketable assets.

A simple process for amending or removing covenants is included in the legislation. A covenant would not supplant or impose current contamination removal standards, which will continue to be managed as they are currently. The act would not affect the liability of the principally-responsible parties, but would provide a method for minimizing exposure to third parties.

Staff Contact: Rachel Hanke 465-4899

SB64 - Uniform Environmental Covenants Act (UECA) for Alaska

Creates a legal mechanism to safely transfer contaminated property.

Reclaiming contaminated sites can be difficult and expensive. Total cleanup, if possible, can cost much more than the market value of the property. However, if a legal mechanism can be developed for long term control of use, some properties may be safely returned to the market.

- In 2003, the Uniform Law Commissioners created a Uniform Covenants Act to overcome inadequate common law rules. An environmental covenant allows for the sale of property with use limitations to mitigate risk.
- Alaska is one of only 7 states that do not have an environmental covenant law.
- An environmental covenant is a specific recordable interest in the real estate that would be tracked through a DEC database. The covenant would be specific to the risks posed at a particular site and would restrict activities that could result in exposure but would allow other uses to go forward which often is all that is necessary to make property viable again.
- Use restrictions would be developed by DEC exactly as they are now for Institutional Controls, utilizing risk assessments and scientific principles. EUCA would replace our existing approach of simply using deed notices as Institutional Controls.
- Commercial industries would utilize covenant restrictions as a mechanism to ensure future owners effectively manage remaining contamination.
- A covenant provides transparency throughout the life of the property and provides assurances to sellers that future exposure risks will be communicated.
- It would not supplant or impose cleanup standards. Those would continue to be managed as they currently are.
- The act would not affect the liability of the principally responsible parties but would provide a method for minimizing exposure to third parties.

The ultimate goal is to return previously contaminated property to the stream of commerce and ensure buyers are fully informed about their purchase.

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/17/17

FURTHER: Labor and Commerce

DATE TURNED IN TO OFFICE: 3/8/17

Community and Regional Affairs Committee considered SENATE BILL NO. 64

SB 64 UNIFORM ENVIRO COVENANTS ACTS

"An Act adopting the Uniform Environmental Covenants Act; relating 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; and providing for an effective date."

and recommends:

- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS _____ (_____) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DEC			✓	1
DNR			✓	2

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	MACKINNON			✓	
	STEEDMAN			✓	
		✓			
CHAIR:	Bishop	✓			

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: SB 64
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB064-DEC-SPAR-2-24-17
Title: UNIFORM ENVIRONMENTAL COVENANTS ACT
Sponsor: MICCICHE
Requester: (S) Community and Regional Affairs

Department: Department of Environmental Conservation
Appropriation: Spill Prevention and Response
Allocation: Spill Prevention and Response
OMB Component Number: 3094

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **Yes**
If yes, by what date are the regulations to be adopted, amended or repealed? **06/30/18**

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Kristin Ryan, Director</u>	Phone: <u>(907)269-7604</u>
Division: <u>Spill Prevention and Response</u>	Date: <u>02/24/2017 09:00 AM</u>
Approved By: <u>Alice Edwards, Deputy Commissioner</u>	Date: <u>02/24/17</u>
Agency: <u>Department of Environmental Conservation</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. SB064

Analysis

The proposed legislation establishes the ability to create environmental covenants for property with contamination remaining above cleanup levels. A covenant would restrict some activities from occurring on the property to avoid releasing the contamination but allow other uses to occur. It allows for transparency in real estate transactions and assurance to sellers that remaining contamination will be effectively managed. The Division currently maintains the contaminated sites database which contains deed notices. Environmental covenants will replace deed notices since they are sometimes lost as ownership turns over. The Division will modify this database to track environmental covenants with existing personnel resources. The database already has a public access webpage so there is no additional cost for adding a searchable element for environmental covenants. Staff already spend time creating and maintaining deed notices, and this effort will be replaced by similar effort to create and maintain environmental covenants. Increased personnel costs are not expected. Therefore, the department submits a zero fiscal note.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: SB 64
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB064-DNR-MLW-2-24-17
Title: UNIFORM ENVIRONMENTAL COVENANTS ACT
Sponsor: MICCICHE
Requester: Senate Community & Regional Affairs

