

ALASKA LEGISLATURE

2335

HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002

Largest vessel by region

	Region	Largest non-tank vessels operating in the region	Fuel capacity	15 percent RPS	Predominant fuel type
1	Southeast	77,500 gross ton cruise ship	21,400 bbls and 1,541 bbls	3,210 bbls and 231 bbls	non-persistent and persistent
2	Prince William Sound	77,500 gross ton cruise ship	21,400 bbls and 1,541 bbls	3,210 bbls and 231 bbls	non-persistent and persistent
3	Cook Inlet	77,500 gross ton bulk carrier 34,600 gross ton liquid gas	30,300 bbls 32,700 bbls and 5,032 bbls	4,695 bbls 4,905 bbls and 755 bbls	persistent persistent and non-persistent
4	Kodiak	21,000 gross ton container vessel	18,200 bbls and 3,800 bbls	2,730 bbls and 570 bbls	persistent and non-persistent
5	Aleutian (excluding Dutch Harbor)	12,500 gross ton refrigerated tramper	21,700 bbls and 10,800 bbls	3,255 bbls and 1,620 bbls	persistent and non-persistent
5a	Aleutian (Dutch Harbor)	65,000 gross ton container vessel	52,000 bbls	2,600 bbls	persistent
6	Bristol Bay	12,500 gross ton refrigerated tramper	21,700 bbls and 10,800 bbls	3,255 bbls and 1,620 bbls	persistent and non-persistent
7	Western Alaska	12,500 gross ton refrigerated tramper	21,700 bbls and 10,800 bbls	3,255 bbls and 1,620 bbls	persistent and non-persistent
8	Northwest Arctic	6,500 gross ton refrigerated tramper	9,500 bbls	1,425 bbls	persistent
9	North Slope	drillship	8,000 bbls (estimated)	1,200 bbls (estimated)	persistent
10	Interior	not known	none		

Alaska Railroad RPS and Prevention Measures Recap

I. ARRC Response Planning Standard Volume Determination

- Non-persistent: Maximum capacity per train is 41,250 barrels
Maximum train for non-persistent product is 75 cars
Tank car (23,000 gallons = 550 bbls.)
Total load = 1,725,000 gallons or 41,072 bbls. (rounded to 41,250 bbls.)
RPS: 15% is 258,750 gallons or 6188 bbls. (rounded up to 6200 bbls.)
- Persistent: Maximum capacity per train is 3300 bbls
Maximum train for persistent product is six cars
Tank car (23,000 gallons = 550 bbls.)
Total load = 138,000 gallons or 3286 bbls. (rounded up to 3300 bbls.)
RPS: 15% is 20,700 gallons or 493 bbls. (rounded up to 495 bbls.)

II. RPS and Prevention Measures

Response Measures Currently in Place

1. ARRC Emergency Response Plan. ARRC will continue to maintain and update it.
2. Maintain, inventory, and replenish emergency response equipment in caches (connexs)
3. Review locations for response equipment caches.
4. Maintain trained ARRC emergency response staff and increase training in Incident Command System.
5. Maintain spill response term contracts.

Prevention Measures Proposed

The ARRC deems the greatest threat for an unpermitted discharge of petroleum is from a derailment. Thus, the primary prevention strategy is to reduce risk of derailment. The premise for implementing this strategy is:

1. Determine the areas of greatest risk¹ for derailment along the rail line.
2. Where risk is identified, develop preventative measures to reduce the risk to the lowest realistic level.
3. Where necessary and appropriate, supplement the preventative measures with strategically placed response equipment.

A major step in implementing this strategy is completion of the ARRC System Risk Assessment, being performed by ARRC and Rail Sciences, Inc. This risk assessment, to be completed by the end of December 2000, will provide a comprehensive analysis of the railroad's operating and mechanical systems, plus the track maintenance and engineering programs. As the operational and systematic risks are better understood and more clearly defined, more effective prevention and response measures can be implemented. These, in turn, can be incorporated into the ARRC Emergency Response Plan.

¹ For purpose of response planning and prevention measures "risk" includes not only the physical threat of derailment but also a determination of resources at risk, i.e., identification of environmental sensitive areas subject to a greater level of protection.

USCG – DEC memorandum of agreement

Following are excerpts from the memorandum of agreement between the U.S. Coast Guard and the Department of Environmental Conservation regarding oil spill prevention.

**MEMORANDUM OF AGREEMENT
ON
OIL AND HAZARDOUS SUBSTANCE POLLUTION PREVENTION AND RESPONSE
BETWEEN
THE COMMANDER, SEVENTEENTH COAST GUARD DISTRICT
AND
THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

WHEREAS, the United States Coast Guard and the State of Alaska share a common interest and responsibility for protecting the waters of Alaska and have determined that their cooperative response to large oil spills such as the EXXON VALDEZ oil spill has permitted the State and the Coast Guard to leverage available resources, which in turn has led to better protection of our environment; and

WHEREAS, the United States Coast Guard and the State of Alaska find efficiency in government is important to the public they serve and that entering into a Memorandum of Agreement that builds upon present close working relationships and identifies areas for expanded interaction will lead to increased protection of Alaska's marine environment at greater efficiency; and

WHEREAS, the authority for the USCG to enter into this Agreement can be found in 14 U.S.C. § 141.

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On-Scene Coordinator (FOSC) within the Alaska coastal zone; and

WHEREAS, Congress explicitly provided the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements regarding oil discharges or other oil pollution within such a state or removal activities in connection with such a discharge; (2) affect the authority of any state to establish a fund to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

PREVENTION OF OIL SPILLS

- A. **Cooperative Implementation:** The Parties are coordinating their efforts to prevent oil spills in the marine environment.

To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities to minimize duplication of effort. The Parties will also seek to identify opportunities for innovative implementation of vessel and facility prevention plans. Both Parties recognize the importance of encouraging cross training in each other's regulations and rules including the areas of inspection and response.

- B. **Vessel Inspections:** Each Party recognizes they may elect to independently exercise their respective examination responsibilities in accordance with applicable law, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign-flagged vessels. The State has authority to conduct inspections for the purpose of ensuring compliance with state laws and regulations and can participate in joint examinations with federal agencies. Further, either Party may evaluate the inspection process and make recommendations for improvement or perform its own inspections in accordance with applicable laws.

1. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized. To this end, the Parties will endeavor to exchange information and conduct joint inspections or may pursue agreements under which a single inspection may fulfill both state and federal requirements.
2. In implementing a State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.
3. Review of inspection records: The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.
4. The State shall report recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States foreign-flagged vessels to the responsible Officer in Charge, Marine Inspection (OCMI).
5. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.
6. The State will promptly inform the cognizant OCMI and the Coast Guard will promptly inform the ADEC Industry Preparedness and Pipeline Program's Marine Vessel Section Manager of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation. Both Parties also agree to ensure joint notification when an

initial report is received from Alyeska SERVS regarding any irregularity or indication of a problem which threatens a tanker or its cargo (including ballast water) as well as situations where a tanker leaves both the U.S. Coast Guard designated Prince William Sound and Valdez Arm traffic lanes (except when an outbound tanker leaved the lanes at the Hinchinbrook Entrance terminus).

7. Both Parties agree to share all applicable information obtained from their respective vessel inspections.

C. **Vessel Screening:** The Coast Guard, under federal law, through the District Commander and the Captain of the Port (COTP), has the authority to regulate the entry of vessels into the COTP zone, including those determined to be a threat to the environment. The State may establish the means by which it can determine whether tank vessels entering the waters of the State pose a substantial risk of harm to the public health and safety and the environment.

When the State determined that a particular vessel or vessels pose a substantial risk, that determination will be forwarded to the cognizant Captain of the Port (COTP). The COTP shall consider that information in making a determination under federal law as to appropriate action to be taken, if any, including the possibility of denial of entry.

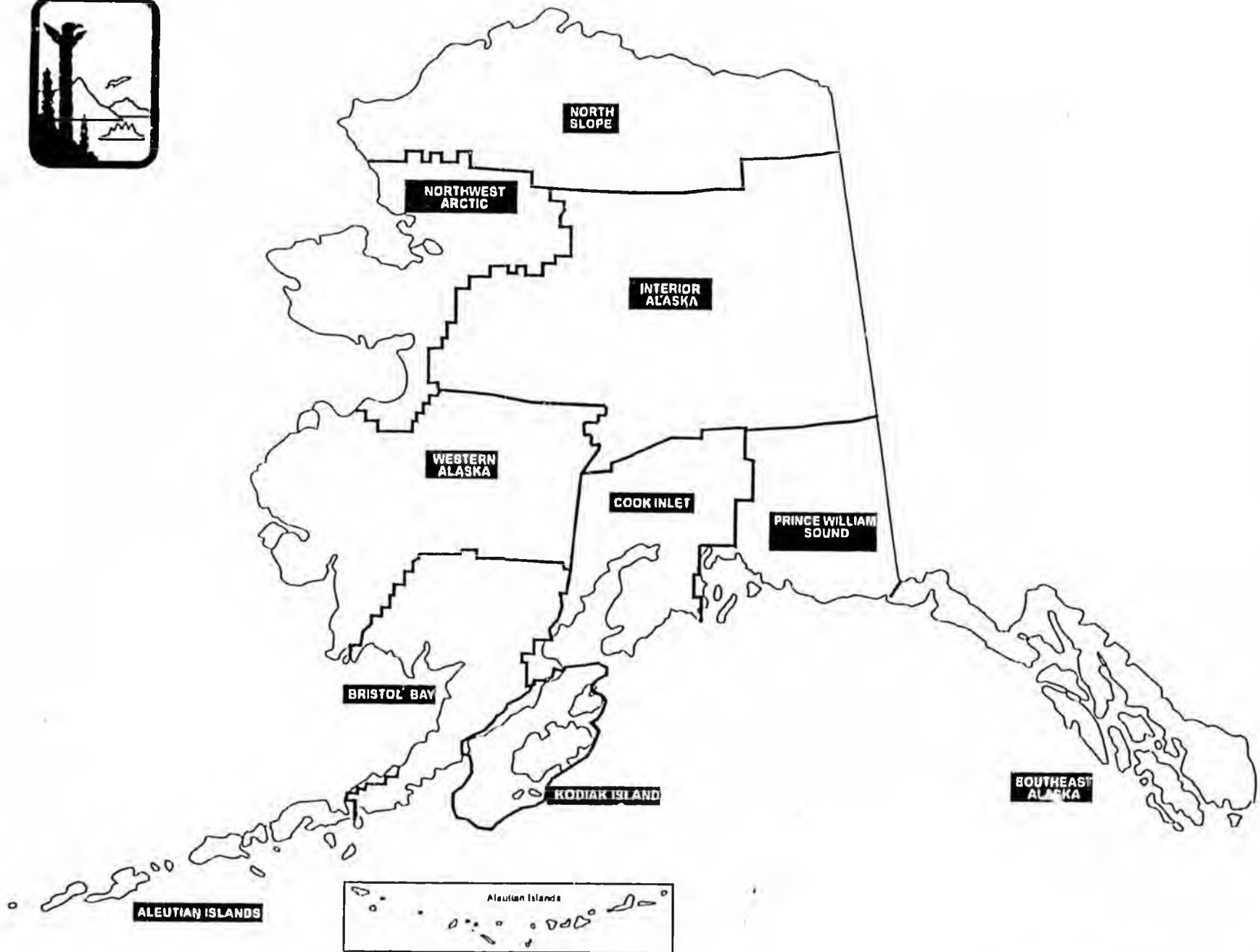
D. **Tank Vessel Crewing:** The Coast Guard establishes and enforces requirements for crewing, competence, and documentation of personnel aboard vessels.

