

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 845

will include a one year, a two year, a three year and two four terms.

Q. WHO MAY NOT SERVE ON THE CITIZEN'S OVERSIGHT COUNCIL?

>Elected officials or any federal, state or municipal employees or contractors directly or indirectly involved in the oversight or regulation of the oil industry.

>Oil industry employees or any contractors or subcontractors to the oil industry are prohibited from serving on the Citizen's Oversight Council.

Q. WHO APPOINTS MEMBERS OF THE CITIZEN'S OVERSIGHT COUNCIL?

>Members are appointed by the Legislative Council, a permanent, joint House/Senate Committee of the Alaska State Legislature.

Q. WHAT AUTHORITY DOES THE CITIZEN'S OVERSIGHT COUNCIL HAVE?

>The Council has an advisory role in state government. There are seven specific directives to the Council in the enabling legislation. They all direct the Council to assess the risks of oil and hazardous substance spills in Alaska, to make that information known and to recommend action on the part of the responsible agencies.

>The Council has the power to conduct investigations, subpoena witnesses and require the production of files, books and papers necessary for the proper conduct of investigations.

>The Council is to serve as a coordinating group for other citizen groups in Alaska.

Q. ARE THE CITIZEN'S OVERSIGHT COUNCIL MEMBERS PAID?

>No. The Council budget includes money only for travel and expenses for the members.

Q. HOW MUCH TIME WILL MEMBERS HAVE TO DEVOTE TO THE COUNCIL?

>There is no set amount of time that must be devoted to the Council. However, the Legislative Council is looking for five citizens who regard the prevention of releases of oil and other hazardous substances as a serious and important matter to the future of Alaska. In a oil dependent state such as Alaska, the promotion of prevention will be a complex and time-consuming matter.

The Council will probably meet on a regular basis, either in person or through the teleconference system. Public hearings will probably be held on an irregular basis. The current budget includes money for travel to six meetings.

Council members will have the assistance of staff. The Council budget includes money for two employees, an administrator and a secretary. More than \$100 thousand in contractual money is available for research projects.

NEWS 11 Dec 90

## Spill council organized

The Associated Press

JUNEAU — Five Alaskans have been named to a new advisory council that will determine whether government agencies are properly regulating the transportation and handling of oil and other hazardous substances.

The state Citizens' Oversight Council on Oil and Other Hazardous Substances was created by the 1990 legislature in response to the Exxon Valdez oil spill.

The legislature found that "a pervasive contributing factor to the Exxon Valdez disaster was the complacency of the oil industry and the federal and state agencies." It concluded "it is essential to involve local citizens to help ensure compliance with environmental laws and regulations."

The council will file an annual report with the legislature and governor assessing the performance of state and federal agencies and recommending changes in laws and procedures to improve environmental safety.

Its members were recently appointed by the Legislative Council, the panel of lawmakers that handles legislative business between sessions. The members are:

• Leo Hannan, a retired engineering technician with the U.S. Air Force in An-

chorage.

• John H. Lucking Jr., a sergeant with the Unalaska police force.

• Harry R. Bader, an assistant professor of natural resources management at the University of Alaska Fairbanks.

• Gary Kompkoff, a commercial fisherman and village council president in Tatitlek.

• Kathryn L. Kinnear of Kodiak, a national board member of the Women's Fisheries Network.

The council plans to hold its first organizational meeting Wednesday in Anchorage at the Legislative Information Office.

SOUTHEAST ALASKA PETROLEUM RESOURCE ORGANIZATION  
540 Water Street Suite 202  
Ketchikan, Alaska 99801

03/19/91

Statement concerning the proposed adoption of the Pacific  
Ocean Resources Compact by SB 102 & HB 135

The Southeast Alaska Petroleum Resource Organization, SEAPRO, is a recently formed cooperative organization representing several oil transporters, oil terminals, and bulk oil users who do business in the Southeast Alaska region. Our area of operation is from Dixon Entrance to Yakutat, and our headquarters office is located in Ketchikan. The purpose of the organization is to enhance the regional industry's ability to respond to oil spills which may occur in this area, especially any spill which may be greater than the capacity of any one member to control and clean up. Currently SEAPRO operates as an information network between member companies, other regional companies, government agencies, and other pollution response organizations. One of the goals of this network is to be able to provide a rapid and comprehensive means of communication between industry and government which will allow more efficient planning for pollution prevention and response, plus acquire appropriate pollution response resources as rapidly and efficiently as possible in the event that they are needed.

Over the past couple of days we have been reviewing the proposed Pacific Ocean Resource Compact in light of it's potential impact on pollution prevention and response within our area of concern, which includes the adjacent waters of British Columbia. It is the opinion of SEAPRO management that this Compact offers some potential benefits in advancing pollution prevention and response, but that it also contains several technical deficiencies and omissions which should be corrected in advance of adoption.

#### BENEFITS

1. The adoption of the Compact, especially if British Columbia is included, should improve overall pollution prevention and response efficiency. All of the Pacific coastal jurisdictions are in the process of adopting rules, regulations, and procedures which are intended to enhance pollution prevention and response. Unfortunately, each jurisdiction seems to be creating different approaches to solving the same problems. The multiplicity and duplication caused by this circumstance has forced industry to expend time, energy, and resources, sometimes at cross purposes, in attempts to divine means of compliance with the anticipated desires of each separate jurisdiction.

(1. Continued) Establishing a single set of rules to govern the entire region will allow industry to focus it's efforts and expenditures in those areas which are mutually determined to be of greatest benefit toward pollution prevention and response.

2. Adoption of the Compact should improve the expertise of each individual jurisdiction. Currently, each individual state or province is limited in it's pollution specific expertise by it's own internal capability to acquire and maintain such expertise. Additionally, the expertise acquired by any particular jurisdiction is generally limited to the specific concerns of the agencies within that region. This handicap greatly limits the broader professional knowledge which is necessary to keep abreast of technological trends or developments which tend to antiquate specific regulations as well as prevention and response planning and methods. The Compact could act to centralize available expertise and distribute information tailored to the specific need of any particular jurisdiction, thereby increasing the access to expertise for all of the jurisdictions without necessarily having to maintain such expertise "in house".

3. Adoption of the Compact should force the federal government to improve the level of professionalism within their regulatory agencies. Enforcement of the Compact requirements will fall on the U.S. Coast Guard. The Coast Guard has been charged with enforcing pollution prevention and vessel safety regulations for decades. Unfortunately, due to a number of complex personnel policies and conditions within the Coast Guard, the level of professional competence at the inspection and enforcement level has deteriorated over the past several years. This condition has caused resentment of, and decreased cooperation with, Coast Guard inspectors by many in industry. Requiring the Coast Guard to enforce the provisions adopted by the Compact will allow the several jurisdictions direct oversight over the Coast Guard's professional performance. This may well force the leadership of the Coast Guard to adopt policies and procedures which will improve the level of professional competence of their inspectors and administrators, thereby increasing industries willingness to cooperate with those personnel. The end result would be an improvement in the overall material condition of merchant vessels and waterfront facilities.

TECHNICAL DEFICIENCIES

1. There seems to be a growing trend by legislators to be overly specific in technical terms when creating new law. We view this as a serious mistake. For example, under Article II Definitions (5), you end the definition of "oil" with the words "liquified natural gas, or propane". While propane is a petroleum product, (liquified petroleum gas), it is only one of a series of such products.

307241117 P. 64

(1. Continued) By adopting such precise language you specifically omit other similar petroleum gasses such as butane, propylene, and butylene which are capable of liquefaction by pressurization only, while specifying LNG, (methane), which is not capable of liquefaction unless refrigerated to extreme temperatures. Aside from the fact that none of these gasses, especially LNG, pose any serious environmental threat if spilled, and aside from the fact that technology to contain these products if spilled does not exist, the attempted specificity makes the law appear silly in the eyes of professionals, and creates serious problems of compliance and enforcement.

2. Article II Definitions (8) gives a definition for "vessel" which appears to be legally insufficient. It appears that an attempt to specify tank vessels is being made, but falls short of doing so. It also points to three additional characters, "bulk", "cargo" and "residue", which are key to the definition of a vessel, yet these three characters are not defined. All three of these characters have specific definitions under 33 CFR, 46 CFR, and 49 CFR. It would be interesting to know which definition this law envisions. Also, since you are dealing with interstate commerce, possibly international commerce, it would be nice if the definition of "vessel" were a little more in compliance with that which is specified in 1 USC.

3. Article II Definitions (8) (B) ends with the words "in a place subject to the jurisdiction of the United States." Since this Compact could possibly include an international jurisdiction, possibly that wording should be changed to "in a place subject to the jurisdiction of the Compact."

4. Unfortunately, we have not had sufficient time to thoroughly analyze the proposed legislation in conjunction with the referenced laws, but we tend to believe that the general concept is acceptable if specific technical details of the regulations promulgated under the referenced laws are directly incorporated by the Compact.

#### OMISSIONS

The most serious omission of this proposed Compact is that it patently ignores existing and future threats to the environment. As is traditional after all oil spills which achieve notoriety, the public, (media), clamors for action and politicians pass laws to prevent a repetition of similar incidents. The problem is that usually such actions are directed at closing the barn door through which the horse has already bolted. The legislation drawn usually envisions a specific incident, but it's impacts will be felt in places unimagined.

This certainly has been the case with all of the environmental legislation passed by Alaska since the EXXON VALDEZ, and it appears to be the case here. As is clear from attempting to define a "vessel" within this legislation, everybody seems to have put their blinders on and are focusing on "tank vessels". Specifically tank vessels carrying crude oil. While tank vessels carrying crude oil will always pose a threat to the environment, they are not the sole threat. Unfortunately, the entire state of Alaska seems to be oblivious to the fact that there are other vessels plying our waters which also threaten the environment, as well as the health and safety of large numbers of people.

Every year for the past ten years, there have been significant casualties involving foreign flag cruise ships either in Alaskan waters, enroute to Alaska, or just departing Alaska. Of these, the fire and sinking of the PRINZENDAM, and the grounding and sinking of the SUN DANCER resulted in significant pollution. Fortunately, the first happened well out to sea, while the other occurred in Canada. But several others such as the DAPHNE and NORTH STAR have resulted in moderate pollution of Alaskan waters.

Many of these ships carry large quantities of heavy fuel oil which looks and acts much like crude oil. These ships proceed into some of the most sensitive habitats in our state, through difficult navigational areas, with the added pressure of keeping precise time schedules. None of these ships have contingency plans, none have adequate pollution response or control equipment, none have adequately trained spill response personnel, and all are capable of protecting themselves from legal claims arising from a ship casualty. Of course none of us will be all that concerned with environmental protection when one of these ships goes to the bottom hazarding the lives of 800 visitors to our state, but oil pollution will be a by-product of such a tragedy. You are courting disaster by not recognizing this threat and planning accordingly.

In addition to cruise ships, a significant number of foreign flag freight ships call at locations large and small throughout the state. Again, these vessels carry large quantities of heavy fuel, and they have a history of causing pollution incidents, although not as frequently as cruise ships. The most serious pollution incident in Southeast Alaska's history was caused by such a ship sinking in Dixon Entrance, and a couple of freight trampers have caused environmental damage in the Aleutians over the past couple of years.

Finally, the rapidly increasing size and number of "uninspected" fishing vessels bearing the U.S. flag working Alaskan waters also pose a serious threat. Recently one such vessel sank in Tongass Narrows in front of the oil terminals in Ketchikan, causing the largest oil spill in that community in many years. Because these vessels have had the political ability to prevent themselves from falling under Coast Guard inspection, they usually fall far below the material condition, damage control capability, and manning standards of even the foreign flag cruise ships. Again these ships pose a substantial threat to the environment, not to mention the threat to the health and safety of their crews and innocent by-standers, yet the threat they pose is being ignored.

Another omission, or more correctly a mis-classification, which will lead to serious deficiencies in pollution prevention and preparedness planning has already been encoded in HB 567 which was passed last year, and has been the cause of furious regulatory activity so far this year. This is the professionally unacceptable mistake of dividing oils into the categories of crude oil and non-crude oil for the purpose of assigning pollution regulation applicability. The use of the wording crude and non-crude was an apparent attempt by the legislature to recognize that certain non-persistent oils common to the Alaskan transportation system pose a lesser threat to the environment than does "Alaskan" crude oils. This division then was established to allow for a lesser degree of financial responsibility and even prevention and preparedness measures.

Those of us in the oil pollution business divide oils by there tendency to pose threats to the environment. The terms persistent and non-persistent are the classifications normally use to determine the gross environmental threat of a product. We tend to think of crude oil as persistent, however, there are numerous examples of crude oils which exhibit characteristics similar to gasoline or case head oils. We also tend to think of non-crude oils as non-persistent. But Number 6 oil, Bunker C, and Asphalt are all examples of non-crude oils which are highly persistent when spilled into the marine environment. In the first case, there is little concern because we do not experience very light crude oils in the Alaskan transportation system. In the second case, however, there is very real cause for concern, because we experience all three of the products mentioned with relative frequency in Alaska.

In our view, the threat to the environment posed by a spill of 100,000 gallons of heavy fuel oil or asphalt is roughly similar to a 100,000 gallon spill of "Alaskan" crude oil.

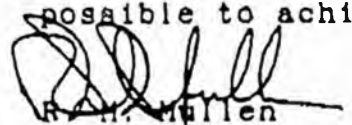
If you judge the threat to the environment by the relative persistence of the product, you can see how foolish it is for the state to treat oils of relatively equal persistence as a lesser threat than "Alaskan" crude oil. Yet this is exactly the situation created by the wording of HB 587. This is another example of trying to be over technical in writing law when you have little professional knowledge of the subject at hand.

Our reason for mentioning this last item is to illustrate the almost impossible regulatory compliance climate which is being developed by the State of Alaska. While Alaska has lead the pack in creating an impossible compliance climate, it is not alone. All of the other jurisdictions considering the Pacific Ocean Resources Compact are working toward equally impossible regulations.

It is our hope that by placing the authority for further development of pollution prevention and response regulations under a single jurisdiction, we will be able to then work with that jurisdiction to achieve a more rational and professional approach to controlling the threat posed by the transportation of oils and hazardous materials than is currently possible.