Department: Department of Natural Resources
Appropriation: Fire Suppression, Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2018 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By: Brent Goodrum, Director
Division: Division of Mining, Land & Water
Approved By: Andrew T. Mack, Commissioner
Agency: Department of Natural Resources

Phone: (907)269-8625
Date: 02/24/2017 01:00 PM
Date: 02/24/17

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. SB 64

Analysis

The bill may result in the Department of Natural Resources (DNR) being a holder of an Environmental Covenant (EC) on DNR managed state public domain lands in order to allow Department of Environmental Conservation (DEC) to close environmentally contaminated sites on these lands. If and when ECs are placed on DNR-managed state public domain lands, they will have to be monitored and enforced.

Ultimately these costs for review and coordination will be based on how many ECs are initiated, the scope and complexity of each EC, the time or resources that these ECs may require, and the degree to which this cost can be recovered from responsible third parties. While these costs are unknown, it is expected that they can be absorbed in the Department's operating budget without fiscal impact. Therefore a zero fiscal note is submitted.



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

03 March 2017

Senator Micciche
Alaska State Legislature
State Capitol Room 508
Juneau, AK 99801

Subject: DoD Comments on Alaska Senate Bill 64

Dear Senator Micciche:

As the U.S. Department of Defense Regional Environmental Coordinator for Region 10, which includes the State of Alaska, I recommend amendments to Senate Bill 64 (SB 64) to address national defense concerns.

The Department of Defense is concerned that it cannot comply with the proposed law as drafted due to Federal real property law constraints that prohibit the Department from placing covenants or other use restrictions, including in the form of notices, on real property in its inventory except when disposing of the property. This concern only applies so long as the property is owned by the United States and under the administrative jurisdiction of the Department of Defense. The Department is also concerned that the proposed statute is based on application of the State's police powers on federal property, to which the United States has not consented.

When transferring property to a non-Federal entity, the Department can, and normally does, require an environmental covenant in order to protect any remedy the Department has put in place and thereby prevent endangerment of public health and safety. The Department believes that it and the State should work closely to achieve the substantive goals of an environmental covenant, namely to prevent, over the long term, land uses that would either interfere with the remedy or cause an exposure to contamination that would threaten human health and safety. The Department believes the State's efforts in this regard would likely qualify for payment under the Defense State Memorandum of Agreement. To avoid its concern, while still allowing the two agencies to work toward their mutual goal of ensuring the public health and safety are protected, the Department recommends editing the proposed statute as follows:

Amend section 46.04.300 by adding the following new subsection:

“(f) An environmental covenant is not required in the case of real property owned by the United States and under the administrative jurisdiction of the Department of Defense so long as

the real property remains under the administrative jurisdiction of the Department of Defense. The department may enter into agreements or decision documents with the Department of Defense to achieve the substantive goals of an environmental covenant.”

Amend section 46.04.340 by adding the following new subsection:

“(l) A notice of activity and use limitation is not required in the case of real property owned by the United States and under the administrative jurisdiction of the Department of Defense so long as the real property remains under the administrative jurisdiction of the Department of Defense. The department may enter into agreements or decision documents with the Department of Defense to achieve the substantive goals of a notice of activity and use limitation.”

The Department also suggests changing “AS 46.04.300” to “AS 46.04.340” in section 46.04.340(b) to avoid inadvertently incorporating by reference requirements that do not, by their terms, appear to be relevant to the notice of activity and use limitation. In addition, the Department suggests referring to the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980” in section 46.04.390(3)(A), which is the statutory short title of the law mentioned. Similarly the Department suggests changing “Resource Conservation and Recovery Act” to “Solid Waste Disposal Act” in section 46.04.390(A), which is the statutory short title for the entire law, of which RCRA is only an amendment.