1. The Coast Guard will consult with the State to the extent practicable, in its evaluation and implementation of additional requirements for crewing, training, and qualification requirements through the crewing standards process.

2. The parties agree to actively promote and coordinate research projects to identify human factors, which need to be regulated to prevent pollution incidents.

E. **Tank Vessel Transfer Operations:** Monitoring tank vessel transfer operations have been identified as an effective pollution prevention action.

The Parties will cooperate to monitor transfer operations involving tank vessels (as well as cruise ships, fish processors, fishing vessels, etc.), including, but not limited to, dockside transfer at facilities, lightering and bunkering operations. Each party will advise the other of violations observed.



Map of DEC Oil Spill Regions

Equipment cost tables

I. Cleanup starter kit

Skimmer types	Fuel-water ratio	Liquid recovered to skim 300 bbls spilled fuel per day	Storage capacity needed to meet daily recovery	Cost of skimmer	Cost of storage capacity	Cost of cleanup starter kit
Weir	20% fuel, 80% water	1500 bbls	1500 bpd	\$50,000	\$ 300,000	\$ 350,000
Lori or Lamor	80% fuel, 20% water	360 bbls	360 bpd	\$60,000	\$ 100,000	\$ 160,000

II. Cleanup kit for RPS of 1500 bbls (Vessel capacity of 10,000 bbls)

Skimmer	No. of Skimmers	No. of 500 bbl Storage		Cost of skimmer	Cost of storage capacity	Cost of cleanup starter kit
Weir	1	3		\$50,000	\$ 300,000	\$ 350,000
Lori or Lamor	1	1		\$60,000	\$ 100,000	\$ 160,000

III. Cleanup kit for RPS of 3000 bbls (Vessel capacity of 20,000 bbls)

Skimmer	No. of Skimmers	No. of 500 bbl Storage		Cost of skimmers	Cost of storage capacity	Cost of cleanup starter kit
Weir	1	6		\$ 50,000	\$ 600,000	\$ 650,000
Lori or Lamor	1	2		\$ 60,000	\$ 200,000	\$ 260,000

IV. Cleanup kit for RPS of 6000 bbls (Vessel capacity of 30,000 bbls)

Skimmer	No. of Skimmers	No. of 500 bbl Storage		Cost of skimmers	Cost of storage capacity	Cost of cleanup starter kit
Weir	1	12		\$ 50,000	\$1,200,000	\$1,250,000
Lori or Lamor	1	3		\$ 60,000	\$ 300,000	\$ 360,000

Authorizing Legislation

Senate Bill 273

Senate Concurrent Resolution 1

HOUSE CS FOR CS FOR SENATE BILL NO. 273(WTR)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON WORLD TRADE AND STATE/FEDERAL
RELATIONS

Offered: 4/26/00
Referred: Finance

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act regarding oil discharge prevention, and relating to contingency plans and
2 proof of financial responsibility for all self-propelled nontank vessels exceeding 400
3 gross registered tonnage and for railroad tank cars; and providing for an effective
4 date."

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

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

7 Sec. 46.04.055. Nontank vessels and railroad tank cars. (a) A person may
8 not cause or permit the operation of a nontank vessel within the waters of the state or
9 cause or permit the transfer of oil to or from a nontank vessel unless the person has
10 furnished to the department and the department has approved proof of financial ability
11 to respond to damages meeting the requirements of AS 46.04.040. Proof of financial
12 responsibility required under this subsection is subject to adjustment of dollar amounts
13 under AS 46.04.045 and is established, for a nontank vessel that carries

14 (1) predominantly persistent product, at \$300 per incident for each

1 barrel of oil storage capacity on the vessel or \$5,000,000, whichever is greater; and
2 (2) predominantly nonpersistent product, at \$100 per incident for each
3 barrel of oil storage capacity on the vessel or \$1,000,000, whichever is greater.

4 (b) A person may not transport oil by railroad tank car or cause or permit the
5 transfer of oil to or from a railroad tank car unless the person has furnished to the
6 department and the department has approved proof of financial ability to respond to
7 damages meeting the requirements of AS 46.04.040. Proof of financial responsibility
8 required under this subsection is subject to adjustment of dollar amounts under
9 AS 46.04.045 and is established at

10 (1) \$300 per incident for each barrel of persistent product based on the
11 maximum amount of persistent product storage capacity of any train on the railroad;
12 and

13 (2) \$100 per incident for each barrel of nonpersistent product based
14 upon the maximum amount of nonpersistent product storage capacity of any train on
15 the railroad or \$1,000,000, whichever is greater.

16 (c) For purposes of AS 46.04.030(k), response planning standards apply to
17 nontank vessels and railroad tank cars as follows:

18 (1) for a nontank vessel,

19 (A) containment and control of 15 percent of the maximum oil
20 capacity of the nontank vessel within 48 hours; and

21 (B) cleanup of the discharge within the shortest possible time
22 consistent with minimizing damage to the environment; and

23 (2) for a railroad tank car,

24 (A) containment and control of 15 percent of the maximum oil
25 capacity of a train on the railroad within 48 hours; and

26 (B) cleanup of the discharge within the shortest possible time
27 consistent with minimizing damage to the environment.

28 (d) Notwithstanding the requirements of AS 46.04.040(e) and (l) and
29 46.04.047, for purposes of (a) of this section, an applicant may provide evidence of
30 financial responsibility by proof of entry of the nontank vessel in a protection and
31 indemnity association or proof of coverage with another insurer that

1 (1) is financially solvent and has a favorable history of claim handling;

2 (2) provides coverage against pollution risks in at least the amount of
3 the financial responsibility required under (a) of this section without any requirement
4 for a special endorsement;

5 (3) does not agree to be subject to direct action in court or to
6 appointment of an agent for service of process; and

7 (4) in the case of a protection and indemnity association or group of
8 insureds, is not authorized by the Department of Community and Economic
9 Development to sell insurance in the state so long as it is not listed by the Department
10 of Community and Economic Development as being disapproved for use in the state.

11 (e) The requirements of (a) - (d) of this section do not apply to a nontank
12 vessel operating in the waters of the state if the nontank vessel

13 (1) is engaged in innocent passage; for purposes of this paragraph, a
14 nontank vessel is engaged in innocent passage if its operation in state waters,
15 irrespective of whether it is a United States or foreign-flag vessel, would constitute
16 innocent passage under the Convention on the Territorial Sea and the Contiguous Zone,
17 April 29, 1958, 15 U.S.T. 1606, or the United Nations Convention on the Law of the
18 Sea 1982, December 10, 1982, U.N. Publication No. E 83.V.5, 21 I.L.M. 1261 (1982),
19 were the vessel a foreign-flag vessel;

20 (2) enters state waters because of imminent danger to the crew, or in
21 an effort to prevent an oil spill or other harm to public safety or the environment, and
22 are inapplicable only until the vessel is able to leave state waters as soon as it may do
23 so without imminent risk of harm to the crew, public safety, or the environment; or

24 (3) enters state waters after the United States Coast Guard has
25 determined that the vessel is in distress, and are inapplicable only until the vessel is
26 able to leave state waters as soon as it may do so without imminent risk of harm to
27 the crew, public safety, or the environment.

28 * Sec. 2. AS 46.04.900(12) is amended to read:

29 (12) "oil terminal facility" means an onshore or offshore facility of any
30 kind, and related appurtenances, including but not limited to a deepwater port, bulk
31 storage facility, or marina, located in, on, or under the surface of the land or waters

1 of the state, including tide and submerged land, that [WHICH] is used for the purpose
2 of transferring, processing, refining, or storing oil; a vessel, other than a nontank
3 vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship
4 transfer of oil, and when it is traveling between the place of the ship-to-ship transfer
5 of oil and an oil terminal facility;

6 * Sec. 3. AS 46.04.900(21) is amended to read:

7 (21) "vessel" includes tank vessels, [AND] oil barges, and nontank
8 vessels;

9 * Sec. 4. AS 46.04.900 is amended to add new paragraphs to read:

10 (24) "nonpersistent product" has the meaning given to "non-persistent
11 or Group I oil" in 33 C.F.R. 155.1020;

12 (25) "nontank vessel" means a self-propelled watercraft of more than
13 400 gross registered tons; in this paragraph, "watercraft" includes commercial fishing
14 vessels, commercial fish processor vessels, passenger vessels, and cargo vessels, but
15 does not include a tank vessel, oil barge, or public vessel;

16 (26) "persistent product" has the meaning given to "persistent oil" in
17 33 C.F.R. 155.1020;

18 (27) "public vessel" means a vessel that is operated by and is either
19 owned or bareboat chartered by the United States, a state or a political subdivision of
20 that state, or a foreign nation, except when the vessel is engaged in commerce;

21 (28) "railroad tank car" means rolling stock used to transport oil in bulk
22 as cargo by rail;

23 (29) "train" means connected rolling stock operated as a single moving
24 vehicle on rails; for purposes of this paragraph, "connected rolling stock" includes
25 railroad tank cars.

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

28 TASK FORCE ON MOTORIZED OIL TRANSPORT. (a) There is established a Task
29 Force on Motorized Oil Transport within the Department of Environmental Conservation.

30 (b) The Task Force on Motorized Oil Transport shall

31 (1) determine how to implement the response planning standards set out in

1 AS 46.04.055(c), added by sec. 1 of this Act, for nontank vessel and railroad tank car
2 contingency plans; and

3 (2) deliver a report to the Twenty-Second Alaska State Legislature on or before
4 the first day the legislature convenes that contains its recommendations with respect to
5 implementation of the response planning standards set out in AS 46.04.055.

6 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 REGULATIONS. The Department of Environmental Conservation shall proceed to
9 adopt regulations necessary to implement the changes made by this Act. The regulations take
10 effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of
11 secs. 1 - 4 of this Act.

12 * Sec. 7. Sections 5 and 6 of this Act take effect immediately under AS 01.10.070(c).

13 * Sec. 8. Except as provided in sec. 7 of this Act, this Act takes effect September 1, 2000.