It is also our hope that in the event this Compact is not established in the very near future, that the Alaska State Legislature will revisit the legislation passed in the wake of the EXXON VALDEZ, assess the damage which those laws and subsequent regulations are doing to Alaskan businesses, and make adjustments which improve the regulatory compliance capabilities of our businesses without compromising environmental protection.

Our organization stands ready to assist you in any way possible to achieve the goals stated above.

  
 R. M. Mullen  
 Manager

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CS SB 102 (O&G)

Revision Date: \_\_\_\_\_  
 Title: An Act enacting and entering into Pacific Ocean  
 Resources Compact \_\_\_\_\_  
 Sponsor: Senators Cotton, Zharoff, Sturqulewski, et. al.  
 Requestor: \_\_\_\_\_

Department Affected: Office of the Governor  
 BRU: Executive Operations  
 Component: Executive Office

COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	14.8	14.8	14.8	14.8	14.8	14.8
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	14.8	14.8	14.8	14.8	14.8	14.8
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: n/a

ANALYSIS: (Attach a separate page if necessary.)  
 Fiscal note assumes travel for Governor and attending staff to meet annually with the governors of the compact states regarding compact issues.

Prepared by: Michael A. Nizich, Director *MAN/ep*  
 Division: Division of Administrative Services

Phone: 465-3616  
 Date: 4/8/92

Approved by Commissioner: D. Max Hodel, Chief of Staff  
 Agency: Office of the Governor *[Signature]*

Date: 4/8/92 *4/8/92*

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agencies).

# FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CSSB 102 (O & G)

Revision Date: \_\_\_\_\_  
Title: Pacific Ocean Resources  
Compact  
Sponsor: Cotten  
Requestor: Senate Finance

Department Affected: Environmental Conservation  
BRU: Spill Prevention and Response  
Component: Spill Prevention and Response

COMPONENT SERIAL NO. 1 | 0 | 1 | 6

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	57.0	57.0	57.0	57.0
TRAVEL	10.0	20.0	40.0	40.0	40.0	40.0
CONTRACTUAL	0.0	4.0	200.0	440.0	440.0	440.0
SUPPLIES	0.0	1.0	10.0	10.0	10.0	10.0
EQUIPMENT	0.0	0.0	10.0	10.0	10.0	10.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>10.</b>	<b>25.</b>	<b>317.</b>	<b>557.</b>	<b>557.</b>	<b>557.</b>

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0	25.0	317.0	557.0	557.0	557.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER						
FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>10.</b>	<b>25.</b>	<b>317.</b>	<b>557.</b>	<b>557.</b>	<b>557.</b>

POSITIONS:

FULL-TIME	0.0	0.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary.)	See Attached
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Prepared by: Lynn Tomich Kent  
Division: Spill Prevention & Response

Phone: 465-5220  
Date: 4/7/92

Approved by Commissioner: \_\_\_\_\_  
Agency: Environmental Conservation

Date: 4/8/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## ATTACHMENT TO CSSB 102 FISCAL NOTE

Estimation of this fiscal note has required several fundamental assumptions regarding the future direction of the proposed compact. If the parties to the compact choose to be expansive in exercising their mandate, then the operational costs will be greater than if the compact remained in a more advisory capacity. For this analysis we choose assumptions that would result in a fiscal note that assumes startup of the compact over a three year period while other states pass similar laws and Congress ratifies the compact through the high end of the multiplicity of possible fiscal impacts to the State should the compact develop its own regulatory package.

We did not factor in the compact's proposed funding formula, and instead choose to reflect Alaska's costs will be a contribution equal to that of the four other states. If less than five states joined the compact, then the costs to each would be increased somewhat due to lessening of economies of scale.

During start-up of the compact, the amount required for participation will be considerably lower because the organizational details and the compact's mandate would not be established. The first two years of funding will cover organizational meetings and negotiations.

It is assumed that under any scenario, one new full-time staff position (Environmental Specialist III) would be needed after the first two years to carry out Alaska's responsibilities under the compact. Additional funding is provided after the second year to cover the travel costs for Alaska's three appointed representatives and contractual funding to pay Alaska's share of the total annual budget for the compact. This contractual amount would phase in and by FY 96 would pay for five staff and for operational costs at the compact's headquarters.

Funding to carry-cut these new responsibilities is not available in existing budgets. The compact is envisioned as a permanent body and thus, the need for funding would continue in future years unless the state withdrew from participation. The costs for participation should remain stable, although the state's contribution for support of the compact would likely fluctuate depending on the funding formula and the extent of the compact's mandate.

General funds are shown as the funding source. The Oil and Hazardous Substance Release Response Fund could be considered as a back-up source if a determination was made that this use is consistent with the purposes of the fund.

### FY 93 FUNDING

Travel

10.0

Total 10.0

**FY 96 FULL FUNDING**

Personal Services

1 Environmental Specialist III 57.0

Travel

Estimated for staff and three appointed representatives to attend meetings of the compact 40.0

Contractual

Includes Alaska's estimated contribution to support the compact and five staff positions 440.0

Supplies

10.0

Equipment

Total 10.0  
557.0

[G:\ADMIN\HB102FN2.NAR]

# Alaska State Legislature

## Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman  
Senator Drue Pearce, Vice-Chairman  
Senator Bettye Fahrenkamp  
Senator Lyman F. Hoffman  
Senator Dick Shultz



P. O. Box V, State Capital  
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### Summary of Changes to SB 102--The Pacific Ocean Resources Compact

The Pacific Ocean Resources compact legislation was simultaneously introduced in Alaska, Hawaii, Washington, Oregon, and California on February 1, 1991. The intent of the legislation is to provide a unified effort to 1) prevent spills of substances, especially oil, dangerous to the environment and fisheries of the Pacific Ocean and 2) provide a uniform set of standards for matters such as contingency planning and financial responsibility.

When introduced in each state, the legislation was identical, but various changes have been made in hearings in each state. Many of these changes were discussed by prime sponsors at Western Legislative Conference, Ocean Resources Committee meetings on March 1 and 2 in San Diego and April 5 and 6 in San Francisco. The next sections briefly discuss changes incorporated into the bill in joint hearings in the Alaska Senate in the Special Committee on Oil and Gas and Transportation Committee. While an identical bill was introduced in the Alaska House of Representatives, no hearings occurred.

#### Original Bill

The Compact bill, as originally introduced, would have given the Compact considerable authority to direct federal agencies, especially the U.S. Coast Guard. In addition, the compact agency could establish uniform standards for routes, crews, and equipment, contingency plans, and financial responsibility, and provide oversight for the implementation of these standards. A more complete discussion of the original bill is contained in the Compact overview paper attached.

#### "Oregon" Proposed Bill

At the Ocean Resources Committee meeting in San Diego, members discussed testimony received in hearings on the Compact in Alaska, California, Washington, and Oregon (Hawaii adjourned shortly after their bill was introduced before any hearings occurred). As a result of these discussions, Oregon proposed a second version of the Compact (shown as Oregon SB 500). This version significantly reduced the proposed Compact authority--instead of directing

federal agencies and setting uniform standards, the Compact would provide a "short cut" into the federal Administrative Procedures Act by establishing the Compact as an interested party. This would give the Compact standing in any federal agency rulemaking procedure. Thus, the Oregon proposal would facilitate the ability of the compact states to influence U.S. Coast Guard rulemaking.

#### Alaska Senate Special Committee on Oil & Gas Committee Substitute

In general, this version of the bill is a compromise between the original bill and the state of Oregon proposal. Under the first bill, the Compact agency would have authority to essentially direct U.S. Coast Guard (USCG) rulemaking. The second proposal established the Compact as an interested party for making recommendations to the USCG.

Under the current proposal, the Compact agency continues to have the status of an interested party. In addition, by serving as a West Coast Spill Prevention Advisory Committee to the USCG, the Compact is more intricately involved in the development of rules pertinent to the prevention of oil spills. This committee is created by the Compact. As in all the reviewed versions, the USCG retains enforcement authority. Compact voting procedures are also changed in this draft. Under this proposal each state has two voting representatives; at least one affirmative vote from each state is required for a measure to pass.

#### Amendments Unique to the Current Alaska Committee Substitute

The current Alaska committee substitute contains two amendments that have not been passed in other states. The first amendment (attached) is a technical amendment clarifying the transition from state approved contingency plans to Compact approved contingency plans. Without this amendment, state approved plans could remain in effect indefinitely. This amendment requires contingency plans to be approved under Compact regulations once Compact regulations are in place and a state approved plan expires.

The second amendment (attached) changes the definition of vessels to exempt vessels under 5,000 gross weight tonnage. This amendment is still in need of negotiation with other party states because Oregon sponsors preferred an exemption for vessel less than 2,500 gross weight tonnage. The intent of this amendment is to avoid potentially raising fuel prices in rural Alaska as a result of Compact actions. These smaller vessels, however, would continue to be subject to state jurisdiction.

#### Status of Compact Legislation in Other States

The following is brief summary of the status of Compact legislation in the party states:

Oregon--legislation is ~~expected to be passed~~ <sup>1991</sup> this year;  
Oregon's legislature meets biennially;

Washington--there have been a number of hearings on the bill which has moved through committees but it is not expected to pass the legislature this year as a result of industry concerns; Washington meets annually;

California--some hearings have been held but the legislation is not expected to pass because in fall 1990 California passed extensive oil spill prevention legislation; California's statutes are now more stringent than other west coast states; California is reluctant to potentially give up these standards; California meets annually; and

Hawaii--no action to date because of adjournment; hearings expected when legislature reconvenes.

Attachments

G. Fay, May 21, 1991

## DIVISION OF LEGAL SERVICES

### LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
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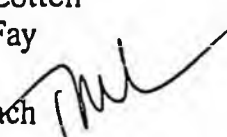
Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

#### MEMORANDUM

March 19, 1991

**SUBJECT:** Vessel Contingency Plans  
(Work Order No. 7LS-1032)

**TO:** Senator Sam Cotten  
Attn: Ginny Fay

**FROM:** Terri Lauterbach   
Legislative Counsel

You have asked whether the laws of California are more comprehensive or more stringent than the laws of Alaska with respect to oil spill contingency plans for vessels.<sup>1/</sup>

In my opinion, the laws of California are both more comprehensive and more stringent than the laws of Alaska for vessel contingency plans. Contingency plan requirements for vessels in California cover at least one additional area compared to Alaska and have stricter requirements in some of the areas that are covered in both states' laws.

#### CONTEXT OF DISCUSSION

The context in which you asked your question comes from the possibility of Alaska joining an interstate compact with other West Coast states that might contain language such as the following:

The compact shall work closely with officials of the [party states] to assure that the vessel contingency plans required under this compact are at least as comprehensive as similar plans required by the parties before adoption of this compact and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in effect at the time the compact initiates its requirements under this subparagraph. (Emphasis added.) (Language obtained from you.)

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<sup>1/</sup> This memo is restricted to a discussion of the statutes of the two states. No attempt is made to compare the regulations of each state. Both sets of regulations are still being developed.

Senator Sam Cotten  
March 19, 1991  
Page 2

I interpret this language to mean that the vessel contingency plans of the compact states must not only address all relevant areas (comprehensiveness) but also contain "any requirements...in effect at the time" (be as stringent).<sup>2/</sup>

### COMPREHENSIVENESS

The main area covered by California laws that makes their contingency planning requirements for vessels more comprehensive than under Alaska's laws is in the area of prevention measures.

California requires that vessel contingency plans demonstrate that "all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the...vessel." Alaska has no such requirement to reduce the possibility of an oil spill.

Our laws call the plans "oil discharge prevention and contingency plans" but Alaska law only contains standards for response measures that must be taken after a spill occurs. DEC can make exceptions to the response planning standards for vessels that take prevention measures, but no vessel is required to take prevention measures under our law.

### STRINGENCY

California's vessel contingency plan laws are more stringent than Alaska's in several respects.

(1) Best available protection. California's laws require that contingency plans provide for "the best achievable protection of coastal and marine resources."<sup>3/</sup> In contrast, Alaska's laws set specific response planning standards in terms of size of vessel, size of discharge, and number of hours.

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<sup>2/</sup> Since the compact language you sent to me deals only with vessel contingency plans, that is the only subject addressed in this memo. This memo does not address master state plans or other aspects of state prevention or response to oil discharges, such as state research into technology, state deployment of equipment and personnel, or state marine safety regulations.

<sup>3/</sup> Govt. Code 8670.28(a). "Best achievable protection" is defined in Govt. Code 8670.3(c) as being the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable...

"Best achievable technology" is further defined in Govt. Code 8670.3(d) to include processes "that are being developed, or could feasibly be developed anywhere in the world."

In my opinion, California's "best achievable protection" standard might well be a stricter standard than our 72-hour standard, particularly as technologies improve, and particularly for smaller spills which, in Alaska, are only subject to the same 72-hour standard as larger spills.

(2) Best available technology. In California, the state can require a contingency plan to be resubmitted when new response technologies become available.<sup>4/</sup> In Alaska, a plan only needs to contain the best technology available at the time of submission or renewal, with no modifications required for upgrading technology within the three-year approval period.<sup>5/</sup>

(3) Reasons for modification. In California, the state can require resubmission of a contingency plan for reasons not allowed in Alaska. Those reasons are availability of better technology than when the plan was first approved (discussed above), changes in regulations (not necessarily in response to a change in the underlying law), deficiencies determined in a statewide evaluation one year after the 1991 regulations are adopted, and increased need to protect endangered species habitat.<sup>6/</sup>

In Alaska, the only specified reasons for modifications within the three-year approval period are changes within the operation of the facility and discharge experience.<sup>7/</sup>

(4) Approval period. In California, a contingency plan is approved for only a two-year period. In Alaska, a plan is approved for three years.

(5) Conditional approval. It does not appear to me that California's law allows for approval of a plan subject to conditions, as is allowed under regulations of DEC in Alaska.<sup>8/</sup> California law specifically provides that "A plan is not deemed approved until all portions are approved."<sup>9/</sup> A nonapproved plan must be returned to the sender. Failure to gain approval after a second submission may be determined to be a violation in California.

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<sup>4/</sup> Govt. Code 8670.31(g).

<sup>5/</sup> AS 46.04.030(e).

<sup>6/</sup> Govt. Code 8670.31(g).