The Department remains committed to working with the State of Alaska and its Department of Environmental Conservation and the Alaska State of Cooperation agencies on environmental cleanup and other issues. Please feel free to contact my office if you have any questions or need any additional information. I can be reached at (707) 424-8290, or by email at robert.shirley.2@us.af.mil

Sincerely,



ROBERT SHIRLEY
DoD Regional Environmental Coordinator
Region 10

Senator Peter A. Micciche

Alaska State Legislature

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SB 64: Uniform Environmental Covenants Act

Sectional Analysis

Section 1

Adds a new article to AS 46.04 that

- AS 46.04.300 - establishes when an environmental covenant is necessary, who is a holder, who is bound by the covenant, subordination, rules for commonly held property, and states that the covenant has no interest in the land;
- AS 46.04.305 - provides which documents are required for the record and additional documents that may be requested;
- AS 46.04.310 - provides situations in which the covenant is still valid and enforceable and is priority over common law;
- AS 46.04.315 - outlines procedure for notice;
- AS 46.04.320 - establishes guidelines for recording the covenant in property records;
- AS 46.04.325 - defines terms for termination of a covenant and amendment by court action i.e., consent, foreclosure with another interest as priority, or eminent domain;
- AS 46.04.330 - defines procedure for termination of a covenant and amendment by consent;
- AS 46.04.335 - states the department has the power to enforce and bring civil action if there is failure to comply;
- AS 46.04.340 - creates the ability to enforce an environmental covenant on federal lands;
- AS 46.04.345 - places covenant restrictions above other land-use laws;
- AS 46.04.350 - provides that the department shall maintain a registry for covenants;
- AS 46.04.355 - states that this Act is uniform law;
- AS 46.04.390 - provides definitions used in the Act.

Section 2

Uncodified law - provides that the Department of Environmental Conservation and the Department of Natural Resources may adopt necessary regulations to implement this Act.

Sections 3

Provides an immediate effective date for Section 2 of this Act.



Contact Us: 312.450.6600

Legislative Fact Sheet - Environmental Covenants Act

Act Environmental Covenants Act

Origin Completed by the Uniform Law Commissioners in 2003.

Description This act provides clear rules for a perpetual real estate interest – an environmental covenant – to regulate the use of brownfields when real estate is transferred from one owner to another.

Endorsements

Enactments Alabama, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, South Dakota, U.S. Virgin Islands, Utah, Virginia, Washington, West Virginia

2017 Introductions New Mexico

Staff Liaison(s) Benjamin Orzeske

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Contact Us: 312.450.6600

Environmental Covenants Act Summary

Virtually everywhere in America, state and local governments are struggling with the problem of brownfields – vacant, abandoned and underused sites with various forms and degrees of environmental contamination. Reclaiming many of these sites for beneficial uses is very difficult and very expensive. Total cleanup, if possible, would often cost much more than the market value of the property. However, if a legal mechanism can be developed for long term control of use and clean-up or remediation (the current term of art), some properties may be safely returned to use and may be bought and sold. Current real property law is inadequate. Various common-law doctrines and other legal rules often work against such long-term controls, a situation which undermines the use and marketability of contaminated property.

In 2003, the Uniform Law Commissioners have promulgated the Uniform Environmental Covenants Act to overcome the inadequate common law rules. The statutory legal mechanism it creates is called an "environmental covenant." Covenants are generally recognized in the common law as a means of conveying restrictions on use of land. The environmental covenant relies on the common law base, but re-creates it for the specific purpose of controlling the use of contaminated real estate, perpetually if necessary, while allowing that real estate to be conveyed from one person to another subject to those controls.