CONFERENCE CS FOR SENATE CONCURRENT RESOLUTION NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered: 4/27/00

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE SENATE COMMITTEE ON COMMITTEES

A RESOLUTION

1 Relating to the Task Force on Motorized Oil Transport.

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

3 WHEREAS concern has developed among the people of Alaska about potential
4 petroleum product spills from the Alaska Railroad and nontank vessels operating in Alaska
5 waters; and

6 WHEREAS there are many complexities in applying oil spill prevention and response
7 rules to the Alaska Railroad and to the various classes and categories of nontank vessels
8 operating in the waters in different areas of Alaska; and

9 WHEREAS it is the intent of the legislature to establish reasonable oil spill prevention
10 and response rules for the Alaska Railroad and for nontank vessels taking into account the
11 different classes of vessels and different operating conditions in Alaska and the costs
12 associated with the rules; and

13 WHEREAS it appears that several months of work by interested parties and the
14 Department of Environmental Conservation will be needed to draft the rules for consideration
15 by the legislature;

16 BE IT RESOLVED that the Alaska State Legislature establishes the Task Force on
17 Motorized Oil Transport, composed of a number of members as follows:

1 (1) one member appointed by the President of the Senate from among the
2 members of the Senate;

3 (2) one member appointed by the Speaker of the House of Representatives
4 from among the members of the House of Representatives;

5 (3) one member to serve as a representative of the United States Coast Guard,
6 appointed by the commanding officer of the 17th Coast Guard District;

7 (4) one member from a response action co-op in Alaska appointed by the
8 Governor with the advice and consent of the Senate and House members of the task force;

9 (5) one member from the Alaska Railroad appointed by the Governor with the
10 advice and consent of the Senate and House members of the task force;

11 (6) one member who is a maritime shipping agent in Alaska appointed by the
12 Governor with the advice and consent of the Senate and House members of the task force;

13 (7) one member from the Alaska Steamship Association appointed by the
14 Governor with the advice and consent of the Senate and House members of the task force;

15 (8) one member from the container ship industry operating in Alaska appointed
16 by the Governor with the advice and consent of the Senate and House members of the task
17 force;

18 (9) two members from the spot charter vessel industry in Alaska appointed by
19 the Governor with the advice and consent of the Senate and House members of the task force;

20 (10) the director of the division of spill prevention and response in the
21 Department of Environmental Conservation;

22 (11) the commissioner and deputy commissioner of the Department of
23 Environmental Conservation; and

24 (12) other participants as may be agreed to by the commissioner of
25 environmental conservation and the Senate and House members of the task force; and be it

26 **FURTHER RESOLVED** that the commissioner of environmental conservation, or the
27 deputy commissioner, shall serve as chair of the task force, and that the Department of
28 Environmental Conservation shall provide staff support to the task force; and be it

29 **FURTHER RESOLVED** that the task force may meet as frequently as its members
30 determine necessary to perform the work; and be it

31 **FURTHER RESOLVED** that the task force shall determine how to achieve response

1 planning standards for a railroad tank car contingency plan and for a nontank vessel
2 contingency plan as set out in a version of an Act of the Twenty-First Alaska Legislature
3 regarding oil discharge prevention, and relating to contingency plans and proof of financial
4 responsibility for all self-propelled nontank vessels exceeding 400 gross registered tonnage and
5 for railroad tank cars; and authorizing inspection of nontank vessels and trains; and be it

6 **FURTHER RESOLVED** that the task force shall consider only the following
7 motorized oil transport:

8 (1) self-propelled watercraft of more than 400 gross registered tons, except
9 when the watercraft are tank vessels, oil barges, or public vessels operated by and owned or
10 bareboat chartered by the United States, a state, a political subdivision of a state, or a foreign
11 nation; and

12 (2) railroad tank cars that are rolling stock used to transport oil in bulk as
13 cargo by rail; and be it

14 **FURTHER RESOLVED** that the task force shall deliver a report to the Twenty-
15 Second Alaska State Legislature on or before the day the legislature first convenes that
16 contains recommendations by the task force concerning

17 (1) Alaska statutes and regulations not subject to preemption by federal law
18 that are calculated to achieve the response planning standard for motorized oil transport in a
19 practical and cost-efficient manner; the Department of Environmental Conservation has the
20 burden of showing why the response planning standard cannot be implemented using
21 containment equipment that is readily available for purchase in the market;

22 (2) practical measures to implement the response planning standard as are
23 necessary to take into account the special conditions within waters of the state west of 157
24 degrees West Longitude or north of 62 degrees North Latitude;

25 (3) use of fleet plans, vessel agents, generic contingency plan contents
26 established by regulations, streamlined contingency plans with membership in a nonprofit
27 corporation that is a primary response action contractor, and spill prevention measures as
28 means of achieving the response planning standard; and

29 (4) inspection measures to be included in the regulations; and be it

30 **FURTHER RESOLVED** that the task force is terminated on the first day of the
31 Twenty-Second Alaska State Legislature.

RECEIVED

JAN 29 2001



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Senate Finance Committee

Senator Drue Pearce
State Capitol
Juneau, AK 99801-1182

Drue - This is a sample of a letter of appreciation to all the legislators. Thank you for the Amusement leadership on the Task Force - Eric

Dear Senator Pearce:

Between the end of the last legislative session and the one currently under way, the Task Force on Motorized Oil Transport, established by SB273 and SCR1 of the Twenty-first Legislature, was formed, met frequently, and produced a report, proposed regulations and proposed legislation to implement the recommendations of the Task Force. Those recommendations are embodied in the Task Force Report and in SB16. I was pleased to represent the cargo carriers on the Task Force.

It is my hope, and the hope of the Task Force members, that you will support the findings of the Task Force and will support movement of the bill. We were able to develop our findings largely by consensus. While this was definitely the higher and more difficult road, it ensured that everyone had a voice in the outcome. Even the Alaska Center for the Environment supported the Task Force goals and process.

As one of the Co-chairs of the Prevention Committee, it was rewarding to see the entire Task Force embrace the work of my committee. It doesn't take a rocket scientist to understand that the easiest oil spill to clean up is the one that never occurs. Every other U.S. west coast state and British Columbia wrestled with prevention language, but only the Alaska Task Force was ultimately able to develop recommendations that will reward prevention efforts. Recommendation 27 of the Task Force report (enclosed), The Prevention Credit Program, outlines our efforts.

I will be in Juneau next the week of February 5. If you have questions about the work of the Task Force, or, more specifically, of the Prevention Committee, please let me know. I would be happy to discuss the Task Force's findings with you.

Very best wishes for a successful legislative session.

Sincerely,

Eric Britten
Manager, Business Planning & Development

Contact information:
Direct Line: 907.263.5611; Fax: 907.263.5620
E-mail: EBritten@csxlines.com

Prevention recommendations

SA=Broad Statutory Authority

Recommendation	Reg	Stat	Comment
24. <u>Periodic review.</u> The Task Force recommends that the Department of Environmental Conservation periodically review all recommendations with the regulated community.	Y	N	Based on the review, additional statutory changes may be possible in the future.
25. <u>Mandatory prevention measures.</u> All affected nontank vessels must comply with applicable federal and international requirements.	Y	N	General statutory authority contained in draft legislation, Section 2, ¶(m).
26. <u>Reduction in the response planning standard.</u> The Task Force does not recommend reduction of the response planning standard in any nontank vessel prevention credit program.	N	N	
27. <u>Prevention credit program.</u> The Task Force recommends a prevention credit program that awards vessels credit for measures taken to prevent oil spills. The Task Force recommends the program be based on a list of recommended prevention measures by vessel type as stated in the prevention credit table. A vessel would become eligible for the prevention credit by achieving 50% of the points available to the vessel category. A vessel eligible for the prevention credit would receive an extended contingency plan review cycle (5 years instead of 3 years), with a corresponding reduction in the frequency of spill drills, and would receive a "Blue Star" vessel award for measures Above and Beyond Compliance with state requirements.	Y	N	

Prevention Measures - Weight and Applicability

	Relative Weight	Fishing Vessels		Fish Processors & Tenders		General Cargo		Cruise Ships		Container Ships	
		Applicable?	Weight	Applicable?	Weight	Applicable?	Weight	Applicable?	Weight	Applicable?	Weight
1 Emergency towline or dedicated mooring line with on-board means for deployment	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
2 Emergency on-board dewatering or petroleum pumps	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
3 On-board storage bladder or dedicated tank	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
4 Non-contiguous tank location on vessel	3	No	0	No	0	Yes	3	Yes	3	Yes	3
5 Redundant propulsion systems	3	Yes	3	Yes	3	Yes	3	Yes	3	Yes	3
6 Redundant/integrated navigation systems	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
7 Use of an Alaska marine pilot when not otherwise required by law	2	No	0	No	0	Yes	2	Yes	2	Yes	2
8 Maintaining a transponder, AIS or other vessel location/ident. technology onboard	2	Yes	2	No	0	Yes	2	Yes	2	Yes	2
9 Use of advanced anchoring systems or placement of mooring buoys	1	No	0	Yes	1	Yes	1	Yes	1	Yes	1
10 Comply with bridge safety management practices; meet ISMC requirements before 7/02; licensing, certification, training beyond fed/intl. requirements	1	No	0	No	0	Yes	1	Yes	1	Yes	1
11 Participation in risk assessment process for operations	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
12 Membership in a marine safety organization	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
13 Tugboats staged/on standby	2	No	0	No	0	No	0	Yes	2	Yes	2
14 Additional staged equipment onshore to improve RPS	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
15 Weather/oceanographic equipment and systems	1	No	0	No	0	Yes	1	Yes	1	Yes	1
16 Enhanced maintenance	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
17 Ice classification	2	No	0	No	0	Yes	2	Yes	2	Yes	2
18 Specialized onboard training programs in prevention and response	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
19 Mooring plan	1	No	0	Yes	1	Yes	1	Yes	1	Yes	1
20 Others as proposed by operators	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Total possible score for category	33		20		20		31		33		33



**NORTH WEST
CRUISESHIP
ASSOCIATION**

100 - 1111 W. Hastings Street
Vancouver, BC V6E 2J3
Main: 604-681-9515
Fax: 604-681-4364
Email: nwca@nwcrueship.com

January 15th, 2001

Senator John Torgerson
Chair, Resource Committee
Alaska State Legislature
State Capital - Room 427
Juneau, Alaska 99801-1182

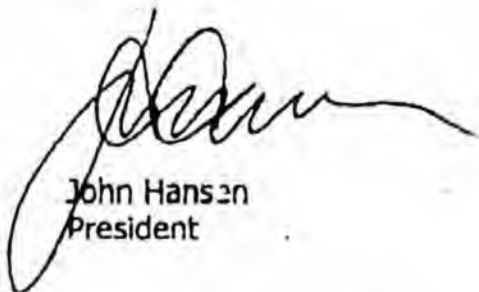
Dear Senator Torgerson:

On behalf of the member lines of the North West CruiseShip Association, I am pleased to state our support for Senate Bill No. 16.

This is important legislation for Alaska. We appreciate the opportunity to have participated on the Task Force on Motorized Oil Transport. This was an important part of the process in developing recommendations for the legislation and regulations.

We look forward to continuing to work with ADEC as the specific regulations are developed pursuant to SB 16.

Sincerely,



John Hanson
President

NWCA Member Lines:

Carnival Cruise Lines • Celebrity Cruises • Crystal Cruises • Holland America Line-Westours • Norwegian Cruise Line
Princess Cruises • Radisson Seven Seas Cruises • Royal Caribbean International • World Explorer Cruises

NOTES RE: SB 16
Oil Discharge Prevention: Nontank Vessels/RR

Most of the questions go to the fiscal note. Most questions are to Larry Dietrick, SPAR Director

1) We have spent a lot of time with the department and the legislative fiscal analyst this last week trying to ensure that we understand the impact of the DOT/PF and DEC fiscal notes on the 470 Prevention Account.