<sup>7/</sup> AS 46.04.030(e).

<sup>8/</sup> While this memo is primarily limited to statutory comparisons, I mention this particular Alaska regulation because it has been made noteworthy by developments in this state. I consider it highly unlikely that California might turn out to have a similar regulation when its regulations are adopted because of its more specific statutory language about plans not being approved in parts.

<sup>9/</sup> Govt. Code 8670.31(d).

Senator Sam Cotten  
March 19, 1991  
Page 4

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I hope you find the discussion in this memo helpful. Please let me know if I can answer further questions on this matter or be of other assistance.

TML:pl  
91-180.plm

7-LS0470G  
Dierdorff  
4/8/92

*See new 4/24/92  
draft by  
Sen. Cotten.*

**CS FOR SENATE BILL NO. 102 (FINANCE)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS COTTEN, Zharoff, Sturgulewski, Eliason, Menard**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act enacting and entering into the Pacific Ocean Resources Compact."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. AS 46 is amended by adding a new chapter to read:

4 CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

5 Sec. 46.47.010. COMPACT ENACTED AND ENTERED INTO. (a) The Pacific Ocean  
6 Resources Compact as set out in AS 46.47.020 is enacted into law and entered into on behalf of  
7 the state. This compact shall take effect after two or more of the states of California, Hawaii,  
8 Oregon, or Washington ratify the compact in substantially the same form as set out in  
9 AS 46.47.020 and consent is granted by the Congress as required by section 10, Article I, of the  
10 Constitution of the United States.

11 (b) In addition to the states named in (a) of this section, the Province of British Columbia  
12 may become an associate party to the compact, without voting power. Upon request of the  
13 Province of British Columbia and approval of the Congress, the Province of British Columbia  
14 may become a full party to the compact with the same rights and powers as the party states.



1 (D) environmental monitoring and research;

2 (4) each party has jurisdiction over the submerged and submersible land within  
3 its territorial sea and responsibility for management of many marine resources and ocean uses;  
4 each party has unique natural resource, social, economic, and political conditions for which local  
5 management by the individual party is the most appropriate;

6 (5) the parties now do not have an effective means to address mutual concerns  
7 related to transport of oil and hazardous substances in waters within and beyond the party's  
8 jurisdiction that may jeopardize ocean resources and uses important to one or more coastal  
9 parties;

10 (6) the 1983 Presidential Proclamation of the 200-mile United States Exclusive  
11 Economic Zone has created the opportunity for all coastal states to more fully exercise and assert  
12 their responsibilities pertaining to the protection, conservation, and development of ocean  
13 resources under United States jurisdiction;

14 (7) citizens of the Pacific states and the Province of British Columbia are  
15 increasingly concerned with the environmental integrity of the ocean and protection of all ocean  
16 resources;

17 (8) recent studies conducted in the wake of major accidental releases of oil or  
18 hazardous substances have concluded that the existing system of response to spills could be  
19 improved in the following ways to provide better protection of ocean resources:

20 (A) enhanced personnel training and qualifications;

21 (B) improved vessel design and integrity;

22 (C) better mechanisms for cost recovery by the states or the province;

23 (D) improved coordination in regulatory oversight;

24 (E) enhanced traffic management; and

25 (F) an improved information base dealing with marine and coastal  
26 environments;

27 (9) a spill or discharge of oil or a hazardous substance from an ocean-going vessel  
28 has the potential of causing major regional effects.

29 (b) Therefore, the purpose of this compact is to

30 (1) assist in the promotion of interstate commerce by encouraging uniform  
31 regulation of the transportation of oil or hazardous substances within the compact zone;

- 1 (2) provide a legal mechanism to regulate certain ocean activities within the  
2 United States Exclusive Economic Zone;
- 3 (3) enhance regional coordination of issues of critical importance;
- 4 (4) work with federal agencies to advance the best interest of the region;
- 5 (5) foster regional cooperation and pooling of resources to reduce costs and  
6 increase effective use of scarce resources;
- 7 (6) monitor activities of concern to the parties;
- 8 (7) address issues of mutual concern to the Pacific states and the Province of  
9 British Columbia and enhance the parties' influence over activities of concern that are not now  
10 addressed through existing compacts, including
- 11 (A) spill prevention;
- 12 (B) transportation of oil and other hazardous substances;
- 13 (C) spill response planning; and
- 14 (D) environmental monitoring and research;
- 15 (8) foster cooperation and coordination among the parties in order to increase the  
16 effectiveness of the individual party's ocean laws and programs;
- 17 (9) provide technical assistance to parties for ocean activities covered by this  
18 compact;
- 19 (10) provide for formal participation by the Province of British Columbia with  
20 the compact to more fully address issues of regional concern;
- 21 (11) ensure that the citizens of the region have opportunities to participate in  
22 discussions and deliberations of regional ocean resources issues;
- 23 (12) establish an innovative system under which the parties can represent their  
24 shared interests within the compact zone, including
- 25 (A) the maintenance and protection of common ocean resources; and
- 26 (B) vessel transportation of oil and other hazardous substances;
- 27 (13) recommend uniform safety standards for routes, crews, and equipment for  
28 vessels transporting oil and hazardous substances within the compact zone and monitor the  
29 implementation of these standards and regulations by federal agencies, states or provinces, and  
30 private industry;
- 31 (14) promote more coordinated management of ocean resources that are of mutual

1 concern;

2 (15) provide a forum for the regional coordination of the individual parties' plans  
3 for the management and protection of those areas of the Pacific Ocean and adjacent waters over  
4 which the compacting parties jointly or separately now have or may acquire jurisdiction.

5 ARTICLE II  
6 DEFINITIONS

7 In this compact,

8 (1) "compact" means the representative body created by Article IV of this  
9 compact;

10 (2) "compact zone" means the portion of the oceans bordering the parties within  
11 the 200-mile exclusive economic zone;

12 (3) "hazardous substance" means an element or compound that, when it enters in  
13 or on the water, presents an imminent and substantial danger to the public health or welfare or  
14 the environment, including fish, animals, vegetation, or a part of the natural habitat in which they  
15 are found; "hazardous substance" includes a substance designated under 33 U.S.C. 1321(b)(2)(A),  
16 an element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, a  
17 hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921, a toxic  
18 pollutant listed under 33 U.S.C. 1317(a), and an imminently hazardous chemical substance or  
19 mixture with respect to which the administrator of the United States Environmental Protection  
20 Agency has taken action under 15 U.S.C. 2606;

21 (4) "navigable waters" means the waters of the United States, including the  
22 territorial sea;

23 (5) "oil" means crude petroleum oil or any other hydrocarbon, regardless of  
24 gravity, that is produced at the well in liquid form by ordinary production methods, and any  
25 petroleum products or petrochemicals of any kind and in any form whether crude, refined, or a  
26 petroleum byproduct, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
27 refuse, or mixed with other wastes, liquefied natural gas, or propane;

28 (6) "party" means a state or province that ratifies this compact as provided in  
29 Article III of this compact;

30 (7) "representative" means an individual appointed as provided in Article IV of  
31 this compact to represent a party;

1 (8) "vessel" means a watercraft or other artificial contrivance that is constructed  
2 or adapted to carry, or that carries oil or hazardous substances in bulk as cargo or cargo residue  
3 and that is greater than 5,000 gross weight tonnage, and that

4 (A) operates on the navigable waters of the compact zone; or

5 (B) transfers oil or hazardous substances in a place subject to the  
6 jurisdiction of the United States.

7 ARTICLE III

8 OPERATIVE DATES

9 (a) Except as provided in (b) of this article, this compact shall become effective when  
10 this state and two or more of the states of California, Hawaii, Oregon, or Washington ratify the  
11 compact and the consent of the Congress is or has been granted as required by section 10,  
12 Article I, of the Constitution of the United States.

13 (b) This agreement shall become operative as to the Province of British Columbia as a  
14 full party upon request of the Province of British Columbia and approval of the Congress.

15 ARTICLE IV

16 PACIFIC OCEAN RESOURCES COMPACT

17 (a) The Pacific Ocean Resources Compact is created and shall have its offices within the  
18 territorial limits of one of the parties, shall carry out its duties and functions in accordance with  
19 this compact, shall continue in force and effect in accordance with this compact, and, except as  
20 specifically provided in this compact, may not be considered an agency or instrumentality of the  
21 United States for the purpose of any federal law. Each party participating in this compact shall  
22 appoint two persons, subject to the applicable laws of the appointing party, to undertake the  
23 functions and duties of representatives of the compact. This compact shall be invested with the  
24 powers and duties set out in this compact.

25 (b) The term of each representative shall be four years. A representative shall hold office  
26 until a successor is appointed and qualified but the successor's term shall expire four years from  
27 the legal date of expiration of the term of the predecessor. Vacancies occurring in the office of  
28 a representative for any reason or cause shall be filled for the unexpired term by the party  
29 represented by the vacancy. A party may remove the representative for that party in accordance  
30 with the statutes of the party concerned. Each representative may delegate to a deputy the power  
31 to be present and participate, including voting as the representative or substitute, at any meeting

1 of or hearing by or other proceeding of the compact.

2 (c) The compact shall invite the Secretary of the United States Department of  
3 Transportation, the Administrator of the United States Environmental Protection Agency, and the  
4 Administrator of the National Oceanic and Atmospheric Administration or their designees to  
5 participate as nonvoting members of the compact.

6 ARTICLE V

7 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

8 (a) The Pacific Ocean Resources Compact is authorized to

9 (1) facilitate the prevention of or response to oil and hazardous substance spills

10 by

11 (A) serving as a West Coast Spill Prevention Advisory Committee to the  
12 United States Coast Guard; as such, the compact shall advise the United States Coast  
13 Guard on matters pertaining to spill prevention and response within the compact zone and  
14 also shall advise the United States Coast Guard on other matters within the compact's  
15 authority as set forth in this compact;

16 (B) participating as an interested person in any rulemaking proceeding by  
17 the United States Coast Guard related to the establishment of safety standards for routes,  
18 crews, and equipment for vessels transporting oil and hazardous substances; the United  
19 States Coast Guard shall adopt the recommendations of the compact, unless the United  
20 States Coast Guard makes a finding, as part of the rulemaking process, that the adoption  
21 of a recommendation would not prevent or facilitate response to oil and hazardous  
22 substance spills;

23 (C) as an interested person, requesting the United States Coast Guard to  
24 initiate rulemaking for the establishment or amendment of safety standards for routes,  
25 crews, and equipment for vessels transporting oil and hazardous substances; the United  
26 States Coast Guard shall initiate rulemaking as requested by the compact, unless the  
27 United States Coast Guard makes a finding that the initiation of the rulemaking would not  
28 further the prevention of or response to oil and hazardous substance spills;

29 (D) making recommendations to other appropriate state, federal, and  
30 regional entities regarding uniform safety standards for routes, crews, and equipment for  
31 vessels transporting oil and hazardous substances in the compact zone;

1 (2) ensure a coordinated network of oil and hazardous substance spill response  
2 plans and programs of the parties, federal agencies, and private organizations;

3 (3) by regulation, establish the requirements for submission of and approval by  
4 the compact of a contingency plan by any vessel transporting oil or hazardous substance in the  
5 compact zone; the requirements must be compatible with the requirements for response plans  
6 under sec. 4202 of the Oil Pollution Act of 1990 (P.L. 101-380); a plan developed in accordance  
7 with the regulations adopted by the compact and approved by the compact shall satisfy the  
8 requirements of sec. 4202 of the Oil Pollution Act and shall satisfy and supersede any  
9 requirements of an individual party for submitting a vessel contingency or spill response plan;  
10 however, all plans approved by parties to this compact before the operative date of the compact  
11 shall remain in full force and effect until a contingency plan is approved by the compact under  
12 this paragraph; if a contingency plan approved by one of the parties to this compact expires after  
13 the compact contingency plan regulations are adopted, a new contingency plan must be adopted  
14 under the compact regulations; in establishing regulations under this paragraph, the compact shall  
15 work closely with officials of the parties to assure that the vessel contingency plans required  
16 under this compact include all subject areas included by the member parties in the standards for  
17 vessel contingency plans of the parties, in the aggregate, before the adoption of the compact;

18 (4) establish and maintain an informational clearinghouse related to spill response,  
19 including a directory of personnel, equipment, technical expertise, organizations, and other  
20 resources available to assist as part of a regional oil or hazardous substance spill response;

21 (5) provide a forum for discussion and recommendation to resolve conflicts  
22 among member parties or the federal government regarding various ocean resources programs  
23 that have been or may be established by each party;

24 (6) provide opportunities for public participation in compact activities by holding  
25 meetings of the compact in various locations within the territorial limits of the parties, providing  
26 opportunities for public comment at meetings and developing a public outreach program;

27 (7) designate state or provincial agency officials to act on behalf of the compact  
28 as liaisons with federal agencies;

29 (8) identify the regional data needs related to ocean resources and recommend a  
30 method for compiling the data in a format that can be shared by all parties;

31 (9) consult with and advise any pertinent party or federal agency with regard to

1 problems connected with ocean resources management and recommend the adoption of any rules  
2 or regulations the compact considers advisable that are within the jurisdiction of the agency;

3 (10) establish sanctions and a schedule of civil penalties for violations of the rules  
4 or regulations of the compact and impose those sanctions or civil penalties in accordance with  
5 5 U.S.C. 551 - 559 and 701 - 706;

6 (11) request the United States Coast Guard to enforce or assist in the enforcement  
7 of any regulations adopted by the compact including, but not limited to, regulations related to the  
8 submission of a contingency plan or financial assurance requirements in the compact zone;

9 (12) establish a schedule of reasonable fees to be assessed for the review of a  
10 contingency plan submitted under (3) of this subsection; the fees must be sufficient to recover  
11 the costs of reviewing the plans and conducting any related inspections; the fees may be assessed  
12 in increments up to the maximum amount.