An environmental covenant is a specific recordable interest in the real estate. It arises from an environmental response project that imposes activity and use limitations. Such a project must arise under an appropriate federal or state program or approval for clean up of the property or closure of a waste management site. No environmental covenant is effective without the relevant agency signature. The interest is created in a specific instrument for the purpose. The instrument recites the controls and remediation requirements imposed upon the property. The rights under the covenant must be granted to a party or parties called the holders. The covenant is perpetual unless limited in time within the instrument. It runs with the land and does not have to be "appurtenant." This means it cannot be extinguished when one owner transfers rights or interests in the property to another, no matter who the holders are.

Two principal policies are served by confirming the validity of environmental covenants. One is to ensure that land use restrictions, mandated environmental monitoring requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination will be recorded in the land records and effectively enforced over time as a valid real property servitude. This Act reverses the variety of common law doctrines that cast doubt on such enforceability.

A second important policy served by this Act is the return of previously contaminated property, often located in urban areas, to the stream of commerce. The environmental and real property legal communities have often been unable to identify a common set of principles applicable to such properties. The frequent result has been that these properties do not attract interested purchasers and therefore remain vacant, blighted and unproductive. This is an undesirable outcome for communities seeking to return once important commercial sites to productive use. Large numbers of contaminated sites, often known as brownfields, are unlikely to be successfully recycled until regulators, owners, responsible parties, affected communities, and prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored and enforced for so long as needed. This Act should encourage transfer of ownership and property re-use by offering a clear and objective process for creating, modifying or terminating environmental covenants and for recording these instruments which will appear in any title abstract for the property in question.

At the time this Act was promulgated, approximately half the states had laws providing for land use restrictions in some real estate form pertaining to environmental contamination. Those existing laws

vary greatly in scope – some simply note the need for land use restrictions, while others create tools similar to many of the legal structures envisioned by this Act. Most such acts apply only to cleanups under a state program. In contrast, this Act includes a number of provisions absent from most existing state laws, including the Act's applicability to both federal and state-led cleanups. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession, and marketable title statutes. The Act also provides detailed provisions regarding termination and amendment of covenants, and includes important provisions on dealing with recorded interests that have priority over the new covenant. There is broad enforcement authority to make sure a covenant does govern the property. Holders are expected to enforce, but any party to the covenant and appropriate agencies may enforce as well. Further, the Act offers guidance to courts confronted with a proceeding that seeks to terminate such a covenant through eminent domain or the doctrine of changed circumstances.

Under the Uniform Act, the governmental regulators who sign an environmental covenant will serve to ensure that the risk assessments and control mechanisms are based on sound science and that affected third parties have notice of the covenant and associated controls. The act specifies that persons with a recorded interest in the property or who are in possession of the property, together with local governments in which the property is located and any other person the agencies require, must be given notice of the covenant. Environmental covenants, and any associated amendments or terminations, must be recorded in the local land records.

It is important to note that Act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The Act assumes those standards will be developed in the prior regulatory process. Rather, the Act validates site-specific, environmental use restrictions that result from the environmental response project which an environmental covenant helps implement. Implicit in use controls is the fact that, despite best efforts, total cleanups of many contaminated sites are not possible, but property may be put to limited uses without risk to others, nonetheless. The Act also does not affect the liability of principally responsible parties for the cleanup or any harm caused to third parties by the contamination – rather it provides a method for minimizing the exposure of third parties to such risks and for owners and responsible parties to engage in long-term cleanup mechanisms.

The Uniform Environmental Covenants Act is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment and economic expansion. It was drafted with the active participation of federal and state environmental regulators, public and private land holders, banking interests, environmentalists, and land use experts. Its uniform enactment nationwide will provide owners, especially owners with properties in multiple states, with the confidence to engage in long-term remediation strategies and use controls, and bring economic growth back to blighted sites and areas.