- **On what production level are you basing your estimates of the balance of available 470 Fund money?** (production was estimated at 1.000 million barrels/day in the Fall 00 Revenue Sources Book, but as of 2/5/01 is at 0.977 bbl/day – 23,000 below 12/12/00 estimate)
- **How does the production level (whatever your base is) affect the estimate available for appropriation from the 470 Prevention Account?**
- **According to work done by our fiscal analyst, the balance available for legislative appropriation in the 470 Prevention Account is \$27,726,500 – is that your assessment?**
- **Are the 470 monies that are *RSA'd to other departments included in the operating budget total of \$22,981,700?**
- **I understand that you have 20 staff currently reviewing 140 c-plans. Are all of these staff in one division? Please explain, in addition to what already accompanies the fiscal note, your rationale for the additional positions.**
- **Do you think that with your current staff and the anticipated FY 03 fiscal note on this bill of almost a quarter million dollars that you will not be coming back to the Legislature asking for additional funds for this program or any others funded by the 470 Fund Prevention Account? (simply as those funds currently appear in the Governor's amended budget, you are not being asked to attempt to figure out where the Legislature might appropriate 470 Fund dollars.)**
- **How many staff currently work reviewing, testing and training contingency plans?**
- **I believe these plans are updated every three years? How long has DEC been reviewing c-plans? Do you have templates that streamline the workload?**

*RSA – Reimbursable Service Agreement

SENATE FINANCE COMMITTEE

February 6, 2001

Response to Followup Questions from Senate Finance Committee for SB 16

*Prepared by the Alaska Department of Environmental Conservation
Division of Spill Prevention and Response*

1. Please clarify the funding source (1052) coding for the fiscal note for SB 16.

OMB's instructions and Legislative Finance's Budget Guide: The Swiss Army Knife of Budget Handbooks directs that if "other funds" are being used, specify the fund code using Alaska Budget System (ABS) fund source codes and the source name. The ABS codes for DEC funding sources are:

1002	Federal Receipts
1003	General Fund Match
1004	General Fund
1005	General Fund Program Receipts
1007	Inter Agency Receipts
1018	Exxon
1036	Commercial Fishing Loan Fund
1052	Response Fund
1061	Capital Improvement Projects
1075	Clean Water Fund
1079	Storage Tank Fund
1093	Clean Air Protection Fund
1100	Drinking Water Fund
1108	Statutory Program Receipts

These fund source codes are used on the fiscal note form to designate the overall fund.

2. Why did the Task Force recommend against user fees?

The Task Force discussed user fees and prepared Recommendation 31, which recommends that the nontank community not be charged user fees to support the nontank program. The Task Force recommended against user fees as one measure by which to allow implementation in the practical and cost efficient manner set forth in SCR 1.

3. Why was the response fund selected as the funding source?

Recommendation 31 states that the program should be funded from the response fund and/or state general funds. In view of the efforts to limit general fund expenditures the Department has assumed that use of the response fund is preferred.

4. Is the proposed program an eligible use of the response fund?

Yes. The purposes of the response fund are established in statute and explicitly allow use of the response fund's prevention account for this purpose. (AS 46.08.040(a)(2)(B)). The review of contingency plans, training, response exercises, inspections and other preparedness activities are some of the core purposes for which the fund was established.

5. What are the impacts to using the response fund?

The Department has reviewed the fiscal note costs against the Department of Revenue projections for crude oil production and believes they are sustainable under current forecasts. When compared to the revenue stream generated by the three cent surcharge the long term costs once the program is fully implemented in FY 05 are less than 2%. When weighed against the streamlined contingency planning approach and use of the private sector, the benefits to the state by including nontank vessels and the railroad in the states oil spill safety net is a prudent investment for enhancing protection of state resources.

Task Force on Motorized Oil Transport

Brian Rogers, Facilitator
Information Insights, Inc.
751 Old Richardson Hwy, Suite 235
Fairbanks, AK 99701
(907) 452-2461

SB 16 Sponsor Statement

Alaska arguably has the world's best oil spill prevention and response program. Until last year, however, the program was limited to vessels that carry oil as cargo (tank vessels), and on-shore oil facilities such as oil wells, pipelines, refineries and tank farms. Most of Alaska's oil spills come from carriers that were not required to prepare for spill response.

The 21st Alaska Legislature adopted SB 273, requiring previously unregulated non-tank vessels – self-propelled watercraft of 400 or greater gross registered tons – and the Alaska Railroad to provide proof of financial ability to respond to damages resulting from a spill. The bill further established a spill response planning standard of containment and control of up to 15 percent of the vessel's maximum oil capacity within 48 hours, and cleanup of spills as quickly as possible with minimal damage to the environment. Finally, the bill, and companion SCR 1, established the Task Force on Motorized Oil Transport to study, and report back to the Legislature, how to achieve this planning standard in a way that minimizes any potential adverse impacts to industry.

The Task Force included a 23-member cross section from the maritime industry, the Alaska Railroad, the department, petroleum producers, distributors and transporters, spill response cooperatives, and the US Coast Guard. The Task Force held 11 formal meetings over a five-month period in which the members worked through legal and technical issues on prevention, contingency plans, and response planning standards. The Task Force exhaustively reviewed the legal issues and identified what elements should be contained in regulation and what should be contained in statute.

The Task Force reached unanimous agreement on 31 recommendations, and on draft legislation, which was introduced as SB 16. This legislation fundamentally makes SB 273 effective, while including enabling language to support regulations detailing how it will be implemented. These regulations have effectively been negotiated through the Task Force proceedings, and will be drafted consistent with the recommendations contained in the report.

This legislation contains the minimum changes necessary to

- Activate the contingency planning process, establishing a streamlined procedure for nontank vessels;
- Limit liability for response action contractors, including those providing incident management team services and response planning facilitator services;
- Enable the department to adopt regulations consistent with the Task Force report.

The Task Force believes this legislation shows the value of negotiated rule-making and the advantages of including participation by regulated industry in the regulatory process. The Task Force recommends adoption of the legislation with clear legislative intent that the Task Force proceedings should be used as the guidelines for the department in adopting regulations under the legislation.

Personal Services New Position Detail

DRAFT

Department of Environmental Conservation

FY 2002

Scenario: DEC FY2002 Fiscal Note Scenario (1735)
 Component: Industry Preparedness and Pipeline Operations (1922)
 BRU Name: Spill Prevention and Response (208)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#021	Environmental Spec III	FT	A	GG	Anchorage	1A	18A	12.0	43,860	522	0	15,347	59,729

Justification:

Fiscal Note

Funding Detail:

1052	Oil/Hazardous Response Fund	100.00%	59,729
Total Funding:		100.00%	59,729

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1052 Oil/Hazardous Response Fund	100.00%	59,729
Total Funding:	100.00%	59,729

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

DRAFT

Department of Environmental Conservation
FY 2003 and FY 2004

Scenario: DEC FY2002 Fiscal Note Scenario (1735)
Component: Industry Preparedness and Pipeline Operations (1922)
BRU Name: Spill Prevention and Response (208)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#021	Environmental Spec III	FT	A	GG	Anchorage	1A	18 A	12.0		43,860	522	0	15,347	59,729
Justification:						Funding Detail:								
Fiscal Note						1052	Oil/Hazardous Response Fund					100.00%	59,729	
												Total Funding:	100.00%	59,729
18-#022	Environmental Spec III	NP	A	GG	Anchorage	1A	18 A	12.0		43,856	490	0	12,189	56,535
Justification:						Funding Detail:								
Fiscal Note						1052	Oil/Hazardous Response Fund					100.00%	56,535	
												Total Funding:	100.00%	56,535
18-#023	Environmental Spec III	NP	A	GG	Anchorage	1A	18 A	12.0		43,860	490	0	12,189	56,539
Justification:						Funding Detail:								
Fiscal Note						1052	Oil/Hazardous Response Fund					100.00%	56,539	
												Total Funding:	100.00%	56,539
18-#024	Environmental Spec III	FT	A	GG	Anchorage	1A	18 A	12.0		43,860	522	0	15,347	59,729
Justification:						Funding Detail:								
Fiscal Note						1052	Oil/Hazardous Response Fund					100.00%	59,729	
												Total Funding:	100.00%	59,729

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Personal Services New Position Detail

DRAFT

Department of Environmental Conservation
FY 2003 and FY 2004

Scenario: DEC FY2002 Fiscal Note Scenario (1735)
Component: Industry Preparedness and Pipeline Operations (1922)
BRU Name: Spill Prevention and Response (208)

Component Summary:

Total New Positions: 4

Fund Description	Fund Percent	Fund Amount
1052 Oil/Hazardous Response Fund	100.00%	232,532
Total Funding:	100.00%	32,532

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

DRAFT

Department of Environmental Conservation
FY 2005 - FY 2007

Scenario: DEC FY2002 Fiscal Note Scenario (1735)
Component: Industry Preparedness and Pipeline Operations (1922)
BRU Name: Spill Prevention and Response (208)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs	
18-#021	Environmental Spec III	FT	A	GG	Anchorage	1A	18 A	12.0		43,860	522	0	15,347	59,729	
Justification:							Funding Detail:								
Fiscal Note							1052 Oil/Hazardous Response Fund 100.00% 59,729								
												Total Funding:		100.00%	59,729
18-#022	Environmental Spec III	FT	A	GG	Anchorage	1A	18 A	12.0		43,860	522	0	15,347	59,729	
Justification:							Funding Detail:								
Fiscal Note							1052 Oil/Hazardous Response Fund 100.00% 59,729								
												Total Funding:		100.00%	59,729

Component Summary:

Total New Positions: 2

Fund Description	Fund Percent	Fund Amount
1052 Oil/Hazardous Response Fund	100.00%	119,458
Total Funding:	100.00%	119,458

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column

NOTES RE: SB 16
 Oil Discharge Prevention: Nontank Vessels/RR

Most of the questions go to the fiscal note. Most questions are to Larry Dietrick, SPAR Director

1) We have spent a lot of time with the department and the legislative fiscal analyst this last week trying to ensure that we understand the impact of the DOT/PF and DEC fiscal notes on the 470 Prevention Account.

- On what production level are you basing your estimates of the balance of available 470 Fund money? (production was estimated at 1,000 million barrels/day in the Fall 00 Revenue Sources Book, but as of 2/5/01 is at 0.977 bbl/day - 23,000 below 12/12/00 estimate)
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*RSA - Reimbursable Service Agreement

Post-it Fax Note	7871	Date	# of pages
To		From	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

NOTES RE: SB 16

Oil Discharge Prevention: Nontank Vessels/RR

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Response:

DEC uses the Department of Revenue/Tax Division of Revenue Sources Book: Petroleum Severance Tax and Royalty Revenue Forecast production levels to prepare estimates. This source is also used to prepare budget requests. Daily production levels may and do fluctuate.

- **How does the production level (whatever your base is) affect the estimate available for appropriation from the 470 Prevention Account?**

Response:

Changes in production levels are adjusted once a year on a fiscal year basis.