13 (b) In addition to the authority granted under (a) of this article, the compact may

14 (1) accept grants and gifts;

15 (2) enter into contracts for whose performance the compact shall be solely  
16 responsible in order to support its operations;

17 (3) conduct and prepare, independently or in cooperation with others, studies,  
18 investigations, research, and programs relating to the purposes of this compact;

19 (4) conduct public hearings on matters pertaining to the purposes of this compact;

20 (5) establish a standardized cost recovery formula for damages to other resources  
21 based on the amount of oil or hazardous substance spilled;

22 (6) enter into an agreement with the United States Coast Guard under which the  
23 compact will administer compliance with the requirements for demonstrating financial  
24 responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by  
25 the compact; proof of financial responsibility, if established by the compact under this paragraph,  
26 shall satisfy and supersede the requirement of any individual party for demonstrating financial  
27 responsibility; however, all financial responsibility requirements established by the parties to this  
28 compact before the compact establishes an amount under the paragraph shall remain in full force  
29 and effect until the compact establishes a requirement and enters into an agreement with the  
30 United States Coast Guard under this paragraph; in establishing the amount of financial  
31 responsibility under this paragraph, the compact shall work with officials of each party to assure

1 that such requirements are sufficient to satisfy the requirements of the parties, in aggregate;  
2 (7) in accordance with the provisions of 5 U.S.C. 551 - 559 and 701 - 706,  
3 enforce the rules and regulations adopted by the compact to carry out the authority of the  
4 compact as set out in this article;

5 (8) appoint technical and advisory comm[~~itee~~] for the purpose of advising the  
6 compact on regional ocean resources issues, data needs ~~and~~ format, and other purposes related  
7 to the compact's activities; a technical or advisory committee appointed by the compact is not  
8 subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended);

9 (9) allow a variance from the provisions of this compact or rules or regulations  
10 adopted by the compact under this article; a variance must be based on a showing by the person  
11 or entity seeking the variance that the activity allowed under the variance will have no regional  
12 effect and that the variance is economically necessary; under no circumstances may a variance  
13 result in the regulation of the transportation of oil or hazardous substance according to standards  
14 less stringent than standards imposed under federal law.

15 (c) The compact shall adopt all regulations necessary to carry out its duties and exercise  
16 its authority under this article. The compact shall adopt the regulations in accordance with the  
17 provisions of 5 U.S.C. 500 - 559.

## 18 ARTICLE VI

### 19 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

20 The compact shall select a chair and a vice-chair. After the initial chair and vice-chair  
21 are selected, the compact shall establish a rotation for the selection of the chair and vice-chair  
22 so the office rotates through the parties to the compact. The compact shall appoint and at its  
23 pleasure remove or discharge such officers and employees as may be required to carry the  
24 provisions of this compact into effect and shall fix and determine their duties, qualifications, and  
25 compensation. The compact shall adopt rules and regulations for the conduct of its business.  
26 It may establish and maintain one or more offices for the transaction of its business and may  
27 meet at any time or place within the territorial limits of the signatory parties but must meet at  
28 least once a year.

## 29 ARTICLE VII

### 30 VOTING AND QUORUM

31 (a) A majority of the representatives shall constitute a quorum.

1 (b) Each representative shall be entitled to one vote. An action or decision of the  
2 compact may not be approved unless the action or decision receives a majority of the votes of  
3 the representatives, including at least one affirmative vote from each party.

4 ARTICLE VIII

5 SUPPORT AGENCIES

6 The compact may contract for the staff support necessary to carry out the purposes of this  
7 compact or request appropriate agencies of the signatory parties to act as the research agencies  
8 of the compact.

9 ARTICLE IX

10 PARTIES' POWERS UNDER COMPACT

11 Except as specifically provided in Article V of this compact, nothing in this compact may  
12 be construed to limit the powers of a party or to repeal or prevent the enactment of legislation  
13 or the enforcement of a requirement imposing additional conditions and restrictions to conserve  
14 ocean resources.

15 ARTICLE X

16 ABSENCE

17 Continued absence of representation or of a compact representative from a party shall be  
18 brought to the attention of the appointing authority of the party not represented.

19 ARTICLE XI

20 FUNDING

21 (a) Each party shall contribute to the support of the compact.  
22 (b) The annual contribution of each party shall be figured to the nearest \$100.  
23 (c) The compact shall prepare an annual budget which shall be approved by vote of the  
24 compact. After approval, the proposed budget shall be presented to the chief executive and the  
25 legislative body of each party.

26 (d) Each party shall be responsible for the expenses of its own representatives.

27 ARTICLE XII

28 WITHDRAWAL FROM COMPACT

29 This compact shall continue in force and remain binding upon each party until renounced  
30 by it. Renunciation of this compact must be preceded by sending six months' notice in writing  
31 of intention to withdraw from the compact to the other parties to the compact.

1                   Sec. 46.47 030. REPRESENTATIVES. The two representatives of the state to the Pacific  
2                   Ocean Resources Compact shall be appointed by the governor, subject to confirmation by the  
3                   legislature.

THE FOLLOWING DOCUMENT HAS NOT  
BEEN FILMED BUT IS AVAILABLE IN THE  
ORIGINAL FILE.

PLEASE MICROFILM TOP PAGE ONLY

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UNIVERSITY OF ALASKA SEA GRANT LEGAL RESEARCH TEAM

PROFESSORS      HARRY BADER, FAIRBANKS  
                     RALPH JOHNSON, SEATTLE  
                     ZYGMUNT PLATER, BOSTON, COORDINATOR  
                     ALISON RIESER, NEW HAVEN

ADMINISTRATION : RON DEARBORN, SUSAN DICKINSON      U/A FAIRBANKS SEA GRANT (907) 474-7088

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LEGAL RESEARCH REPORT

No. 9.2

"POTENTIAL UTILITY OF AN INTERSTATE COMPACT  
AS A VEHICLE FOR OIL SPILL PREVENTION AND RESPONSE"

Submitted: December 1989  
Principal Investigator: Harry Bader

The contents of this report are presented in draft form subject to amendment and supplementation, intended for the use of the State of Alaska Oil Spill Commission, and may not be quoted or used in any manner without the permission of the Legal Research Team.

**SB103**

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/4/91

FURTHER: \_\_\_\_\_

*Noted by SFC 2/7/91*

DATE TURNED INTO OFFICE: \_\_\_\_\_

The Finance Committee considered SB 103

Appropriation to the Dept. of Law to pursue litigation resulting from the Exxon Valdez oil spill losses; efd.

***Died in SFC.***

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_

**APPROVES PREVIOUS:**

- fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

**SIGNING DO PASS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_  
Co-Chairs: Signatures and Recommendations

## SENATE BILL NO. 103

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS HALFORD, Eliason, Cotten, Adams, Pourchot, Uehling, Sturgulewski, Frank, Hoffman, Kerttula, Duncan, Rodey, Collins, Menard, Pearce, Fischer

Introduced: 2/4/91

Referred: Finance

Funding Information:	General Fund	\$20,000,000
	Other Funds	-0-
		<u>\$20,000,000</u>

## A BILL

## FOR AN ACT ENTITLED

1 "An Act making an appropriation to the Department of Law to pursue litigation resulting  
2 from the Exxon Valdez oil spill losses; and providing for an effective date."

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

4 \* Section 1. The sum of \$20,000,000 is appropriated from the general fund to the Department of Law  
5 to enable the department to pursue litigation resulting from the Exxon Valdez oil spill losses.

6 \* Sec. 2. The appropriation made by this Act lapses June 30, 1992.

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

ALASKA STATE LEGISLATURE  
SENATE BILL NO. 103

HISTORY IN THE SENATE

HISTORY IN THE HOUSE

1991  
2/4

Read first time and referred to:  
Finance

---

\_\_\_\_\_ RPT(\_\_\_\_) CS \_\_\_ DP \_\_\_ NR \_\_\_ DNP \_\_\_ AM  
New Title \_\_\_ Same Title \_\_\_ Previous FN  
\_\_\_ FN \_\_\_ OFN To \_\_\_\_\_

\_\_\_\_\_ RPT(\_\_\_\_) CS \_\_\_ DP \_\_\_ NR \_\_\_ DNP \_\_\_ AM  
New Title \_\_\_ Same Title \_\_\_ Previous FN  
\_\_\_ FN \_\_\_ OFN To \_\_\_\_\_

\_\_\_\_\_ RPT(\_\_\_\_) CS \_\_\_ DP \_\_\_ NR \_\_\_ DNP \_\_\_ AM  
New Title \_\_\_ Same Title \_\_\_ Previous FN  
\_\_\_ FN \_\_\_ OFN To \_\_\_\_\_

\_\_\_\_\_ Rules Calendar(\_\_\_\_) CS \_\_\_ AM \_\_\_ Other  
New Title \_\_\_ Same Title \_\_\_ Previous FN  
\_\_\_ FN \_\_\_ OFN

Read second time

\_\_\_\_\_ CS Adopted (\_\_\_\_) \_\_\_\_\_ New Title  
\_\_\_ Amended \_\_\_\_\_ Advanced

Read third time

\_\_\_\_\_ Letter of Intent adopted  
\_\_\_\_\_ Return to second for specific amendment

PASSED EFD Same \_\_\_ or  
Yeas Yeas  
Nays Nays  
Excused Excused  
Absent Absent

Reconsideration  
Reconsideration not taken up

PASSED EFD Same \_\_\_ or  
Yeas Yeas  
Nays Nays  
Excused Excused  
Absent Absent

Reported correctly engrossed  
Signed by President, to House

---

Secretary of the Senate

19

Read first time and referred to:

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\_\_\_\_\_ RPT CS( ) \_\_\_ New Title  
\_\_\_\_\_ DP \_\_\_\_\_ DNP \_\_\_\_\_ NR \_\_\_\_\_ AM  
\_\_\_\_\_ FN \_\_\_\_\_ OFN \_\_\_\_\_ Previous FN

\_\_\_\_\_ RPT CS( ) \_\_\_ New Title  
\_\_\_\_\_ DP \_\_\_\_\_ DNP \_\_\_\_\_ NR \_\_\_\_\_ AM  
\_\_\_\_\_ FN \_\_\_\_\_ OFN \_\_\_\_\_ Previous FN

\_\_\_\_\_ RPT CS( ) \_\_\_ New Title  
\_\_\_\_\_ DP \_\_\_\_\_ DNP \_\_\_\_\_ NR \_\_\_\_\_ AM  
\_\_\_\_\_ FN \_\_\_\_\_ OFN \_\_\_\_\_ Previous FN

Read second time  
CS( ) Adopted

Amended

Advanced

Read third time

Return to second for specific amendment

PASSED EFD Same \_\_\_ or  
Yeas Yeas  
Nays Nays  
Excused Excused  
Absent Absent

\_\_\_\_\_ Intent adopted

Reconsideration  
Reconsideration not taken up

PASSED ON RECON. EFD Same \_\_\_ or  
Yeas Yeas  
Nays Nays  
Excused Excused  
Absent Absent

\_\_\_\_\_ Intent adopted

Reported correctly engrossed, signed by the Speaker  
and returned to the Senate

---

Chief Clerk of the House

SENATE-HOUSE HISTORY Continued

19

Received from the House  
Version: \_\_\_\_\_

Concur in House amendment  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_  
\_\_\_\_\_ Efd same or Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

Failed to concur in House amendment, ask House recede  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

House failed to / receded from amendment  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

CC appointed by Senate \_\_\_\_\_ Chair  
\_\_\_\_\_

CC appointed by House \_\_\_\_\_ Chair  
\_\_\_\_\_

(S) Granted Limited Powers of Free Conference

(H) Granted Limited Powers of Free Conference

19

(S) Adopted CC Rpt \_\_\_\_\_  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_  
\_\_\_\_\_ Efd same or Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

(H) Adopted CC Rpt \_\_\_\_\_  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_  
\_\_\_\_\_ Efd same or Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

To enrolling  
Received from enrolling  
Sent to Governor

\_\_\_\_\_ By Governor

Chapter Number \_\_\_\_\_

Filed with Lieutenant Governor

**SB104**

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/13/91

FURTHER:

DATE TURNED INTO OFFICE: \_\_\_\_\_

The Finance Committee considered SENATE BILL NO. 104

"An Act relating to the taking and compensation for damage of property by state agencies, municipalities, and other entities; and providing for an effective date."

*Died in SFC*

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted
- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

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

ATTACHES NEW FISCAL NOTE(S):  
Dept/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

SIGNING DO PASS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_

Co-Chairs: Signatures and Recommendations

SENATE COMMITTEE REPORT

DATE: 2/6/91

FURTHER: Finance

Date of 5-Day Notice: 3/14/91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-13-91

State Affairs Committee considered SB 104

Taking and compensation for damage of property by state agencies, municipalities, and other entities; efd.

and recommended:

*to be explained w/ SB104*

- replace with \_\_\_\_\_ CS ST. AFFAIRS  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title
- attached amendment(s) *+ rpts it back as floor*  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

*FM & P/M*

ATTACHES NEW FISCAL NOTE(S): Dept/Date:  
 fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

APPROVES PREVIOUS: Dept/Date:  
 fiscal note(s) DOT 3/14/91  
SB & CS

zero fiscal note(s) LAW 3/5/91  
SB & CS

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*2 - not same bill no rec*  
*2 - with check no rec*  
*2 - give 10 day notice*

*Patricia Kelley do pass*  
Chair: Signature and Recommendation

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

FISCAL NOTE

No. 1  
 BI Bill Version: SB 104  
 (S) Publish Date: 5/13/91

Revision Date: \_\_\_\_\_ Department Affected: DOT&PF  
 Title: relating to the taking and compensation for damage of property by state agencies; ... BRU: Statewide Engineering & Operations Standards  
 Sponso.: Senators Rodey, Halford Component: Engr. & Operations Stand.  
 Requestor: Senator Rodey Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)  
 See second page and department position paper.

Changes in CSSB-104 (STA)  
 reflect NO FISCAL CHANGE from the original  
 fiscal note. This fiscal note is appropriate.  
5/13/91 date W.A. Co. J. Comte Aide (initial)

Prepared by: Jeffery C. Ottesen, Director [Signature]

Phone: 465-2951

Division: Engineering and Operations Standards

Date: March 14, 1991

Approved by Commissioner: [Signature]  
 Frank G. Furpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: March 14, 1991

Distribution By Preparer: Legislative Finance, Legislative Sponsor, Requestor, OMB, Impacted Agency(ies).