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111 N. Wabash Avenue Suite 1010 Chicago, Illinois 60602



Contact Us: 312.450.6600

Why States Should Adopt UECA

The **Uniform Environmental Covenants Act (UECA)**, drafted and approved by the National Conference of Commissioners on Uniform State Laws in 2003, allows for the long-term enforcement of clean-up controls (restrictions on certain uses, prohibitions on using wells, protection of concrete "caps", maintenance of monitoring equipment, etc.) to be contained in a statutorily-defined agreement known as an "environmental covenant" which will be binding on subsequent purchasers of the property and be listed in the local land records. The fundamental purpose of this act is to remove various legal impediments to the use of such restrictions and to thereby lessen liability concerns of sellers and lenders associated with the redevelopment and sale of "brownfields" while at the same time requiring state approval of the remediation and control plan as well as notice to surrounding landowners, local governments, and other parties in interest. By ensuring such "institutional controls" are maintained and enforced, UECA helps fulfill the dual purposes of such restrictions – the protection of human health and the economically viable reuse of the property in question.

There are many reasons why every state should adopt the **Uniform Environmental Covenants Act**.

- UECA helps to return previously contaminated property to the stream of commerce, by allowing the owners of that property to engage in responsible risk-based cleanups and then transfer or sell the property subject to state-approved controls on its use.
- UECA gives a broad array of interested parties the ability to enforce the use and activity restrictions contained in an environmental covenant, thereby helping to ensure those controls will remain in place and prevent secondary harms.
- UECA protects valid environmental covenants from being inadvertently extinguished by application of various common law doctrines, adverse possession, tax lien foreclosures, less-restrictive zoning changes, and marketable title statutes.
- UECA requires the state environmental agency to be a signatory to the covenant, thereby ensuring that risk assessments and control mechanisms are based on sound science, adequately protect human health and surrounding properties, and that notice of the covenant and associated controls is provided to affected third parties.
- UECA does not supplant or impose substantive cleanup standards or liability; rather it validates approved site-specific controls resulting from an environmental response project, and makes sure those controls are maintained as long as necessary to meet the objective for which they were approved.

The **Uniform Environmental Covenants Act** is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment. It was drafted with the participation of state and federal regulators, public and private land owners, banking interests, environmentalists, and land use experts. Its uniform national enactment will provide the owners of contaminated land the confidence to invest in long-term remediation strategies and use controls, while at the same time protecting human health and allowing those properties to be developed and thus bring economic revitalization to blighted areas and sites.

Uniform Environmental Covenants Act (UECA) for Alaska

Creates a legal mechanism to safely transfer contaminated property.

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- In 2003, the Uniform Law Commissioners created a Uniform Covenants Act to overcome inadequate common law rules. An environmental covenant allows for the sale of property with use limitations to mitigate risk.
- Alaska is one of only 7 states that do not have an environmental covenant law.
- An environmental covenant is a specific recordable interest in the real estate that would be tracked through a DEC database. The covenant would be specific to the risks posed at a particular site and would restrict activities that could result in exposure but would allow other uses to go forward which often is all that is necessary to make property viable again.
- Use restrictions would be developed by DEC exactly as they are now for Institutional Controls, utilizing risk assessments and scientific principles. EUCA would replace our existing approach of simply using deed notices as Institutional Controls.
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- It would not supplant or impose cleanup standards. Those would continue to be managed as they currently are.
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The ultimate goal is to return previously contaminated property to the stream of commerce and ensure buyers are fully informed about their purchase.

Senator Peter A. Micciche
Alaska State Legislature

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*23 states already have this
AK 1 of 7 states who don't have any*

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SB 64: Uniform Environmental Covenants Act (UECA)

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Use restrictions imposed by the covenant are developed by the responsible party and DEC - exactly as they are now for Institutional Controls - utilizing risk assessments and scientific principles.

A covenant provides transparency throughout the life of the property and provides assurances to buyers and sellers that risks will be safely managed. Other states have found that covenants help communities transform blighted property into marketable assets.

A simple process for amending or removing covenants is included in the legislation. A covenant would not supplant or impose current contamination removal standards, which will continue to be managed as they are currently. The act would not affect the liability of the principally-responsible parties, but would provide a method for minimizing exposure to third parties.