- **According to work done by our fiscal analyst, the balance available for legislative appropriation in the 470 Prevention Account is \$27,726,500 – is that your assessment?**

Response:

DEC accounting staff recently reviewed a forecast prepared by Legislative Finance and agreed with this balance.

- **Are the 470 monies that are *RSA'd to other departments included in the operating budget total of \$22,981,700?**

Response:

Yes.

- **I believe these plans are updated every three years? How long has DEC been reviewing c-plans? Do you have templates that streamline the workload?**

Response:

The requirement for renewal of contingency plans is every three years. DEC has been reviewing contingency plans under current law since HB 567 was passed in 1990. Numerous steps have been taken to streamline the workload. These include use of facility "umbrella" plans, standardized tactics manual for spill response, coordinated stakeholder reviews, cross referencing, standardized formats, standardized scenarios, development of a statewide incident command system, standardized resource typing, electronic databases for equipment inventories and others.

* RSA – Reimbursable Service Agreement

THE BOAT COMPANY

1730 M Street, NW, Suite 204

Washington, DC 20036

Phone (202) 338-8055 Fax (202) 234-0745

February 12, 2001

The Honorable Drew Pearce
Chairwoman, Rules Committee
State of Alaska

Transmitted via FAX

Dear Senator Pearce:

This letter addresses concerns we have re: HB 55.

First a note on ourselves. The Boat Company operates three small passenger vessels (carrying capacity 12, 20 and 24 passengers) which run tours in Southeast Alaska during the summer season. I should add, we are an Alaskan corporation, have recently signed a lease to occupy a portion of the old pulp mill site in Sitka and are building warehouse and dock facilities which will enable us to move our boats plus maintenance and operations departments there (hopefully by the end of the summer).

Two of our vessels are wooden-hulled, ex U.S. Navy minesweeps, the third a new aluminum-hulled vessel that is a look-alike for the first two.

The Task Force on Motorized Oil Transport outlines in its report to the legislature (Pg. 54) vessels which range in size from 6,500 to 77,500 gross tons and which carry 9,500 to 52,000 barrels of oil (400,000 to almost 2,200,000 gallons).

Tonnage, as you are no doubt aware, is a measure of volume not of weight. Specifically, 100 cubic feet of enclosed space equals 1 ton (has nothing to do with weight, displacement of water, etc., etc.).

Further, in the most simple terms, there are two forms of tonnage measurement, i.e., registered gross tons (international) and regulatory gross tons (U.S.A.).

Our vessels, several of which may be swept up in SB 16 (HB 55) carry 70 (in the smallest) to 280 (in the largest) barrels of oil (3,000 to 12,000 gallons) divided between anywhere from 4-to-8 separate tanks. This is a small amount compared to the figures mentioned in the study/report.

We have attempted but, to-date, have been unable to learn the specific concern the legislature has regarding the size of potential spills it wanted (intended) to address, i.e., 5,000, 10,000, 20,000 barrels, etc.

However, if it was not the intent of the legislature to reach down to "the little guys", we would hope the legislature would consider adding to its current legislation something like "....400 registered gross tons carrying at least 500 barrels...." (or some other figure the legislature finds appropriate).

February 12, 2001
Page 2

In closing I would add that we believe Senator Murkowski, in his Federal legislation addressing problems of gray/black water discharges, recognized the inherent difficulties of using tonnage as a criteria and as a result, rather directed his attention to the number of passengers it carried, i.e., the cause of the size of the effluent discharged.

There are large vessels which carry small amounts of oil and small that carry large, so the issue is really what is the size of a potential spill the legislature wishes to address. Our suggested change is merely a reflection of the same, i.e., specifying the size of the potential discharge rather than the size (tonnage) of the vessel.

Thanks for your consideration.

Sincerely,



Michael A. McIntosh

MAM:osk

cc: The Honorable John Cowdery, Chairman
Transportation Committee
The Honorable Dave Donley, Co-Chairman
Finance Committee
The Honorable Pete Kelly, Co-Chairman
Finance Committee
The Honorable John Torgerson, Chairman
Resources Committee



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

- In Anchorage: 3709 Spenard Road / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
- In Valdez: 154 Fairbanks Dr / P.O. Box 3089 / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

February 2, 2001

MEMBERS

- Alaska State Chamber of Commerce
- Alaska Wilderness Recreation & Tourism Association
- Chugach Alaska Corporation
- City of Cordova
- City of Homer
- City of Kodiak
- City of Seldovia
- City of Seward
- City of Valdez
- City of Whittier
- Community of Chignik Bay
- Community of Tatishchee
- Cordova District Fishermen United
- Ketchikan Peninsula Borough
- Kodiak Island Borough
- Kodiak Village Mayors Association
- Oil Spill Region Environmental Coalition
- Prince William Sound Aquaculture Corporation

Senator Pete Kelly
 Co-Chair, Senate Finance Committee
 Alaska State Legislature
 State Capitol (MS 3100) -
 Juneau AK 99801-1182

SUBJECT: Senate Bill 16, Contingency Planning Requirements for Non-Tank Vessels

Dear Senator Kelly:

The Prince William Sound Citizens' Advisory Council (RCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company. RCAC's 18 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental groups.

While RCAC supports the concept of oil-spill prevention and preparedness, we wish to raise two concerns regarding the legislation to establish contingency planning requirements for non-tank vessels.

- We urge that any program governing contingency planning for non-tank vessels be funded in a way that does not reduce, now or in the future, funding for existing programs in the Department of Environmental Conservation that protect against crude-oil spills.

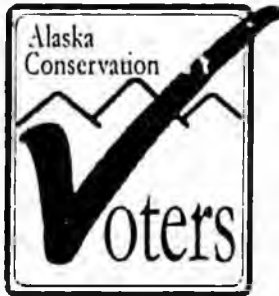
- We urge also that the legislation make explicitly clear that nothing in it should be construed to alter laws or regulations governing transportation of crude oil.

RCAC routinely reviews contingency plans for crude oil carriers and advocates for the highest standards. Alyeska Pipeline Service Company / SERVS, Prince William Sound crude oil shippers, Alaska Department of Environmental Conservation and the U.S. Coast Guard all deserve recognition for creating a world-class response capability for crude carriers in Prince William Sound. Protecting the natural environment should be a high priority for all major carriers of petroleum products, and RCAC appreciates your efforts toward this goal.

Sincerely,

John S. Devens, Ph.D.
 Executive Director

- cc: Senator Jerry Ward
 Senator Alan Austerman
 Senator Lyda Green
 Senator Loren Leman
 Senator Gary Wilken
 Senator Lyman Hoffman
 Senator Donald Olson



750 W. 2nd Ave. #109, Anchorage AK 99501 / Ph. 907-258-6171 / Fax 907-258-6177

P.O. Box 22151, Juneau AK 99802 / Ph. 907-463-3366 / Fax 907-463-3312 / unite@akvoice.org

**SB 16 ~ OIL SPILL RESPONSE:
NONTANK VESSELS & RAILROADS**

To: Senate Finance Committee
Date: February 6, 2001

Alaska Conservation Alliance and Alaska Conservation Voters are sister nonprofit organizations dedicated to protecting Alaska's environment through public education and advocacy. Our 44 member organizations represent over 35,000 registered Alaskan voters. Many of our members in Southeast Alaska are concerned with the issue of cruise-ship related pollution while our members in the Rail Belt would like to see the Alaska Railroad Corporation improve their record in respect to oil and other hazardous material spills. We are pleased with the efforts of the Task Force on Motorized Oil Transport and support the requirements of SB 16 that nontank vessels and the railroad establish spill response planning.

This much-needed legislation fills a large gap in the state's efforts to protect our natural resources that so many Alaskans depend upon for subsistence activities, recreational uses and economic livelihoods. We encourage all legislators to support SB 16.

Susan Schrader, Conservation Advocate

Conserve Alaska. It's Only Natural.

SENATE FINANCE COMMITTEE

SIGN-IN

SB 16-OIL DISCH PREVENTION: NONTANK VESSELS/RR

NAME: LARRY DIETRICK Subject/Bill No: SB 16
Co./Dept./Title: AK. DEPT ENVIRONMENTAL CONSERVATION
DIRECTOR - Spill Prevention & Response Phone: 465 5255
Address: 410 WILLOUGHBY, JUN AK Zip: 99801
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 16-OIL DISCH PREVENTION: NONTANK VESSELS/RR

NAME: LARRY DIETRICH Subject/Bill No: SB 16
Co./Dept./Title: ADEC - Director - Spill Prevention & Response Phone: 465 5255
Address: 410 WILLOWHAY Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: GEORGE CAPACCI Subject/Bill No: SB 16
Co./Dept./Title: DOT+PF - GM, ALASKA MARINE HIGHWAY Phone: 465 3959
Address: 3137 Chand Dr Ocean Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 16-OIL DISCH PREVENTION: NONTANK VESSELS/RR

NAME: BRIAN ROGERS Subject/Bill No: SB16
Co./Dept./Title: INFORMATION INSIGHTS Phone: 452 2461
Address: 751 Old Richardson Hwy #235 Fairbanks Zip: 99701
Do you wish to testify? Yes No Respond To Questions

NAME: PAUL FUHS Subject/Bill No: SB16
Co./Dept./Title: _____ Phone: 351-0407
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: LARRY DIETRICK Subject/Bill No: SB16
Co./Dept./Title: ADEC Phone: 465 5255
Address: 410 WILLOUGHBY Zip: 99801
Do you wish to testify? Yes No Respond To Questions


NAME: GEORGE CAPACCI Subject/Bill No: SB16
Co./Dept./Title: ALASKA Marine Highway/ADOT+PF Phone: 465-3959
Address: 3132 CHANNEL DR TINEAN AK 99801 ~~AK~~
Do you wish to testify? Yes No Respond To Questions

NAME: Sue Schrader Subject/Bill No: SB 16

Co./Dept./Title: AK Conservation Voters Phone: 403-3368

Address: PO Box 22151 Juneau Zip: 99802

Do you wish to testify? Yes No Respond To Questions

 NAME: ERIC BRITTEN Subject/Bill No: SB 16

Co./Dept./Title: CSX LINES LLC Phone: 907-263-5611

Address: 1717 TIDEWATER RD, ANC Zip: 99501

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SB

19

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CS SB 19 (HES)
(S) Publish Date: 02/15/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Child Support Enforcement / BRU: Child Support
Social Security Numbers Component: Child Support
Sponsor: Rules Committee
Requester: Senate Finance Component Number: 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact from this legislation. However, failure to adopt this legislation would move the state out of compliance with federal law for child support enforcement programs and would expose the state to the penalty of losing about \$70 million a year in federal funding for Alaska's child support enforcement program and Alaska's Temporary Assistance Program (ATAP).