ANALYSIS (cont. from page 1):

This bill will have significant direct and indirect impacts to our capital budget. All costs associated with paying business losses including direct payments, legal costs, appraisal costs, staff time and court fees will be ineligible for federal-aid (23 CFR 710.304 (h)). It is difficult to predict how much these payments will be and the extent of litigation which will ensue to interpret the various provisions of the bill. In cases where the Attorney General's office counsels against going to court we will be compelled to reach negotiated settlements. We typically do this now for dollar amounts in excess of fair market value determinations. This bill will likely expand this practice as it broadens the type of losses which can be claimed.

**Direct Costs**

We have based our estimate of \$2 million dollars on a number of assumptions. Each is highly variable and it would have been easy to estimate this fiscal note at a much larger figure. A single business loss claim sought during a condemnation action in 1990 sought \$2 million. Based upon actual experience, we would adjust the amount necessary to pay and defend these claims in future capital budget requests.

Assumptions:

Business loss cases settled by negotiations:	25
Average settlement	\$40,000
Average administrative cost (legal, appraisal, staff)	\$8,000
Subtotal	\$1.2 million

Business loss cases settled in court:	8
Average settlement	\$80,000
Average administrative cost (legal, appraisal, staff)	\$20,000
Subtotal	\$0.8 million

**Total** **\$2.0 million**

**Indirect Costs**

As this bill has an immediate effective date, it will slow the progress of a number of ongoing projects. If these are delayed beyond the end of the federal fiscal year, we will lose the opportunity to "obligate" this money and hence this is an opportunity loss. While it does not show up in a fiscal note, this bill will have the greatest effect on urban projects which are typically the most expensive. Further, in the current fiscal year the department is required to obligate the highest level of federal funds in our history, and an amount which was revealed to us after the fiscal year began. Thus we predict that at least one or two projects will fail to obligate at a potential "cost" of \$10 to \$20 million.

Note: If appropriated, these funds could either be added to the general fund match for federal-aid highways and aviation which include money for a variety of costs not eligible for federal participation, or a separate fund could be appropriated which strictly limits the use of these funds to business loss claims and related expenses.

FISCAL NOTE

No. 2

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Bill Version: SB 104

(S) Publish Date: 5/13/91

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...taking and compensation...of property by state agencies...other entities" BRU: Legal Services  
 Component: Operations  
 Sponsor: Senator Rodey  
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER - IAR	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)  
 Please see the attached analysis.

Changes in CSB-104 (STA) have no fiscal impact. This fiscal note is appropriate.  
5/13/91 date MAR 07 Comte Aide (initial)

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: March 5, 1991  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: March 5, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 104

This bill makes three basic changes to state laws concerning eminent domain, and relocation assistance and real property acquisition practices.

First, the bill would extend existing relocation assistance program benefits to a person, or a person's business or farm, who are displaced by a taking or damaging of property for activities of state agencies. Currently relocation assistance is available only for state agency activities that are federally funded.

Second, the bill would make both short-term and long-term business loss compensable under eminent domain laws. Many jurisdictions do not compensate for such losses, except for losses suffered due to temporary interruptions to business operations, as is currently the case in Alaska.

Third, the bill would require that prior to filing a declaration of taking and prior to taking possession, the state or municipality must complete an expansive fact finding to prove that the amount deposited with the court for estimated compensation for business losses is adequate.

Although these changes will require additional attorney services, they will not have a fiscal impact on the Department of Law. The state's cost for any capital project involving relocation assistance or business losses will be incrementally higher. However, the total number of attorney hours provided in any given year will probably not increase, and thus the legal services costs that are reimbursed to Law by the Department of Transportation and Public Facilities will simply be redistributed for different project legal purposes. The cost that the state pays for eminent domain and relocation assistance will increase to the extent that business losses and state-funded agency activities are a part of capital improvement projects. These increased costs would occur in future capital project budgets. The Department of Transportation and Public Facilities' view on these matters may be helpful in this latter regard.

CS FOR SENATE BILL NO. 104 (STATE AFFAIRS)  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/13/91  
 Referred: Finance

Sponsor(s): SENATORS RODEY, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking, acquisition, and compensation for damage of property by  
 2 state agencies, municipalities, and other entities; amending Alaska Rule of Civil Procedure  
 3 72; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 09.55.300(b) is amended to read:

6 (b) If the court determines that the property is to be taken for a public use [,] and if all  
 7 parties to the action agree [DO NO OBJECT], the court shall appoint a master to determine the  
 8 amount to be paid by the plaintiffs to each owner or other person interested in the property as  
 9 compensation and damages by reason of the appropriation of the property. If a party [ALL  
 10 PARTIES] to the action objects [OBJECT] to the appointment of a master, the court shall  
 11 proceed with a jury trial, unless the jury is waived by all parties to the action.

12 \* Sec. 2. AS 09.55.310(a) is amended to read:

13 (a) The jury or master shall hear the allegations and evidence of persons interested and  
 14 shall ascertain and assess the following:

1 (1) the value of the property sought to be condemned, and all improvements on  
2 it pertaining to the realty, and of each separate estate or interest in it; if it consists of different  
3 parcels, the value of each parcel and each estate or interest in each parcel shall be separately  
4 assessed;

5 (2) if the property sought to be condemned constitutes only a part of a larger  
6 parcel, the damages that [WHICH] will accrue to the portion not sought to be condemned by  
7 reason of its severance from the portion sought to be condemned, and the construction of the  
8 improvemen's in the manner proposed by the plaintiff;

9 (3) separately, how much the portion not sought to be condemned and each estate  
10 or interest in it will be benefited, if at all, by the construction of the improvements proposed by  
11 the plaintiff; and, if the benefit is equal to the damages assessed under (2.) of this section, the  
12 owner of the parcel may not [SHALL] be allowed [NO] damages except for the value of the  
13 portion taken; but if the benefits are less than the damages [SO] assessed, the former shall be  
14 deducted from the latter and the remainder shall be the only damages allowed in addition to the  
15 value;

16 (4) if the property sought to be condemned is for a railroad, the cost of good and  
17 sufficient fences along the line of the railroad, and the cost of cattle guards where fences may  
18 cross the line of the railroad;

19 (5) the full amount of business loss caused by taking or damaging the  
20 property.

21 \* Sec. 3. AS 09.55.330 is amended to read:

22 Sec. 09.55.330. COMPENSATION AND DAMAGES. For the purpose of assessing  
23 compensation and damages, the right to compensation and damages [THEM] accrues at the date  
24 of issuance of the summons, and their [ITS] actual value at that date is the measure of  
25 compensation of the property, except business loss, to be actually taken, and the basis of  
26 damages to property, except business loss, not actually taken but injuriously affected in the cases  
27 where the damages are allowed. The amount of business loss to be awarded as just  
28 compensation is the amount of actual or projected loss that is proved by a party in interest  
29 by a preponderance of the evidence at a master's hearing or at trial. If an order is made  
30 letting the plaintiff into possession, as provided in AS 09.55.380, the compensation and damages  
31 awarded shall draw lawful interest from the date of the order. No improvements put upon the

1 property after the date of the service of summons shall be included in the assessment of  
2 compensation or damages.

3 \* Sec. 4. AS 09.55.440(b) is amended to read:

4 (b) Upon motion of a party in interest and notice to all parties, the court shall  
5 expeditiously [MAY] order that the money deposited [OR A PART OF IT] be paid immediately  
6 to the person or persons entitled to it for or on account of the just compensation to be awarded  
7 in the proceedings. If the compensation finally awarded exceeds the amount of money deposited,  
8 the deposit shall be offset against the award. If the compensation finally awarded is less than  
9 the amount of money deposited, the court shall enter judgment in favor of the plaintiff and  
10 against the proper parties for the amount of the excess.

11 \* Sec. 5. AS 09.55.450(a) is amended to read:

12 (a) Upon the filing of the declaration of taking and the deposit of the estimated  
13 compensation, the court may, upon motion, fix the time during which and the terms upon which  
14 the parties in possession are required to surrender possession to the petitioner. However, the  
15 right of entry may [SHALL] not be granted the plaintiff until after the running of the time for  
16 the defendant to file an objection to the declaration of taking or until after the hearing on an  
17 [ANY] objection to the declaration of taking if the objection is made in the time allowed by law.  
18 In addition, the court may not grant the right of entry until the court determines that the  
19 amount of the deposit of the estimated just compensation for all property that has been  
20 taken or damaged is substantiated by one or more appraisals prepared in good faith.

21 Where the party in possession withdraws a [ANY] part of the award and remains in possession,  
22 the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff  
23 during the [SUCH] possession.

24 \* Sec. 6. AS 09.55.460(b) is amended to read:

25 (b) The plaintiff may not be divested of a title or possession taken unless [ACQUIRED  
26 EXCEPT WHERE] the court finds that the property was not taken by necessity for a public use  
27 or purpose in a manner compatible with the greatest public good and the least private injury, the  
28 amount of estimated just compensation deposited under AS 09.55.440(a) is not adequate,  
29 the state failed to comply with AS 34.60, the plaintiff is a municipality that failed to comply  
30 with AS 34.60, or the plaintiff failed to comply with AS 09.55.275. In the event of that  
31 finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to

1 it for the period during which the property was in the possession of the plaintiff, (2) recover for  
2 the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to  
3 the condition in which it existed at the time of the filing of the declaration of taking unless  
4 [SUCH] restoration is impossible, in which case the court shall award damages to the proper  
5 persons as compensation for a [ANY] diminution in the value of the property caused by the  
6 plaintiff's wrongful possession.

7 \* Sec. 7. AS 09.55 is amended by adding a new section to article 3 to read:

8 Sec. 09.55.465. DEFINITIONS. In AS 09.55.240 - 09.55.465,

9 (1) "business loss" includes short-term loss of profits, long-term loss of profits,  
10 and the loss of goodwill;

11 (2) "private injury" includes business loss caused by the taking of or damage to  
12 property.

13 \* Sec. 8. AS 29.10.200(25) is amended to read:

14 (25) AS 29.35.030 (eminent domain, relocation assistance, and real property  
15 acquisition practices)

16 \* Sec. 9. AS 29.35.030(a) is amended to read:

17 (a) A municipality may, only within its boundaries, exercise the powers of eminent  
18 domain and declaration of taking in the performance of a power or function of the municipality  
19 and shall use [UNDER] the procedures set out in AS 09.55.250 - 09.55.460 and AS 34.60,  
20 regardless of the source of funding. In addition, in the case of a second class city, the exercise  
21 of the power of eminent domain or declaration of taking must be by ordinance that is submitted  
22 to the voters at the next general election or at a special election called for that purpose. A  
23 majority of the votes on the question is required for approval of the ordinance.

24 \* Sec. 10. AS 34.60.010 is amended to read:

25 Sec. 34.60.010. PURPOSE. The purpose of this chapter is to establish a uniform policy  
26 for the fair and equitable treatment of persons displaced as a result of activities undertaken by  
27 state agencies [FEDERALLY ASSISTED PROGRAMS] in order that the displaced persons will  
28 not suffer disproportionate injuries as a result of programs designed for the benefit of the public  
29 as a whole.

30 \* Sec. 11. AS 34.60.020 is amended to read:

31 Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State agencies shall

1 establish and provide the means for implementing a program providing fair and reasonable  
2 relocation and other payment for persons displaced as a result of [FEDERALLY ASSISTED]  
3 activities undertaken by state agencies, to carry out relocation assistance programs for persons  
4 displaced, and to provide payments to persons as a result of the acquisition, taking, or damaging  
5 of [REAL] property for activities of state agencies.

6 \* Sec. 12. AS 34.60.040(a) is amended to read:

7 (a) When the acquisition, taking, or damaging of [REAL] property for a [FEDERALLY  
8 ASSISTED] program or project undertaken by a state agency will result in the displacement of  
9 a person, the state agency responsible for the program or project shall make payment to the  
10 displaced person, upon proper application as approved by the state agency, for

11 (1) actual reasonable expenses in moving a person, the person's family, business,  
12 farm operation, or other personal property;

13 (2) actual direct losses of tangible personal property as a result of moving or  
14 discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable  
15 expenses that would have been required to relocate the property as determined by the state  
16 agency; and

17 (3) actual reasonable expenses in searching for a replacement business or farm.

18 \* Sec. 13. AS 34.60.050 is amended to read:

19 Sec. 34.60.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In addition  
20 to payments otherwise authorized by this chapter, the state agency shall make an additional  
21 payment not to exceed \$22,500 [,] to a displaced person who is displaced from a dwelling  
22 actually owned and occupied by the person for not less than 180 days before the initiation of  
23 negotiations for the acquisition of the property. This additional payment must include the  
24 following elements:

25 (1) the amount, if any, that when added to the acquisition or taking cost of the  
26 dwelling acquired or taken by the state agency, equals the reasonable cost of a comparable  
27 replacement dwelling that is a decent, safe, and sanitary dwelling adequate to accommodate the  
28 displaced person, is reasonably accessible to public services and places of employment, and is  
29 available on the private market; all determinations required to carry out this paragraph shall be  
30 made in accordance with standards established by the state agency making the additional  
31 payment;

1 (2) the amount, if any, that will compensate the displaced person for any  
2 increased interest costs that the displaced person is required to pay for financing the acquisition  
3 of the comparable replacement dwelling; this amount may be paid only if the dwelling acquired  
4 or taken by the state agency was encumbered by a bona fide mortgage that was a valid lien on  
5 the dwelling for not less than 180 days before the initiation of negotiations for the acquisition  
6 or taking of the dwelling; and

7 (3) reasonable expenses incurred by the displaced person for evidence of title,  
8 recording fees, and other closing costs incident to the purchase of the replacement dwelling, but  
9 not including prepaid expenses.

10 (b) The additional payment authorized by (a) of this section may be made only to a  
11 displaced person who purchases and occupies a replacement dwelling that is decent, safe, and  
12 sanitary not later than the end of the one-year [ONE YEAR] period beginning on the date on  
13 which the person receives from the state agency final payment of all costs of the acquired or  
14 taken dwelling [,] or the date on which the person moves from the acquired or taken dwelling,  
15 whichever is the later date.