Staff Contact: Rachel Hanke 465-4899



March 2, 2017

Honorable Members of the Alaska Legislature
Alaska State Capitol Building
P.O. Box 110001
Juneau, AK 99801-0001

SUBJECT: SB 64 – UNIFORM ENVIRONMENTAL COVENANTS ACT

Dear Members of the Alaska Legislature:

I write today on behalf of Cook Inlet Housing Authority (CIHA) to express its support for SB 64, which would encourage the development of previously contaminated sites by providing clarity to prospective purchasers while ensuring the enforceability of applicable land use restrictions, monitoring requirements, and continuing controls for these properties.

As an Alaska Regional Housing Authority, CIHA believes that the development or redevelopment of unproductive and blighted properties is good for communities. As part of our efforts in this arena, we have worked to develop contaminated sites on a fairly regular basis, and we understand that the process of purchasing and developing such properties can be extraordinarily complicated and expensive. Documentation of cleanup efforts and land use restrictions can be difficult to compile, and the full implications of prior and ongoing remediation efforts to a prospective purchaser are often uncertain. This makes private sector development of such sites not only unattractive, but often virtually impossible. The result is that otherwise desirable properties are often not successfully returned to productive use, remaining vacant and contributing to urban blight.

The creation of a recordable interest in land subject to a remediation project would provide needed clarity to prospective purchasers which will help contaminated properties to be returned to beneficial use. The Act sets forth the legal characteristics of the covenant and lays out a specific process for its termination or modification under appropriate circumstances. Purchasers will have express notice of the type of environmental restrictions and controls that apply to a contaminated property and may therefore be far more willing to undertake an otherwise infeasible development or redevelopment project.

At the same time, the legislation affirms the validity of properly created agreements respecting the use and treatment of applicable contaminated sites, so that prescribed remediation controls and use limitations may be effectively enforced over time. The recorded covenant can clearly identify applicable property restrictions and ongoing obligations to ensure that contaminated properties are monitored and used in a manner that is environmentally sound and safe for the community, while providing holders an express legal basis for enforcement of the obligations provided therein.

For these reasons, CIHA fully supports the passage of SB 64. Thank you for your time and attention to this legislation.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Carol Gore', with a circled number '1' to its left.

Carol Gore
President/CEO



**Statement of Benjamin Orzeske, Chief Counsel from the Uniform Law Commission,
to the Alaska Senate Community and Regional Affairs Committee in support of SB 64,
the Uniform Environmental Covenants Act, February 28, 2017.**

Chairman Bishop and Members of the Committee:

Thank you for considering SB 64, which would enact the Uniform Environmental Covenants Act (UECA) in Alaska. This bill is based on a uniform act produced by the Uniform Law Commission (ULC). The ULC is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable. Alaska has a long and successful history of enacting uniform acts including the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Transfers to Minors Act, and dozens of others.

UECA will allow the owners of hazardous or contaminated Alaskan real estate to enter into environmental covenants with the consent of the Department of Environmental Conservation. An environmental covenant is an enforceable restriction on the use of the land. For example, a former landfill site might have a restriction stating that the landowner cannot excavate and must maintain structures built to contain the waste. A site with soil contaminated by petroleum products might have a restriction stating that groundwater cannot be pumped to the surface.

You may think, why can't landowners enter into these agreements under current laws? The answer is: they can – but future owners probably will not be bound by those agreements. Various common-law doctrines dating back to medieval England and incorporated into United States property law work against these long-term restrictions on real property. UECA overrides the common law to allow parties to voluntarily execute legally binding, environmental covenants.