Prepared by: Barbara Miklos, Director Phone 269-6800
Division: Child Support Enforcement Division Date/Time Feb. 13, 2001
Approved by: Larry Persily, Deputy Commissioner Date Feb. 13, 2001
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

Sunset Provisions of Various Versions of SB19/HB41

Version	Sunset Applies to:	Sunset Dates
Existing Statute	Most subjects in 1997/1998 CSED legislation*	July 2001
Original SB19/HB41	Most subjects in 1997/1998 CSED legislation*	Removed
SB19 as Passed by the Senate	Social Security Number Requirements & Financial Institution Data Match	July 2006
	All Other Subjects removed in original bills.	Removed
SB19/HB41 as Amended in House Hess	Social Security Number Requirements & Financial Institution Data Match	July 2003
	All Other Subjects removed in original bills.	Removed

*Provisions of 1998 Act which were not subject to the July 1, 2001, sunset of the 1997 and 1998 Acts:

- (1) Repeal of statute of limitations – AS 09.10.040(b) (§§ 2 and 54(a) of 1998 Act).
- (2) Changes to license suspension statutes (removing subpoena noncompliance as a reason for license suspension and adding best efforts to the driver's license suspension statute) – AS 25.27.244 and AS 25.27.246 (§§ 34 – 46 of the 1998 Act).
- (3) Language concerning tax dependents and certification of arrears – AS 25.24.152, AS 25.24.232, and AS 25.27.107 (§§ 13, 18, and 27 of 1998 Act).
- (4) Minor changes to UIFSA – AS 25.25.602 and AS 25.25.611 (§§ 19 and 20 of 1998 Act).
- (5) Access to certain records of vital statistics concerning remarriage and court records – AS 18.50.310, AS 22.35.020, and 25.27.300 (§§ 10, 11, and 48 of 1998 Act).
- (6) Requiring SSN's to be in the record: rather than on the face of the order or acknowledgment – AS 25.20.050(n), AS 25.24.160, AS 25.24.210, and AS 25.24.230 (§§ 12, 14, 15, and 17 of 1998 Act).
- (7) Minor changes to administrative paternity statutes – AS 25.27.165 (§§ 28 and 29 of 1998 Act).
- (8) Changes to "support order" definition and addition of definitions for "arrearage" and "high-volume automated administrative enforcement" – AS 25.27.900 (§§ 49 – 50 of the 1998 Act).

CHILD SUPPORT ENFORCEMENT "SUNSET" SUMMARY

Legislation passed in 1997 and 1998 contained sunset provisions that will take effect in 2001. These laws support programs and activities at CSED that have resulted in a significant increase in child support payments, and improved services to families in Alaska. If the sunset is allowed to occur, these improvements will be diminished, and by being out of compliance with welfare reform laws Alaska will be in jeopardy of losing \$80,000,000 in federal public assistance and child support funding.

Below is an outline of key parts of the 1997 and 1998 legislation, as well as a description of how the sunset provisions would affect CSED's work. Each of these segments is a requirement of federal compliance.

Availability of Records/Access to Information

The subject statutes allow CSED to obtain certain types of information electronically and through administrative action. If these provisions are repealed, CSED may be required to contact sources of information separately for each case, and take the difficult and time-consuming avenue of obtaining a court order to request basic information. The time lost would severely hamper our child support enforcement efforts.

'Best Efforts' Language

Adopted in 1998, this language allows a non-custodial parent who is found by a court to be making the 'best efforts possible under the circumstances to have no child support arrearages' to avoid the loss or suspension of a driver's or other license. The act adds commercial crewmember fishing licenses to existing license statute, and removes subpoena noncompliance as a reason for general license suspension. Instead, the act allows license suspension for subpoena noncompliance only in the context of a civil contempt action.

Central Registry

The law requires courts to automatically forward child support orders to CSED, and authorizes CSED to exchange this and other critical information within strict confidentiality guidelines. These procedures allow CSED to serve clients with improved timeliness and accuracy, efficiencies that will be diminished if the statutes are repealed.

Credit Bureau Reporting

Current state law requires child support debt to be reflected on a delinquent parent's credit bureau report until it has been paid. The sunset would have the effect that unpaid child support arrears could not be reported after 10 years.

Definitions: Duty of support, earnings, tribunal, arrearages

The 1997 and 1998 acts redefined a number of key terms used in child support enforcement, and this nationwide uniformity is essential to cooperative enforcement efforts between the states.

Due Process

The 1997 and 1998 acts strengthened due process protections by requiring additional notices to parents of their rights and responsibilities in paternity and child support proceedings and by providing additional opportunities for parents and other persons to request and obtain administrative and judicial review of agency actions and decisions.

Financial Institution Data Match and Immunity from Liability

Current statutes allow us to match the names of parents who owe arrears with the names on accounts at financial institutions. This makes it much more difficult for delinquent parents to hide their assets, simplifies the search for funds in multi-state institutions, and allows the institutions to cooperate without fear of retaliatory lawsuits. Few banks would participate in the FIDM if this protection were repealed. Searching for hidden assets would require sweeps of all banks for each and every case. For many children our ability to collect support would be seriously compromised.

Income Withholding

In direct response to federal requirements from PRWORA, the 1997 and 1998 acts have simplified the way a non-custodial parent pays child support through withholding, and shortened to 7 days the time between the request for withholding and the commencement of withholding by the employer. Within 2 days of receipt of withheld funds, CSED forwards the payment to the family. In out-of-state cases, we can request income withholding directly (without going through the other state's child support agency), often saving several months' delay. If these laws are allowed to sunset, it will be harder for CSED to collect monthly payments and arrearages; these collections may take months to implement, rather than immediately; and it will be easier for delinquent parents to avoid payment of their child support obligations by moving to another job before income withholding can be established.

Liens

The subject legislation simplified the statute so that CSED or a parent may assert a lien when the obligor owes an arrearage under a support order being enforced by the agency. Also, Alaska cooperates with other jurisdictions by giving full faith and credit to liens arising by operation of law in other states, *if the person seeking to enforce the lien complies with this state's procedural requirements for recording and serving liens*. The simplified statutes, and the reciprocity with regard to liens, allow us to collect lawfully established support payments and arrearages that might otherwise be unreachable.

Miscellaneous

The subject statutes provide procedures and definitions relating to the following subjects, and bring Alaska into conformance with language in PRWORA.

- exchange information
- application for services
- payments to the agency
- audit of collections
- notice of public assistance
- order establishment
- service of papers
- regulations
- fees for services
- state registry information

Modification

The subject statutes require that parties be given periodic notice of their right to seek review of child support orders. They allow review of orders every three years and clarify CSED's authority to modify administrative orders where out of state court orders also exist. If allowed to sunset, all parties' rights to due process will be weakened because state agencies will no longer be required to have written regulations setting out procedures and standards governing the modification process.

New Hire Reporting

Under the current law, all employers in the state are required to report to CSED new hires and rehires. This information helps CSED locate parents, and establish and enforce child support orders. New Hire reporting is currently responsible for about 12% of total child support collections. If the acts sunset, we will revert to a previous statute that only required employers to report new hires if notified by CSED, and which created a number of classes of exempt employers. Reversion to the old statute will *increase* to \$1000 the civil penalties that can be levied against employers for not reporting

Non-Cooperation

Current and previous laws require ATAP recipients to cooperate with child support proceedings. The 1997 act clarified who would make the determination of non-cooperation (CSED) and who would decide if the party had good cause for non-cooperation (DHHS). This clarification promotes cooperation in matters of paternity and child support, and protects parties who may have reasons for not cooperating, such as threats of domestic violence. These protections would be jeopardized by the sunset.

Nondisclosure of Information

The 1997 statute allows CSED to refuse to disclose the address or other identifying information of a parent or child if the health, safety, or liberty of that person would be unreasonably put at risk by such disclosure. Under the sunset, Alaska law will revert to a requirement to make such information available regardless of the risk if the obligor is current on child support obligations and has a previous visitation or joint custody agreement.

Paternity

The 1997 and 1998 acts include detailed requirements for the form, use, and legal effect of voluntary acknowledgments of paternity, and for proceedings to establish paternity. Acknowledgement forms must include a statement setting out the legal consequences, rights, responsibilities and alternatives to signing the form and listing the restrictions to rescinding the acknowledgment. The acts also addressed a variety of substantive and procedural requirements for the establishment of paternity, including genetic testing, consideration of the best interests of the child, recovery of costs of testing, and allowing a putative father to request genetic testing. Reversion to previous law will diminish due process provisions and safety considerations, and will complicate the paternity determination process.

Seek Work Orders

In cases where support is owed a child who is receiving public assistance, the 1997 statute allows CSED to order an obligor to seek work, or to ask a court to order an obligor to seek work, unless the obligor enters into and complies with an approved payment plan. Without this statute, CSED would have to request a seek work order from the court in the context of a civil contempt proceeding.

Social Security Numbers

The 1997 and 1998 acts required applicants for state licenses, including professional, business, occupational, driver's, recreational and marriage licenses, to include their social security numbers. These numbers help CSED locate parents and collect child support, and reduce the number of cases of mistaken identity. (Requirements for social security numbers on hunting and fishing licenses have been waived and will be allowed to sunset even if the sunset repealer is passed.)

Subpoenas

The current statutes establish procedures that give CSED the authority to subpoena financial or other information needed to establish, modify, or enforce a child support order. They require that subpoenas be served in person, or by registered, certified or insured mail. They allow a claim of good cause excusing compliance, provide a direct avenue of appeal of penalty decisions to the Superior court, and specify that CSED will enforce a subpoena from another state in the same manner. Repeal will restrict CSED's ability to obtain critical information, limiting the establishment, modification and enforcement of child support orders; and will diminish parties' due process rights with regard to administrative subpoenas.

UIFSA

The 1998 act revised the previous UIFSA statute to be clearer and more consistent. Without the changes, interstate cooperation in child support cases would be very difficult.

HOUSE CS FOR CS FOR SB NO. 19 (HES)

Original

Sponsor: Senate Rules Committee by Request of the Governor

Short Title: CHILD SUPPORT ENFORCEMENT/SOC SEC. #

Long Title: An Act relating to federal child support enforcement requirements regarding social security number information, employer reports about employees, and certain kinds of automated data matching with financial institutions; relating to child support payments; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date.

Brief:

CSSB19 (HES) removes most of the sunset provisions that were attached to child support legislation passed in 1997 and 1998, as well as a nonseverability clause, ensuring that Alaska will stay in compliance with federal law and thus remain eligible for approximately \$70,000,000 in public assistance and child support funding. The Senate reinstated a 5-year sunset on the sections dealing with Social Security Number requirements and Financial Institution Data Match, and added Section 11, which provides that failure on the part of an employer comply with new hire reporting requirements does not give rise to a private cause of action. House HESS added Section 12, which allows the agency to characterize a support payment received during the last five business days of the month as having been received on the first day of the next month when that's what was intended; and, also in House HESS, the reinstated sunset provisions were reduced to two years.

Note: The reinstated sunset provisions are accomplished by removing the subject matter from the statutes, and setting the effective date for the removal to 2003.

SECTIONAL ANALYSIS

- Section 1: Removes Social Security Number requirement on applications for licenses for businesses entering into premium finance agreements or insurance sold under the Premium Financing Act.
- Section 2: Removes Social Security Numbers from the Child Support Enforcement reporting requirements for Centralized Licensing.
- Section 3: Removes requirement that the Alaska Bar Association report an applicant's Social Security Number to Child Support Enforcement.
- Section 4: Removes Social Security Number requirement on presumptive death certificates.