16 \* Sec. 14. AS 34.60.060 is amended to read:

17 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In  
18 addition to amounts otherwise authorized by this chapter, the state agency shall make a payment  
19 to or for a displaced person displaced from a dwelling, who is not eligible to receive a payment  
20 under AS 34.60.050, if the dwelling was actually and lawfully occupied by the displaced person  
21 for not less than 90 days before the initiation of negotiations for the acquisition or taking of the  
22 dwelling. The payment must be either

23 (1) the amount necessary to enable the displaced person to lease or rent for a  
24 period not to exceed three years and six months [,] a decent, safe, and sanitary dwelling of  
25 standards adequate to accommodate the displaced person in areas not generally less desirable in  
26 regard to public utilities and public and commercial facilities, and reasonably accessible to the  
27 person's place of employment, but not to exceed \$5,250; or

28 (2) the amount necessary to enable the displaced person to make a down payment,  
29 including incidental expenses described in AS 34.60.050(a)(3), on the purchase of a decent, safe,  
30 and sanitary dwelling of standards adequate to accommodate the displaced person in areas not  
31 generally less desirable in regard to public utilities and public and commercial facilities, but not

1 to exceed \$5,250.

2 \* Sec. 15. AS 34.60.070 is amended to read:

3 Sec. 34.60.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY. The state  
4 agency, as soon as practicable after the date of payment of the purchase price or the date of  
5 deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to  
6 acquire, take, or compensate for damage to [REAL] property, whichever is the earlier, shall  
7 reimburse the owner, to the extent the department considers fair and reasonable, for expenses  
8 necessarily incurred for

9 (1) recording fees, transfer taxes, and similar expenses incidental to conveying  
10 the [REAL] property to the state agency;

11 (2) penalty costs for prepayment of a preexisting recorded mortgage entered into  
12 in good faith encumbering the real property, if the mortgage was a valid lien on the property for  
13 not less than 180 days before the initiation of negotiations for the acquisition of the property; and

14 (3) the pro rata portion of [REAL] property taxes paid that are allocable to a  
15 period subsequent to the date of vesting title in the state [,] or the effective date of possession  
16 of the [REAL] property by the state agency, whichever is the earlier.

17 \* Sec. 16. AS 34.60.080(a) is amended to read:

18 (a) The state court having jurisdiction of a proceeding instituted by the state agency to  
19 take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to,  
20 or title to, or interest in, the [REAL] property a sum that will in the opinion of the court  
21 reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable  
22 attorney, appraisal, and engineering fees [,] actually incurred because of the condemnation  
23 proceedings, if

24 (1) the final judgment is that the state agency cannot take [ACQUIRE] the  
25 [REAL] property by condemnation; or

26 (2) the proceeding is abandoned by the state agency.

27 \* Sec. 17. AS 34.60.090(a) is amended to read:

28 (a) When the acquisition, taking, or damaging of [REAL] property for a program or  
29 project undertaken by a state agency [FOR A FEDERALLY ASSISTED PROGRAM OR  
30 PROJECT UNDERTAKEN BY THE STATE AGENCY] will result in the displacement of a  
31 person [ON OR AFTER JANUARY 2, 1971], the state agency shall provide a relocation

1 assistance advisory program for displaced persons that [WHICH] offers the services described  
2 in (c) of this section. If [THE STATE AGENCY DETERMINES THAT] a person occupying  
3 property immediately adjacent to the [REAL] property acquired or taken is caused substantial  
4 economic injury because of the acquisition or taking, the state agency shall [IT MAY] offer  
5 the occupant relocation advisory services under the program.

6 \* Sec. 18. AS 34.60.120 is amended to read:

7 Sec. 34.60.120. UNIFORM [REAL] PROPERTY ACQUISITION, TAKING, AND  
8 DAMAGE COMPENSATION POLICY. (a) A state agency or other entity acquiring, taking,  
9 or damaging [REAL] property for a [ANY] project or program [IN WHICH FEDERAL OR  
10 FEDERAL-AID FUNDS ARE USED] shall to the greatest extent practicable comply with the  
11 [FOLLOWING] policies set out in this section. [:]

12 (b) [(1)] Every reasonable effort shall be made to expeditiously acquire, take, or make  
13 compensation for [REAL] property by negotiation.

14 (c) Property to be acquired, taken, or damaged [(2) REAL PROPERTY] shall be  
15 appraised before the initiation of negotiations, and the owner or a designated representative shall  
16 be given an opportunity to accompany the appraiser during the inspection of the property.

17 (d) [(3)] Before the initiation of negotiations for [REAL] property, an amount shall be  
18 established that is reasonably believed to be just compensation for all [THE REAL] property  
19 acquired, taken, or damaged, and that amount shall be offered for the property. In no event  
20 may the amount be less than the approved appraisal of the fair market value of the property. A  
21 decrease or increase in the fair market value of [REAL] property before the date of valuation  
22 caused by the public improvement for which the property is acquired or taken or by the  
23 likelihood that the property would be acquired, taken for, or damaged by the improvement,  
24 other than that due to physical deterioration within the reasonable control of the owner, will be  
25 disregarded in determining the compensation for the property. The owner of the [REAL]  
26 property to be acquired, taken, or damaged shall be provided with a written statement of, and  
27 a summary of the basis for, the amount established as just compensation.

28 (e) [(4)] An owner may not be required to surrender possession of [REAL] property  
29 before the state agency concerned pays the agreed purchase price or deposits with the court in  
30 accordance with applicable law, for the benefit of the owner, an amount not less than the  
31 approved appraisal of the fair market value of the property [,] or the amount of the award of

1 compensation in the condemnation proceeding for the property.

2 (f) [(5)] The construction or development of a public improvement shall be so scheduled  
3 that [, TO THE GREATEST EXTENT PRACTICABLE,] a person lawfully occupying [REAL]  
4 property is not required to move from a dwelling, assuming a replacement dwelling will be  
5 available, or to move the person's business or farm operation, without at least 90 days' written  
6 notice of the date by which the move is required and until at least 90 days have elapsed after  
7 a court

8 (1) determines that the prerequisites under AS 09.55.270 have been met; or  
9 (2) has ruled under AS 09.55.450(a) on any objections made to a declaration  
10 of taking, or the time for filing objections under AS 09.55.450(a) has ended without an  
11 objection being filed.

12 (g) [(6)] If an owner or tenant is permitted to occupy the acquired or taken [REAL]  
13 property [ACQUIRED] on a rental basis for a short term or for a period subject to termination  
14 by the state agency on short notice, the amount of rent required may not exceed the fair rental  
15 value of the property to a short-term occupier.

16 (h) [(7)] In no event may the time of condemnation be advanced or negotiations or  
17 condemnation and the deposit of funds in court for the use of the owner be deferred, nor any  
18 other coercive action be taken in order to compel an agreement on the price to be paid for the  
19 acquisition, taking, or damage to property.

20 (i) [(8)] If an interest in [REAL] property is to be taken or damaged [ACQUIRED] by  
21 exercise of the power of eminent domain, formal condemnation proceedings shall be instituted.  
22 The [ACQUIRING] state agency may not intentionally make it necessary for an owner to institute  
23 legal proceedings to prove the fact of the taking or damage of the [REAL] property.

24 (j) [(9)] If the acquisition, taking, or damage of only part of the property would leave  
25 its owner with an uneconomic remnant, an offer to acquire or take the entire property shall be  
26 made.

27 \* Sec. 19. AS 34.60.130(a) is amended to read:

28 (a) Notwithstanding another [ANY OTHER] provision of law, if a state agency acquires  
29 or takes an [ANY] interest in real property, the state agency shall [MUST] acquire or take at  
30 least an equal interest in all buildings, structures, or other improvements located upon the real  
31 property that [WHICH] the state agency requires to be removed from the real property or that

1 [WHICH] the state agency determines will be adversely affected by the use to which the real  
2 property will be put.

3 \* Sec. 20. AS 34.60.130(b) is amended to read:

4 (b) For the purpose of determining just compensation to be paid for a building, structure,  
5 or other improvement required to be acquired or taken under (a) of this section, the building,  
6 structure, or other improvement is considered to be a part of the real property to be acquired or  
7 taken notwithstanding the right or obligation of a tenant, as against the owner of another [ANY  
8 OTHER] interest in the real property, to remove the building, structure, or improvement at the  
9 expiration of the tenant's term, and the fair market value that [WHICH] the building, structure,  
10 or improvement contributes to the fair market value of the real property to be acquired or taken,  
11 or the fair market value of the building, structure, or improvement for removal from the real  
12 property, whichever is the greater, shall be paid to the tenant.

13 \* Sec. 21. AS 34.60.135 is amended to read:

14 Sec. 34.60.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In addition to  
15 the other programs authorized by this chapter, a state agency may make loans in order to  
16 encourage and facilitate the construction or rehabilitation of housing to meet the needs of  
17 displaced persons. These loans are a part of the [FEDERALLY ASSISTED] project cost and  
18 may be made to nonprofit, limited dividend, or cooperative organizations or public bodies. The  
19 loans may be made only for necessary and reasonable expenses, before construction, for planning  
20 and obtaining federally insured mortgage financing for the rehabilitation or construction of  
21 housing for displaced persons. The loans may not exceed 80 percent of the reasonable costs  
22 expected to be incurred in planning, and in obtaining financing for housing for displaced persons.  
23 Reasonable costs include [BUT ARE NOT LIMITED TO] costs for preliminary surveys and  
24 analysis of market needs, preliminary architectural fees, site acquisition, application and mortgage  
25 commitment fees, and construction loan fees and discounts. Loans to an organization established  
26 for profit [SHALL] bear interest at a market rate established by the state agency. All other loans  
27 are [SHALL BE] without interest. The state agency shall require repayment of loans made under  
28 this section [,] under terms and conditions established by the state agency. Repayment shall be  
29 made upon completion of the project or sooner, and except in the case of a loan to an  
30 organization established for profit, the state agency may cancel a [ANY] part or all of a loan  
31 following a determination by the state agency that a permanent loan to finance the rehabilitation

1 or construction of the housing cannot be obtained in an amount adequate for repayment of the  
2 loan.

3 \* Sec. 22. AS 34.60.137 is amended to read:

4 Sec. 34.60.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT. If a  
5 state agency [FEDERAL AIDED] program or project cannot proceed to actual construction  
6 because comparable replacement sale or rental housing is not available, and the state agency  
7 determines that housing cannot otherwise be made available, the agency may take action  
8 necessary or appropriate to provide the housing by use of funds authorized for the project.

9 \* Sec. 23. AS 34.60.150 is amended to read:

10 Sec. 34.60.150. DEFINITIONS. In this chapter

11 (1) "business" means any lawful activity, excepting a farm operation, conducted  
12 primarily

13 (A) for the purchase, sale, lease, and rental of personal and real property,  
14 and manufacture, processing, or marketing of products, commodities, or other personal  
15 property;

16 (B) for the sale of services to the public;

17 (C) by a nonprofit organization; or

18 (D) for assisting, solely for the purpose of AS 34.60.040(a), in the  
19 purchase, sale, resale, manufacture, processing, or marketing of products, commodities,  
20 personal property, or services by the erection and maintenance of an outdoor advertising  
21 display, whether or not the display is located on the premises on which any of the above  
22 activities are conducted;

23 (2) "displaced person" means a [ANY] any person who [, ON OR AFTER  
24 JANUARY 2, 1971] moves from [REAL] property, or moves personal property from [REAL]  
25 property, as a result of the acquisition or taking of the [REAL] property, in whole or in part, or  
26 as a result of the written order of the state agency to vacate [REAL] property, for a program or  
27 project undertaken by the state agency, and solely for the purpose of AS 34.60.040(a) and  
28 34.60.090, as a result of the acquisition or taking of, or as a result of the written order of a state  
29 agency to vacate other [REAL] property on which the person conducts a business or farm  
30 operation for the program or project;

31 (3) "farm operation" means any activity conducted solely or primarily for the

1 production of one or more agricultural products or commodities, including timber, for sale or  
2 home use, and customarily producing these products or commodities in sufficient quantity to be  
3 capable of contributing materially to the operator's support;

4 (4) "mortgage" means those classes of liens commonly given to secure advances  
5 on, or the unpaid purchase price of, real property [,] under the law of the state in which the real  
6 property is located, together with the credit instruments, if any, secured by the property;

7 (5) "person" means an individual, partnership, corporation, or association;

8 (6) **"property" includes short-term and long-term business interests:**

9 (7) "state agency" means a department, agency, instrumentality, corporate  
10 authority of the state, or a political subdivision of the state, or a department, agency,  
11 instrumentality, or authority of two or more political subdivisions of the state [PARTICIPATING  
12 IN FEDERALLY ASSISTED PROGRAMS].

13 \* Sec. 24. AS 34.60.100 is repealed.

14 \* Sec. 25. AS 09.55.300(b). amended by sec. 1 of this Act, amends Alaska Rule of Civil Procedure  
15 72(h)(2) by establishing different criteria for determining whether a master's hearing is held to determine  
16 the amount to be paid by the plaintiff.

17 \* Sec. 26. This Act takes effect immediately under AS 01.10.070(c).

SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS RODEY, Halford

Introduced: 2/6/91

Referred: State Affairs and Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking and compensation for damage of property by state  
2 agencies, municipalities, and other entities; and providing for an effective date."

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

4 \* Section 1. AS 09.55.31(a) is amended to read:

5 (a) The jury or master shall hear the allegations and evidence of persons interested and  
6 shall ascertain and assess the following:

7 (1) the value of the property sought to be condemned, and all improvements on  
8 it pertaining to the realty, and of each separate estate or interest in it; if it consists of different  
9 parcels, the value of each parcel and each estate or interest in each parcel shall be separately  
10 assessed;

11 (2) if the property sought to be condemned constitutes only a part of a larger  
12 parcel, the damages that [WHICH] will accrue to the portion not sought to be condemned by  
13 reason of its severance from the portion sought to be condemned, and the construction of the  
14 improvements in the manner proposed by the plaintiff;

1 (3) separately, how much the portion not sought to be condemned and each estate  
2 or interest in it will be benefited, if at all, by the construction of the improvements proposed by  
3 the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the  
4 owner of the parcel may not [SHALL] be allowed [NO] damages except for the value of the  
5 portion taken; but if the benefits are less than the damages [SO] assessed, the former shall be  
6 deducted from the latter and the remainder shall be the only damages allowed in addition to the  
7 value;

8 (4) if the property sought to be condemned is for a railroad, the cost of good and  
9 sufficient fences along the line of the railroad, and the cost of cattle guards where fences may  
10 cross the line of the railroad;

11 (5) the full amount of business loss caused by taking or damaging the  
12 property.