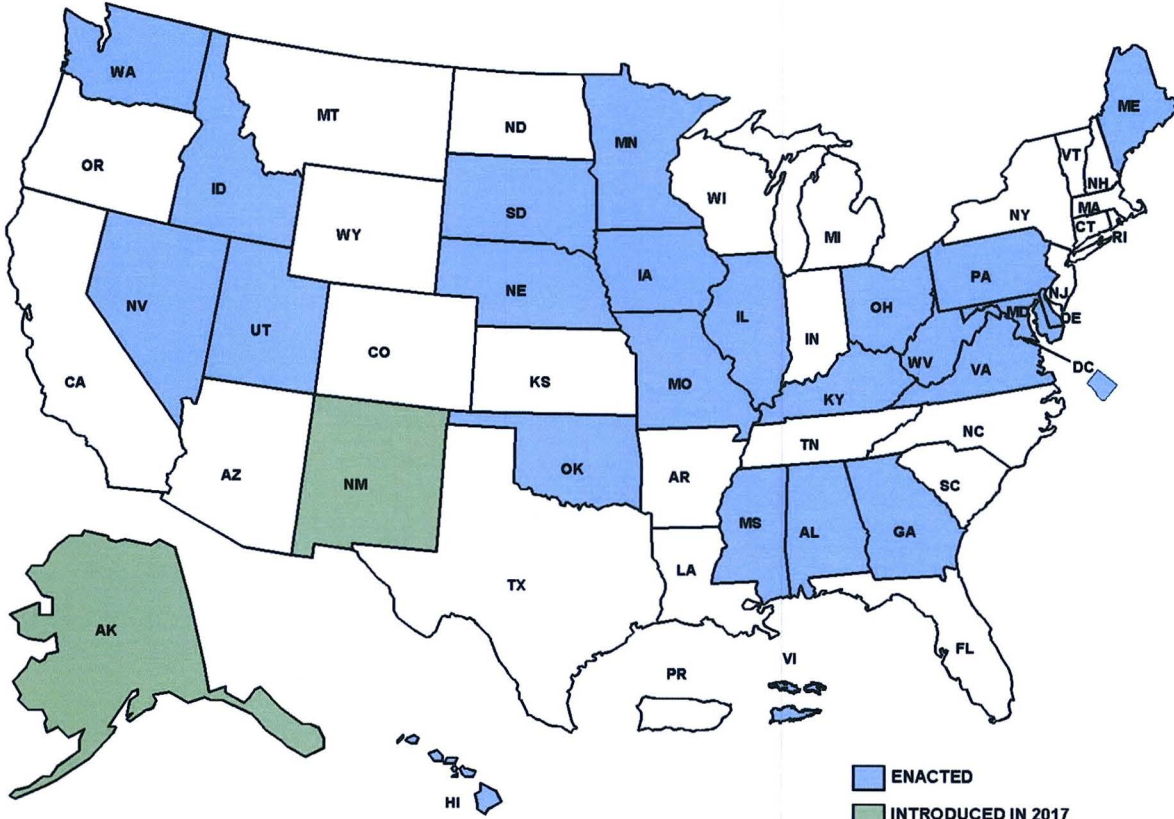
An environmental covenant is recorded in the land records and “runs with the land,” binding not only the current owner but also the owner's heirs or assignees. It is a very flexible tool that can include any type of use restriction or reporting requirement that the parties believe is appropriate for the particular parcel of land. It can only be changed or eliminated with the permission of all the parties to the original agreement (including the Department of Environmental Conservation), or their successors.

If environmental covenants were available fifty years ago, we might have avoided large-scale disasters like Love Canal in upstate New York, or Times Beach in Missouri. They are an important tool for ensuring environmental restrictions are monitored and enforced in the long run. This allows land that otherwise might lie vacant due to indefinite remediation requirements to return to a productive use, with appropriate restrictions to ensure public safety.

UECA was completed by the ULC in 2003 and has since been adopted by twenty-three states, plus the District of Columbia and the U.S. Virgin Islands. Your enactment of SB 64 will give the Alaska Department of Conservation a powerful tool to ensure Alaskans also can benefit from the use of environmental covenants.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

UNIFORM ENVIRONMENTAL COVENANTS ACT



As of February 2017

- ENACTED
- INTRODUCED IN 2017