- Section 5: Removes Social Security Number requirement on applications for crewmember fishing licenses.
- Section 6: Removes Social Security Number requirement on applications for resident commercial fishing licenses.
- Section 7: Removes Social Security Number requirement from dissolution, divorce, or annulment of marriage forms.
- Section 8: Removes Social Security Number requirement from application for licensing of boiler operators.
- Section 9: Removes Social Security Number requirement from application for licensing of security guards.
- Section 10: Removes Social Security Number requirement from application for licenses to sell fireworks at wholesale.
- Section 11: States that failure on the part of an employer to comply with new hiring reporting requirements does not give rise to a private cause of action against the employer.
- Section 12: Allows the agency to characterize a support payment received during the last five business days of the month as having been received on the first day of the next month when it was intended as a payment for the next month.
- Section 13: Removes Social Security Number requirement from application for driver s license.
- Section 14: Repeals:
- 1: Social Security Number requirement of application for license for persons making loans of money, credit, goods, or things under the Alaska Small Loans Act.
 - 2: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing application under Premium Financing Act.
 - 3: Social Security Number requirement of application for Centralized Licensing.
 - 4: Social Security Number requirement for renewal of Centralized Licensing license.
 - 5: Social Security Number requirement for application for teacher certificate or a limited teacher certificate.
 - 6: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of crewmember fishing licenses.
 - 7: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of commercial fishing licenses.
 - 8: Social Security Number requirement for death registration.
 - 9: Reporting requirements of Social Security Numbers to Child Support Enforcement from divorce, dissolution and annulment forms.

- 10: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of boiler operators.
- 11: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of security guards.
- 12: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of fireworks wholesalers.
- 13: Social Security Number requirement for application for Division of Insurance licenses.
- 14: Social Security Number requirement for application for marriage license & reporting requirements of Social Security Numbers to Child Support Enforcement.
- 15: Social Security Number requirement for paternity order or acknowledgements.
- 16: Social Security Number requirement in the records of a judgement of divorce or declaring a marriage void for each party involved.
- 17: Social Security Number requirement for petitions filed for dissolution of marriages for each party involved.
- 18: Social Security Number requirement in the records of a judgment of dissolution of marriage for each party involved.
- 19: Financial data matching requirements.
- 20: Reporting requirement of Social Security Numbers to Child Support Enforcement from drivers license applications.

Section 15: Repeals:

- 1: July 1, 2001 repeal date of 1997 CSED legislation.
- 2: Unrelated statutes in Sections of ch. 37, SLA 1998, Austerman's canned salmon processor reporting bill, that have reference to our repealer, are deleted as a clean-up measure.
- 3: July 1, 2001 repeal date of 1997 CSED legislation.
- 4: July 1, 2001 repeal date of sections 3-9, 16, 21-26, 30-33, 47, 51, and 52 of 1998 CSED legislation.
- 5: 1997 repeal & 1998 repeal are to be read consistently even though their language is different.
- 6: Nonseverability of sections 1-12, 14-17, 19-26, 28-53, and 55 of 1998 CSED legislation.
- 7: Definition of "license" stipulation, which states that definition would remain the same if CSED legislation were allowed to sunset. This is basically a housecleaning repealer.
- 8: Revisor's uncodified law changes for no delayed repeal of 1998 amendment to notification guidelines for initiating paternity proceedings. Also a housecleaning repealer.

Section 16: Sections 11, 12 and 15 take effect immediately.

Section 17: Sections 1-10, 13, and 14 take effect July 1, 2003.

SB

19

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

FEB 15 2001

SENATE FINANCE COMMITTEE

DATE: 2/6/01

FURTHER:

DATE TURNED INTO OFFICE: 15 Feb 01

Finance Committee considered SENATE BILL NO. 19

CHILD SUPPORT ENFORCEMENT/SOCIAL SECURITY NO.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB 19 (HES)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Revenue	2/3/01		✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECO' MENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	X			
<i>Donald C. Olson</i>	X			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

REPORTED OUT
 FFB 1.5 2001
 SENATE FINANCE
 COMMITTEE

FISCAL NOTE

STATE OF ALASKA
 2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS SB 19 (HESS)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Child Support Enforcement / BRU: Child Support
Social Security Numbers Component: Child Support
 Sponsor: Rules Committee
 Requester: Senate Finance Component Number: 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact from this legislation. However, failure to adopt this legislation would move the state out of compliance with federal law for child support enforcement programs and would expose the state to the penalty of losing about \$70 million a year in federal funding for Alaska's child support enforcement program and Alaska's Temporary Assistance Program (ATAP).

Prepared by: Barbara Miklos, Director Phone 269-6800
 Division: Child Support Enforcement Division Date/Time Feb. 13, 2001
 Approved by: Larry Persily, Deputy Commissioner Date Feb. 13, 2001
 Agency: Department of Revenue

For distribution informallon, call the Governor's Legislative Office

ALASKA STATE LEGISLATURE



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SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE SENATOR LYDA GREEN, CHAIR

HESS CS FOR CSSB 19 (RES) CHILD SUPPORT ENFORCEMENT/SOC SEC.

The following changes were made to CSSB 19 (RES):

- Findings and intent language was removed.
- The five-year sunset was renewed on requirements that applicants for various licenses provide their social security numbers to the licensing agency and that the licensing agency provide those social security numbers to child support enforcement agencies.
- The five-year sunset was renewed on the requirements that certain court documents and documents of the Bureau of Vital Statistics include social security numbers and that those social security numbers be provided to child support enforcement agencies.
- The five-year sunset was renewed on the provisions allowing the child support enforcement agency to enter into agreements with financial institutions for financial data matching.
- New hire reporting requirements amended to ensure that an employer who unintentionally fails to report a newly hired employee to child support enforcement agencies may not be held liable for their failure to do so in a private civil case.

SENATOR LOREN LEMAN, VICE-CHAIR
SENATOR PETE KELLY, SENATOR JERRY WARD, SENATOR BETTYE DAVIS

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

Please Reply To:

DEPARTMENT OF REVENUE CHILD SUPPORT ENFORCEMENT DIVISION

CSED, MS

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Bill: CSSB 19 (HES)
Sponsor(s): Senate Rules Committee by Request of the Governor
Short Title: CHILD SUPPORT ENFORCEMENT/SOC SEC. #
Long Title: An Act relating to federal requirements regarding social security number information and certain kinds of automated data matching with financial institutions; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date.

SUMMARY OF ATTORNEY GENERAL'S MEMO ON PRIVACY

The right to privacy provided by the Alaska Constitution is not absolute, and the courts have ruled an individual's rights must be balanced against compelling state and public interests. In a memo Feb. 23, 1998, the Attorney General's office opined that the proposed child support legislation requiring Social Security numbers on state license applications would pass a legal privacy challenge.

The Alaska Supreme Court has applied a three-part test to evaluating privacy claims. This summary analyzes how the legislation would stand up to that privacy test.

Is there a legitimate expectation of privacy? *The answer is no.*

The federal Privacy Act of 1974 specifically allows government agencies to collect Social Security numbers when required by federal law. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (also known as welfare reform) is just such a case. It requires that states collect Social Security numbers on license applications and make those numbers available to child support enforcement agencies. Any expectation of a right to privacy for a Social Security number would be based on earlier congressional action to hold the numbers confidential. That expectation, however, no longer reasonably exists with the change in federal law requiring disclosure of the numbers. Welfare reform merely extends the list of state and federal agencies required to collect the number for identification purposes.

Does the use of Social Security numbers serve a compelling state interest? *Yes.*

Even if a court were to decide there is a reasonable expectation of privacy to a Social Security number, the next test would be if disclosure of the number serves a compelling state interest. The Alaska Legislature has consistently recognized a compelling public need for enforcement of child support obligations (the Child Support Enforcement Act of 1977 and amendments in 1984). Congress recognized the same public interest in its welfare reform legislation, and the Alaska Legislature reaffirmed this with passage of child support legislation (SB 154) in 1997. The courts likely will find that any privacy concerns are far outweighed by society's interests in effective child support enforcement. The state's interest also is served because millions of dollars a year of support obligations go directly into the state general fund as repayment for public assistance payments to single-parent households.

Will Social Security numbers be collected in the least intrusive manner? *Yes.*

The legislation requires the state to use existing licensing systems to collect Social Security numbers – no special forms or reporting requirements would be imposed on individuals or employers. The Alaska Supreme Court has found that, generally, self-disclosure constitutes the least intrusive method of obtaining information. And although the legislation requires Social Security numbers on state license applications, it does not require display of the numbers on the actual licenses.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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DEPARTMENT OF REVENUE CHILD SUPPORT ENFORCEMENT DIVISION

Bill: CSSB19 (HES)
Sponsor(s): Senate Rules Committee by Request of the Governor
Short Title: CHILD SUPPORT ENFORCEMENT/SOC SEC. #
Long Title: An Act relating to federal requirements regarding social security number information and certain kinds of automated data matching with financial institutions; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date.

Sponsor's Statement

Alaska's Child Support Enforcement Division collected and distributed a record \$85 million in Fiscal Year 2000 and is headed toward a new record this year. Senate Bill 19, as amended in the Health, Education and Social Services Committee, guarantees that the state will retain the tools that have enabled this success, and that these tools will continue to be available to help thousands of children receive the financial support they need. It also keeps Alaska in compliance with federal welfare reform laws and eligible for approximately \$70 million in annual federal funding to operate Alaska's family assistance and child support programs.

This bill continues the programs begun in 1997 and 1998 as part of Alaska's compliance with federal welfare reform, which has reduced parents' dependence on government-funded public assistance programs by increasing child support collections. Without this legislation before you today, those compliance measures will sunset on July 1, 2001.

This bill is important to the lives of the children and parents who make up the 48,000 child support cases in Alaska. It will keep in place those successful provisions of the 1997 and 1998 legislation which have improved child support collections, including:

- Enhanced due process protections in paternity proceedings.
- Requirements that all employers report newly-hired employees to the child support agency.
- Authorization to use financial institution data matches to locate assets of delinquent parents.
- Immunity from civil liability for employers and financial institutions that comply with child support income-withholding orders.
- Prohibitions against disclosing identifying information of a parent or child when there is evidence of domestic violence.
- Requirements for Social Security numbers on certain vital statistics and court records, and on applications for some state licenses. To protect an individual's privacy, the numbers are not required on the actual licenses but only on the applications.
- Authorization for the child support agency to obtain orders requiring delinquent parents to seek work and orders to set aside a parent's fraudulent transfer of property if it was done to avoid a child support obligation.
- Improved access to records of other government agencies and financial institutions to locate delinquent parents and their assets.

In the years since passage of the 1997 and 1998 legislation, the state has found the provisions of those bills effective in ensuring that children receive the support they need from both parents. Failure to adopt this bill would jeopardize several years of progress in helping Alaska's families.