13 \* Sec. 2. AS 09.55.440(b) is amended to read:

14 (b) Upon motion of a party in interest and notice to all parties, the court shall  
15 expeditiously [MAY] order that the money deposited [OR A PART OF IT] be paid immediately  
16 to the person or persons entitled to it for or on account of the just compensation to be awarded  
17 in the proceedings. If the compensation finally awarded exceeds the amount of money deposited,  
18 the deposit shall be offset against the award. If the compensation finally awarded is less than  
19 the amount of money deposited, the court shall enter judgment in favor of the plaintiff and  
20 against the proper parties for the amount of the excess.

21 \* Sec. 3. AS 09.55.450(a) is amended to read:

22 (a) Upon the filing of the declaration of taking and the deposit of the estimated  
23 compensation, the court may, upon motion, fix the time during which and the terms upon which  
24 the parties in possession are required to surrender possession to the petitioner. However, the  
25 right of entry may [SHALL] not be granted the plaintiff until after the running of the time for  
26 the defendant to file an objection to the declaration of taking or until after the hearing on an  
27 [ANY] objection to the declaration of taking if the objection is made in the time allowed by law.  
28 In addition, the court may not grant the right of entry until the court determines that the  
29 amount of the deposit of the estimated just compensation for all property that has been  
30 taken or damaged is substantiated by one or more appraisals prepared in good faith.

31 Where the party in possession withdraws a [ANY] part of the award and remains in possession,

1 the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff  
2 during the [SUCH] possession.

3 \* Sec. 4. AS 09.55.460(b) is amended to read:

4 (b) The plaintiff may not be divested of a title or possession taken unless [ACQUIRED  
5 EXCEPT WHERE] the court finds that the property was not taken by necessity for a public use  
6 or purpose in a manner compatible with the greatest public good and the least private injury, the  
7 amount of estimated just compensation deposited under AS 09.55.440(a) is not adequate,  
8 the state failed to comply with AS 34.60, the plaintiff is a municipality that failed to comply  
9 with AS 34.60, or the plaintiff failed to comply with AS 09.55.275. In the event of that  
10 finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to  
11 it for the period during which the property was in the possession of the plaintiff, (2) recover for  
12 the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to  
13 the condition in which it existed at the time of the filing of the declaration of taking unless  
14 [SUCH] restoration is impossible, in which case the court shall award damages to the proper  
15 persons as compensation for a [ANY] diminution in the value of the property caused by the  
16 plaintiff's wrongful possession.

17 \* Sec. 5. AS 09.55 is amended by adding a new section to article 3 to read:

18 Sec. 09.55.465. DEFINITIONS. In AS 09.55.240 - 09.55.465,

19 (1) "business loss" includes short-term business loss, long-term business loss, and  
20 the loss of goodwill;

21 (2) "private injury" includes business loss caused by the taking of or damage to  
22 property.

23 \* Sec. 6. AS 29.10.200(25) is amended to read:

24 (25) AS 29.35.030 (eminent domain, relocation assistance, and real property  
25 acquisition practices)

26 \* Sec. 7. AS 29.35.030(a) is amended to read:

27 (a) A municipality may, only within its boundaries, exercise the powers of eminent  
28 domain and declaration of taking in the performance of a power or function of the municipality  
29 but must use [UNDER] the procedures set out in AS 09.55.250 - 09.55.460 and AS 34.60,  
30 regardless of the source of funding. In the case of a second class city, the exercise of the  
31 power of eminent domain or declaration of taking must be by ordinance that is submitted to the

1 voters at the next general election or at a special election called for that purpose. A majority of  
2 the votes on the question is required for approval of the ordinance.

3 \* Sec. 8. AS 34.60.010 is amended to read:

4 Sec. 34.60.010. PURPOSE. The purpose of this chapter is to establish a uniform policy  
5 for the fair and equitable treatment of persons displaced as a result of activities undertaken by  
6 state agencies [FEDERALLY ASSISTED PROGRAMS] in order that the displaced persons will  
7 not suffer disproportionate injuries as a result of programs designed for the benefit of the public  
8 as a whole.

9 \* Sec. 9. AS 34.60.020 is amended to read:

10 Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State agencies shall  
11 establish and provide the means for implementing a program providing fair and reasonable  
12 relocation and other payment for persons displaced as a result of [FEDERALLY ASSISTED]  
13 activities undertaken by state agencies, to carry out relocation assistance programs for persons  
14 displaced, and to provide payments to persons as a result of taking or damaging  
15 [ACQUISITION] of [REAL] property for activities of state agencies.

16 \* Sec. 10. AS 34.60.040(a) is amended to read:

17 (a) When the taking or damaging [ACQUISITION] of [REAL] property for a  
18 [FEDERALLY ASSISTED] program or project undertaken by a state agency will result in the  
19 displacement of a person, the state agency responsible for the program or project shall make  
20 payment to the displaced person, upon proper application as approved by the state agency, for

21 (1) actual reasonable expenses in moving a person, the person's family, business,  
22 farm operation, or other personal property;

23 (2) actual direct losses of tangible personal property as a result of moving or  
24 discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable  
25 expenses that would have been required to relocate the property as determined by the state  
26 agency; and

27 (3) actual reasonable expenses in searching for a replacement business or farm.

28 \* Sec. 11. AS 34.60.050 is amended to read:

29 Sec. 34.60.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In addition  
30 to payments otherwise authorized by this chapter, the state agency shall make an additional  
31 payment not to exceed \$22,500 [,] to a displaced person who is displaced from a dwelling

1 actually owned and occupied by the person for not less than 180 days before the initiation of  
2 negotiations for the acquisition of the property. This additional payment must include the  
3 following elements:

4 (1) the amount, if any, that when added to the taking [ACQUISITION] cost of  
5 the dwelling taken [ACQUIRED] by the state agency, equals the reasonable cost of a comparable  
6 replacement dwelling that is a decent, safe, and sanitary dwelling adequate to accommodate the  
7 displaced person, is reasonably accessible to public services and places of employment, and is  
8 available on the private market; all determinations required to carry out this paragraph shall be  
9 made in accordance with standards established by the state agency making the additional  
10 payment;

11 (2) the amount, if any, that will compensate the displaced person for any  
12 increased interest costs that the displaced person is required to pay for financing the acquisition  
13 of the comparable replacement dwelling; this amount may be paid only if the dwelling taken  
14 [ACQUIRED] by the state agency was encumbered by a bona fide mortgage that was a valid lien  
15 on the dwelling for not less than 180 days before the initiation of negotiations for the taking  
16 [ACQUISITION] of the dwelling; and

17 (3) reasonable expenses incurred by the displaced person for evidence of title,  
18 recording fees, and other closing costs incident to the purchase of the replacement dwelling, but  
19 not including prepaid expenses.

20 (b) The additional payment authorized by (a) of this section may be made only to a  
21 displaced person who purchases and occupies a replacement dwelling that is decent, safe, and  
22 sanitary not later than the end of the one-year [ONE YEAR] period beginning on the date on  
23 which the person receives from the state agency final payment of all costs of the taken dwelling  
24 [,] or the date on which the person moves from the taken [ACQUIRED] dwelling, whichever is  
25 the later date.

26 \* Sec. 12. AS 34.60.060 is amended to read:

27 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In  
28 addition to amounts otherwise authorized by this chapter, the state agency shall make a payment  
29 to or for a displaced person displaced from a dwelling, who is not eligible to receive a payment  
30 under AS 34.60.050, if the dwelling was actually and lawfully occupied by the displaced person  
31 for not less than 90 days before the initiation of negotiations for taking [ACQUISITION OF] the

1 dwelling. The payment must be either

2 (1) the amount necessary to enable the displaced person to lease or rent for a  
3 period not to exceed three years and six months [,] a decent, safe, and sanitary dwelling of  
4 standards adequate to accommodate the displaced person in areas not generally less desirable in  
5 regard to public utilities and public and commercial facilities, and reasonably accessible to the  
6 person's place of employment, but not to exceed \$5,250; or

7 (2) the amount necessary to enable the displaced person to make a down payment,  
8 including incidental expenses described in AS 34.60.050(a)(3), on the purchase of a decent, safe,  
9 and sanitary dwelling of standards adequate to accommodate the displaced person in areas not  
10 generally less desirable in regard to public utilities and public and commercial facilities, but not  
11 to exceed \$5,250.

12 \* Sec. 13. AS 34.60.070 is amended to read:

13 Sec. 34.60.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY. The state  
14 agency, as soon as practicable after the date of payment of the purchase price or the date of  
15 deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to  
16 take or compensate for damage to [ACQUIRE REAL] property, whichever is the earlier, shall  
17 reimburse the owner, to the extent the department considers fair and reasonable, for expenses  
18 necessarily incurred for

19 (1) recording fees, transfer taxes, and similar expenses incidental to conveying  
20 the [REAL] property to the state agency;

21 (2) penalty costs for prepayment of a preexisting recorded mortgage entered into  
22 in good faith encumbering the real property, if the mortgage was a valid lien on the property for  
23 not less than 180 days before the initiation of negotiations for the acquisition of the property; and

24 (3) the pro rata portion of [REAL] property taxes paid that are allocable to a  
25 period subsequent to the date of vesting title in the state [,] or the effective date of possession  
26 of the [REAL] property by the state agency, whichever is the earlier.

27 \* Sec. 14. AS 34.60.080(a) is amended to read:

28 (a) The state court having jurisdiction of a proceeding instituted by the state agency to  
29 take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to,  
30 or title to, or interest in, the [REAL] property a sum that will in the opinion of the court  
31 reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable

1 attorney, appraisal, and engineering fees [,] actually incurred because of the condemnation  
2 proceedings, if

3 (1) the final judgment is that the state agency cannot take [ACQUIRE] the  
4 [REAL] property by condemnation; or

5 (2) the proceeding is abandoned by the state agency.

6 \* Sec. 15. AS 34.60.090(a) is amended to read:

7 (a) When the taking or damaging [ACQUISITION] of [REAL] property for a program  
8 or project undertaken by a state agency [FOR A FEDERALLY ASSISTED PROGRAM OR  
9 PROJECT UNDERTAKEN BY THE STATE AGENCY] will result in the displacement of a  
10 person [ON OR AFTER JANUARY 2, 1971], the state agency shall provide a relocation  
11 assistance advisory program for displaced persons that [WHICH] offers the services described  
12 in (c) of this section. If [THE STATE AGENCY DETERMINES THAT] a person occupying  
13 property immediately adjacent to the [REAL] property taken [ACQUIRED] is caused substantial  
14 economic injury because of the taking, the state agency shall [ACQUISITION, IT MAY] offer  
15 the occupant relocation advisory services under the program.

16 \* Sec. 16. AS 34.60.120 is amended to read:

17 Sec. 34.60.120. UNIFORM [REAL] PROPERTY TAKING AND DAMAGE  
18 COMPENSATION [ACQUISITION] POLICY. (a) A state agency or other entity taking or  
19 damaging [ACQUIRING REAL] property for a [ANY] project or program [IN WHICH  
20 FEDERAL OR FEDERAL-AID FUNDS ARE USED] shall to the greatest extent practicable  
21 comply with the [FOLLOWING] policies set out in this section. [:]

22 (b) [(1)] Every reasonable effort shall be made to expeditiously take or make  
23 compensation for [ACQUIRE REAL] property by negotiation.

24 (c) Property to be taken or damaged [(2) REAL PROPERTY] shall be appraised  
25 before the initiation of negotiations, and the owner or a designated representative shall be given  
26 an opportunity to accompany the appraiser during the inspection of the property.

27 (d) [(3)] Before the initiation of negotiations for [REAL] property, an amount shall be  
28 established that is reasonably believed to be just compensation for all [THE REAL] property  
29 taken or damaged, and that amount shall be offered for the property. In no event may the  
30 amount be less than the approved appraisal of the fair market value of the property. A decrease  
31 or increase in the fair market value of [REAL] property before the date of valuation caused by

1 the public improvement for which the property is taken [ACQUIRED] or by the likelihood that  
2 the property would be taken [ACQUIRED] for or damaged by the improvement, other than that  
3 due to physical deterioration within the reasonable control of the owner, will be disregarded in  
4 determining the compensation for the property. The owner of the [REAL] property to be taken  
5 [ACQUIRED] shall be provided with a written statement of, and a summary of the basis for, the  
6 amount established as just compensation.

7 (e) [(4)] An owner may not be required to surrender possession of [REAL] property  
8 before the state agency concerned pays the agreed purchase price or deposits with the court in  
9 accordance with applicable law, for the benefit of the owner, an amount not less than the  
10 approved appraisal of the fair market value of the property [,] or the amount of the award of  
11 compensation in the condemnation proceeding for the property.

12 (f) [(5)] The construction or development of a public improvement shall be so scheduled  
13 that [, TO THE GREATEST EXTENT PRACTICABLE,] a person lawfully occupying [REAL]  
14 property is not required to move from a dwelling, assuming a replacement dwelling will be  
15 available, or to move the person's business or farm operation, without at least 90 days' written  
16 notice of the date by which the move is required and until at least 90 days have elapsed after  
17 a court

18 (1) determines that the prerequisites under AS 09.55.270 have been met; or  
19 (2) has ruled under AS 09.55.450(a) on any objections made to a declaration  
20 of taking, or the time for filing objections under AS 09.55.450(a) has ended without an  
21 objection being filed.

22 (g) [(6)] If an owner or tenant is permitted to occupy the [REAL] taken or  
23 damaged property [ACQUIRED] on a rental basis for a short term or for a period subject to  
24 termination by the state agency on short notice, the amount of rent required may not exceed the  
25 fair rental value of the property to a short-term occupier.

26 (h) [(7)] In no event may the time of condemnation be advanced or negotiations or  
27 condemnation and the deposit of funds in court for the use of the owner be deferred, nor any  
28 other coercive action be taken in order to compel an agreement on the price to be paid for the  
29 taking or damage to property.

30 (i) [(8)] If an interest in [REAL] property is to be taken or damaged [ACQUIRED] by  
31 exercise of the power of eminent domain, formal condemnation proceedings shall be instituted.

1 The [ACQUIRING] state agency may not intentionally make it necessary for an owner to institute  
2 legal proceedings to prove the fact of the taking or damage of the [REAL] property.

3 (i) [(9)] If the taking or damage [ACQUISITION] of only part of the property would  
4 leave its owner with an uneconomic remnant, an offer to take [ACQUIRE] the entire property  
5 shall be made.

6 \* Sec. 17. AS 34.60.130(a) is amended to read:

7 (a) Notwithstanding another [ANY OTHER] provision of law, if a state agency takes  
8 an [ACQUIRES ANY] interest in real property, the state agency shall take [MUST ACQUIRE]  
9 at least an equal interest in all buildings, structures, or other improvements located upon the real  
10 property that [WHICH] the state agency requires to be removed from the real property or that  
11 [WHICH] the state agency determines will be adversely affected by the use to which the real  
12 property will be put.

13 \* Sec. 18. AS 34.60.130(b) is amended to read:

14 (b) For the purpose of determining just compensation to be paid for a building, structure,  
15 or other improvement required to be taken [ACQUIRED] under (a) of this section, the building,  
16 structure, or other improvement is considered to be a part of the real property to be taken  
17 [ACQUIRED] notwithstanding the right or obligation of a tenant, as against the owner of  
18 another [ANY OTHER] interest in the real property, to remove the building, structure, or  
19 improvement at the expiration of the tenant's term, and the fair market value that [WHICH] the  
20 building, structure, or improvement contributes to the fair market value of the real property to  
21 be taken [ACQUIRED], or the fair market value of the building, structure, or improvement for  
22 removal from the real property, whichever is the greater, shall be paid to the tenant.

23 \* Sec. 19. AS 34.60.135 is amended to read:

24 Sec. 34.60.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In addition to  
25 the other programs authorized by this chapter, a state agency may make loans in order to  
26 encourage and facilitate the construction or rehabilitation of housing to meet the needs of  
27 displaced persons. These loans are a part of the [FEDERALLY ASSISTED] project cost and  
28 may be made to nonprofit, limited dividend, or cooperative organizations or public bodies. The  
29 loans may be made only for necessary and reasonable expenses, before construction, for planning  
30 and obtaining federally insured mortgage financing for the rehabilitation or construction of  
31 housing for displaced persons. The loans may not exceed 80 percent of the reasonable costs

1 expected to be incurred in planning, and in obtaining financing for housing for displaced persons.  
2 Reasonable costs include [BUT ARE NOT LIMITED TO] costs for preliminary surveys and  
3 analysis of market needs, preliminary architectural fees, site acquisition, application and mortgage  
4 commitment fees, and construction loan fees and discounts. Loans to an organization established  
5 for profit [SHALL] bear interest at a market rate established by the state agency. All other loans  
6 are [SHALL BE] without interest. The state agency shall require repayment of loans made under  
7 this section [,] under terms and conditions established by the state agency. Repayment shall be  
8 made upon completion of the project or sooner, and except in the case of a loan to an  
9 organization established for profit, the state agency may cancel a [ANY] part or all of a loan  
10 following a determination by the state agency that a permanent loan to finance the rehabilitation  
11 or construction of the housing cannot be obtained in an amount adequate for repayment of the  
12 loan.

13 \* Sec. 20. AS 34.60.137 is amended to read:

14 Sec. 34.60.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT. If a  
15 state agency [FEDERAL AIDED] program or project cannot proceed to actual construction  
16 because comparable replacement sale or rental housing is not available, and the state agency  
17 determines that housing cannot otherwise be made available, the agency may take action  
18 necessary or appropriate to provide the housing by use of funds authorized for the project.

19 \* Sec. 21. AS 34.60.150 is amended to read:

20 Sec. 34.60.150. DEFINITIONS. In this chapter

21 (1) "business" means any lawful activity, excepting a farm operation, conducted  
22 primarily

23 (A) for the purchase, sale, lease, and rental of personal and real property,  
24 and manufacture, processing, or marketing of products, commodities, or other personal  
25 property;

26 (B) for the sale of services to the public;

27 (C) by a nonprofit organization; or

28 (D) for assisting, solely for the purpose of AS 34.60.040(a), in the  
29 purchase, sale, resale, manufacture, processing, or marketing of products, commodities,  
30 personal property, or services by the erection and maintenance of an outdoor advertising  
31 display, whether or not the display is located on the premises on which any of the above

1 activities are conducted;

2 (2) "displaced person" means a [ANY] any person who [, ON OR AFTER  
3 JANUARY 2, 1971] moves from [REAL] property, or moves personal property from [REAL]  
4 property, as a result of the taking [ACQUISITION] of the [REAL] property, in whole or in part,  
5 or as a result of the written order of the state agency to vacate [REAL] property, for a program  
6 or project undertaken by the state agency, and solely for the purpose of AS 34.60.040(a) and  
7 34.60.090, as a result of the taking [ACQUISITION] of, or as a result of the written order of a  
8 state agency to vacate other [REAL] property on which the person conducts a business or farm  
9 operation for the program or project;

10 (3) "farm operation" means any activity conducted solely or primarily for the  
11 production of one or more agricultural products or commodities, including timber, for sale or  
12 home use, and customarily producing these products or commodities in sufficient quantity to be  
13 capable of contributing materially to the operator's support;

14 (4) "mortgage" means those classes of liens commonly given to secure advances  
15 on, or the unpaid purchase price of, real property [,] under the law of the state in which the real  
16 property is located, together with the credit instruments, if any, secured by the property;

17 (5) "person" means an individual, partnership, corporation, or association;

18 (6) "property" includes short-term and long-term business interests;

19 (7) "state agency" means a department, agency, instrumentality, corporate  
20 authority of the state, or a political subdivision of the state, or a department, agency,  
21 instrumentality, or authority of two or more political subdivisions of the state [PARTICIPATING  
22 IN FEDERALLY ASSISTED PROGRAMS].

23 \* Sec. 22. AS 34.60.100 is repealed.

24 \* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

Revision Date: 05/12/91  
Title: Condemnation Practices

Department Affected: DOT&PF  
BRU: Statewide Engineering and Operations Standards

Sponsor: Senators Rodey, Halford  
Requestor: Senators Rodey

Component: Engr. & Operations Stand.  
Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	200.0	200.0	200.0	200.0	200.0	200.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	<b>200.0</b>	<b>200.0</b>	<b>200.0</b>	<b>200.0</b>	<b>200.0</b>	<b>200.0</b>

CAPITAL	3,150.00	3,150.00	3,150.00	3,150.00	3,150.00	3,150.00
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	3,150.0	3,150.0	3,150.0	3,150.0	3,150.0	3,150.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	<b>3,150.0</b>	<b>3,150.0</b>	<b>3,150.0</b>	<b>3,150.0</b>	<b>3,150.0</b>	<b>3,150.0</b>

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate Of Current Year Impact: We would require approximately 50% of the amount shown for FY93 as the bill has an immediate effective date.

ANALYSIS: (Attach a separate page if necessary)

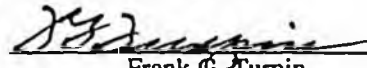
See second page and department position paper.

Prepared by: Jeff Ottesen, Chief, Right-of-Way & Environment

Phone: 465-2951

Division: Engineering and Operations Standards

Date: January 8, 1992

Approved by Commissioner:   
Frank C. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 9, 1992

ANALYSIS (cont. from page 2):

Basis of Estimate:

Contract with a private-sector firm to process and analyze minor business loss type claims:  
Assume 500 claims filed annually @ \$50 each to process: \$25,000  
Claims paid -- assume 350 claims paid @ \$500 each \$175,000

**Sub-total:** \$0.2 million

**Total:** \$3.35 million

**Indirect Costs**

As this bill has an immediate effective date, it will slow the progress of nearly all ongoing projects in order that the business loss issues may be considered. Such delays will undoubtedly cause some projects to slip sufficiently that we cannot complete by the end of the current federal fiscal year (9/30/92) and if this happens we will lose the opportunity to "obligate" this money and hence this is an opportunity loss.

Such slippage would have been difficult to absorb in past years, but in the current year it may be devastating. The new federal highway bill has authorized an unprecedented level of funding to Alaska but such authorization did not take place until the second quarter of the FFY. We are striving to do more in less time than any previous annual highway program in our history and thus the additional steps imposed by this bill may prevent us from fully utilizing federal funds.

The bill will have the greatest impact on urban-type projects, because of the concentration of business activity. Such projects are typically the most expensive. Thus the delay of just one or two urban projects is quite likely and this could cause the State of Alaska to "lose" as much as \$20 or \$30 million.

*Note: When appropriated, these funds could either be added to the general fund match for federal-aid highways and aviation which include money for a variety of costs not eligible for federal participation, or a separate fund could be appropriated which strictly limits the use of these funds to business loss claims and related expenses.*

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

FISCAL NOTE

Revision Date: 05/12/91  
Title: Condemnation Practices

Department Affected: DOT&PF  
BRU: Statewide Engineering and Operations Standards

Sponsor: Senators Rodey, Halford  
Requestor: Senators Rodey

Component: Engr. & Operations Stand.  
Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	200.0	200.0	200.0	200.0	200.0	200.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	200.0	200.0	200.0	200.0	200.0	200.0

CAPITAL	3,150.00	3,150.00	3,150.00	3,150.00	3,150.00	3,150.00
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	3,150.0	3,150.0	3,150.0	3,150.0	3,150.0	3,150.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	3,150.0	3,150.0	3,150.0	3,150.0	3,150.0	3,150.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate Of Current Year Impact: We would require approximately 50% of the amount shown for FY93 as the bill has an immediate effective date.

ANALYSIS: (Attach a separate page if necessary)

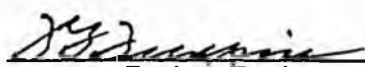
See second page and department position paper.

Prepared by: Jeff Ottesen, Chief, Right-of-Way & Environment

Phone: 465-2951

Division: Engineering and Operations Standards

Date: January 8, 1992

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 9, 1992

ANALYSIS (cont. from page 1):

This bill will have significant direct and indirect impacts to our capital and operating budgets. For capital activities the greatest effect will be in highway projects. All costs associated with paying business losses including direct payments, legal costs, appraisal costs, staff time and court fees will be ineligible for federal-aid (23 CFR 710.304 (h)) and thus require general fund expenditures. It is difficult to predict how much these payments will be and the extent of litigation which will ensue to interpret the various provisions of the bill. In cases where the Attorney General's office counsels against going to court we will be compelled to reach negotiated settlements. We typically do this now for dollar amounts in excess of fair market value determinations. This bill will likely expand this practice as it significantly broadens the type of losses which can be claimed.

For operating activities new costs will be incurred where maintenance activities on transportation facilities must necessarily cause disruptions to adjacent businesses. Streets or runways temporarily closed for maintenance activities will expose the department to loss of business claims. Currently, such temporary shutdowns are not compensable so a new and potentially costly new operating expense will bear on our operating budgets.

**Capital Costs**

We have based our estimate on a number of assumptions. Each is highly variable and it would have been easy to estimate this fiscal note at a much larger figure. A single business loss claim sought during a condemnation action in 1990 sought \$2 million. Based upon actual experience, we would adjust the amount necessary to pay and defend these claims in future capital budget requests.

Basis of Estimate:

Average number of businesses potentially impacted by construction projects:	200	
Analysis of business loss potential for above @ \$250 each		\$50,000
Business loss cases settled by negotiations:	40	
Average settlement assumed at \$40,000		\$1,600,000
Average administrative cost (legal, appraisal, negotiations staff) @ \$10,000		\$400,000
Business loss cases settled in some phase of court proceedings:	10	
Average settlement assumed at \$80,000		\$800,000
Average administrative cost (legal, appraisal, negotiations staff) @ \$30,000		\$300,000
<b>Sub-total:</b>		<b>\$3.15 million</b>

**Operating Costs**

The department performs numerous maintenance-type activities which could be "claimed" as causing some degree of business loss. A pavement resealing might close traffic along an urban arterial for up to a day impacting dozens of businesses temporarily. Even snow plowing operating which temporarily place a berm in front of driveways might serve as a basis for a claim. Each affected business would be potentially eligible to file a claim and receive compensation. Because of the sheer number, such claims would have to be dealt with on an administrative basis with a relatively short and uncomplicated procedure.

ANALYSIS (cont. from page 2):

Basis of Estimate:

Contract with a private-sector firm to process and analyze minor business loss type claims:  
Assume 500 claims filed annually @ \$50 each to process: \$25,000  
Claims paid -- assume 350 claims paid @ \$500 each \$175,000

**Sub-total:** \$0.2 million

**Total:** \$3.35 million

**Indirect Costs**

As this bill has an immediate effective date, it will slow the progress of nearly all ongoing projects in order that the business loss issues may be considered. Such delays will undoubtedly cause some projects to slip sufficiently that we cannot complete by the end of the current federal fiscal year (9/30/92) and if this happens we will lose the opportunity to "obligate" this money and hence this is an opportunity loss.

Such slippage would have been difficult to absorb in past years, but in the current year it may be devastating. The new federal highway bill has authorized an unprecedented level of funding to Alaska but such authorization did not take place until the second quarter of the FFY. We are striving to do more in less time than any previous annual highway program in our history and thus the additional steps imposed by this bill may prevent us from fully utilizing federal funds.

The bill will have the greatest impact on urban-type projects, because of the concentration of business activity. Such projects are typically the most expensive. Thus the delay of just one or two urban projects is quite likely and this could cause the State of Alaska to "lose" as much as \$20 or \$30 million.

*Note: When appropriated, these funds could either be added to the general fund match for federal-aid highways and aviation which include money for a variety of costs not eligible for federal participation, or a separate fund could be appropriated which strictly limits the use of these funds to business loss claims and related expenses.*

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CSSB 104 (ST)

Revision Date: February 21, 1992  
Title: "...taking and compensation...of property by state agencies...other entities."  
Sponsor: Senator Rodev  
Requestor: Senate State Affairs

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations

COMPONENT SERIAL 

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	****	****	****	****	****	****
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
Division: Administrative Services Date: February 21, 1992  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law Date: February 21, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

*Updated 1992 fiscal note.*