STATE OF ALASKA

DEPARTMENT OF REVENUE CHILD SUPPORT ENFORCEMENT DIVISION

TONY KNOWLES, GOVERNOR

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SECTIONAL ANALYSIS

- Section 1: Removes Social Security Number requirement on applications for licenses for businesses entering into premium finance agreements or insurance sold under the Premium Financing Act.
- Section 2: Removes Social Security Numbers from the Child Support Enforcement reporting requirements for Centralized Licensing.
- Section 3: Removes requirement that the Alaska Bar Association report an applicant's Social Security Number to Child Support Enforcement.
- Section 4: Removes Social Security Number requirement on presumptive death certificates.
- Section 5: Removes Social Security Number requirement on applications for crewmember fishing licenses.
- Section 6: Removes Social Security Number requirement on applications for resident commercial fishing licenses.
- Section 7: Removes Social Security Number requirement from dissolution, divorce, or annulment of marriage forms.
- Section 8: Removes Social Security Number requirement from application for licensing of boiler operators.
- Section 9: Removes Social Security Number requirement from application for licensing of security guards.
- Section 10: Removes Social Security Number requirement from application for licenses to sell fireworks at wholesale.
- Section 11: States that failure on the part of an employer to report a newly hired or rehired employee as required by statute does not give rise to a civil action against the employer.
- Section 12: Removes Social Security Number requirement from application for drivers license.
- Section 13: Repeals:
- 1: Social Security Number requirement of application for license for persons making loans of money, credit, goods, or things under the Alaska Small Loans Act.
 - 2: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing application under Premium Financing Act.
 - 3: Social Security Number requirement of application for Centralized Licensing.
 - 4: Social Security Number requirement for renewal of Centralized Licensing license.
 - 5: Social Security Number requirement for application for teacher certificate or a limited teacher certificate.

- 6: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of crewmember fishing licenses.
- 7: Reporting requirement of Social Security Numbers to Child Support Enforcement from: licensing of commercial fishing licenses.
- 8: Social Security Number requirement for death registration.
- 9: Social Security Number requirement for court reports of divorce, dissolution, and annulment.
- 10: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of boiler operators.
- 11: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of security guards.
- 12: Reporting requirement of Social Security Numbers to Child Support Enforcement from licensing of fireworks wholesalers.
- 13: Social Security Number requirement for application for Division of Insurance licenses.
- 14: Social Security Number requirement for application for marriage license & reporting requirements of Social Security Numbers to Child Support Enforcement.
- 15: Social Security Number requirement for paternity order or acknowledgements.
- 16: Social Security Number requirement in the records of a judgement of divorce or declaring a marriage void for each party involved.
- 17: Social Security Number requirement for petitions filed for dissolution of marriages for each party involved.
- 18: Social Security Number requirement in the records of a judgement of dissolution of marriage for each party involved.
- 19: Financial data matching requirements.
- 20: Reporting requirement of Social Security Numbers to Child Support Enforcement from drivers license applications.

Section 14: Repeals:

- 1: July 1, 2001 repeal date of 1997 CSED legislation.
- 2: Sections of ch. 37, SLA 1998, Austerman's canned salmon processor reporting bill, which provide for language of exceptions of the confidentiality of the Department of Revenue which don't include Child Support Enforcement.
- 4: July 1, 2001 repeal date of sections 3-9, 16, 21-26, 30-33, 47, 51, and 52 of 1998 CSED legislation.
- 4: Intent of consistency of 1997 & 1998 CSED legislation, notwithstanding language differences.
- 5: Nonseverability of sections 1-12, 14-17, 19-26, 28-53, and 55 of 1998 CSED legislation.
- 6: Definition of "license" stipulation, which states that definition would remain the same if CSED legislation were allowed to sunset. This is basically a housecleaning repealer.
- 7: Revisor's uncodified law changes for no delayed repeal of 1998 amendment to notification guidelines for initiating paternity proceedings. Also a housecleaning repealer.

Section 15: Sections 11 and 14 takes effect immediately.

Section 16: Sections 1-10, 12, and 13 take effect July 1, 2006.

SENATE COMMITTEE REPORT

DATE: 1/25/01

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2-6-01

Health, Education and Social Services Committee considered **SENATE BILL NO. 19**

CHILD SUPPORT ENFORCEMENT/SOCIAL SECURITY NUMBER

and recommends:

- be replaced with CS SB 19 (HES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to Committee

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Revenue	1/25/01		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John D. ...</i>	✓			
<i>...</i>			✓	
<i>...</i>			✓	
<i>Betty Davis</i>	✓			
CHAIR: <i>...</i>	✓			

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/9/01

FURTHER: HESS
Finance

Date of 5-Day Notice: 1-18-01
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 1-24-01

Resources Committee considered SENATE BILL NO. 19

CHILD SUPPORT ENFORCEMENT/ SOC SEC. #

and recommends:

- be replaced with CS SB 19 (RES)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NF FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Revenue	12-8-00		✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>True Leave</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>				✓
CHAIR: <i>[Signature]</i>	✓			

MEMORANDUM

State of Alaska
Department of LawTO: Deborah Vogt
Deputy Commissioner
Department of Revenue

DATE: February 24, 1998

FILE NO: 663-98-0248

TELEPHONE NO: 465-3600

SUBJECT: Privacy Considerations and the
Governor's Child Support BillFROM: Dan N. Branch
Assistant Attorney General
Human Services Section - Juneau

You have asked whether any provisions of HB 344/SB 252 ("the Governor's child support bill") would violate the privacy rights guaranteed Alaskans by article I, section 22, of the Alaska Constitution. Since the Governor's bill would repeal the sunset provision of SB 154 (ch. 87, SLA 1997), a child support bill passed into law in 1997, you also asked whether the provisions of SB 154 violate privacy rights under the Alaska Constitution. In our opinion, a court is unlikely to find that the provisions of either child support bill would be found to violate the right of privacy afforded under the Alaska Constitution.

BACKGROUND

The U.S. Congress, in an effort to reform the country's welfare system, enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (PWRORA). The Act imposed a set of child support mandates upon the states.¹ The federal mandates raise privacy issues by requiring the production and sharing of social security numbers, employee hire information, and information in government and bank records for child support purposes. In 1997, the Alaska Legislature complied with most of the federal mandates by enacting SB 154.² Section 148(c) of SB 154 will sunset all the legal changes of the bill on July

¹ Article I, section 8, of the U.S. Constitution gives Congress the authority to condition receipt of federal funds upon compliance with federal and administrative statutory directives. *South Dakota v. Dole*, 107 S. Ct. 2793 (1987). If a state does not substantially comply with the child support mandates of the Social Security Act, the Secretary of the Department of Health and Human Services is authorized to penalize the state. *Blessing v. Freestone*, 117 S. Ct. 1353 (1997).

² For example, SB 154 did not satisfy the federal mandate that requires states to require all employers to report each new hire and rehire to the child support agency within 20 days, because it was not required to be in effect until this year. A provision designed to comply with this mandate is part of the Governor's child support bill.

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 2

1, 1999. The Governor's current child support bill would repeal this sunset provision and comply with federal child support mandates which were not addressed by SB 154.³

DISCUSSION

Right to Privacy Guaranteed by the Alaska Constitution

In 1972, the right to privacy was made explicit in Alaska by an amendment to the Alaska Constitution. *Ravin v. State*, 537 P.2d 494, 498 (Alaska 1975). The privacy amendment provides:

Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

Alaska Const. art. I, sec. 22.

You asked if the sections of the Governor's child support bill or of SB 154 violate this provision. The following sections of the Governor's bill and SB 154 are most likely to be challenged as violations of article I, section 22, of the Alaska Constitution: sections mandating the production of social security numbers, employee hire information, financial information, utility records, and the sharing of information in government records.

The right to privacy under the Alaska Constitution is not absolute. *Messerli v. State*, 626 P.2d 81, 83 (Alaska 1981). One asserting a right to privacy must exhibit a subjective expectation of privacy that society is prepared to recognize as reasonable. *State v. Glass*, 583 P.2d 872, 875 (Alaska 1978). Courts do not approach the right to privacy in a vacuum. Rather, there must be a balancing of conflicting rights and interests. *Messerli*, 626 P.2d at 83.

The Alaska Supreme Court applies the following three-part test when evaluating an informational privacy claim:

³ After the Alaska Legislature enacted SB 154, Congress added more mandates by adopting technical amendments to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

January 24, 1998
Page 3

- (1) does the party seeking to come within the protection of the right to privacy have a legitimate expectation that the materials or information will not be disclosed?
- (2) is disclosure nonetheless required to serve a compelling state interest?
- (3) if so, will the necessary disclosure occur in that manner which is least intrusive with respect to the right to privacy?

The Alaska Wildlife Alliance v. Rue, 948 P.2d 976; 980 (Alaska 1997); *Jones v. Jennings*, 788 P.2d 732, 738 (Alaska 1990).

Social Security Numbers

The Governor's bill would require applicants for driver's licenses and for sport hunting and fishing licenses to provide their social security numbers on the license application. These numbers would then be shared with the child support agency in this and other states for child support purposes. SB 154 requires anyone applying for a professional or occupational license to provide his or her social security number on the application so that the numbers may be shared with child support agencies. It also requires that vital statistics records contain the social security numbers of those mentioned in them.

It is possible that someone in the state will assert that these provisions violate their right to privacy guaranteed by article I, section 22, of the Alaska Constitution. To prevail in court, anyone asserting such a challenge must meet the three-prong test set out in *Alaska Wildlife Alliance*, 948 P.2d at 980.

The first prong of the privacy test requires a court to determine whether the party raising the right to privacy has a legitimate expectation that the Alaska Constitution prevents the state from disclosing information the party considers private. In this case, this means the court will have to determine if the party has a legitimate expectation that the state will not disclose the party's social security number to child support agencies. *Alaska Wildlife Alliance*, 948 P.2d at 980. It is doubtful that a court would make such a finding because the U.S. Congress which created the social security system, and initially mandated that the numbers be kept private, has now mandated that they be disclosed on state license applications and given to child support agencies upon request.

Congress created the social security number. It also passed the Privacy Act of 1974,⁴ 42 U.S.C. § 405(c)(2)(C), and 42 U.S.C. § 408(a)(8) to enhance the privacy protections

⁴ P.L. 93-579, section 2, set out in note following 5 U.S.C. § 552a.

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 4

for social security numbers. Section 7 of the Privacy Act of 1974 prohibited states from denying benefits to their citizens as a penalty for refusing to produce social security numbers. 42 U.S.C. § 405(c)(2)(C)(viii)(I) and 42 U.S.C. § 408(a)(8) made it a criminal offense to disclose social security numbers in violation of federal law. These laws are responsible, in large part, for creating an expectation that social security numbers are private, and not subject to release. At least one court has found that the Privacy Act of 1974 creates an expectation of privacy in the minds of employees concerning the use and disclosure of their social security numbers. *Tribune-Review v. Allegheny County Housing Authority*, 662 A.2d 677 (Pa. 1995).

02/13/01 The Privacy Act of 1974 does not apply where disclosure is mandated by federal law. Sections of SB 154 and the Governor's child support bill would not violate the Privacy Act, 42 U.S.C. § 405 or 42 U.S.C. § 408(a)(8) because they are enacting federal mandates. Therefore, a court is not likely to find that an Alaskan resident has a legitimate expectation that the Alaska right to privacy prevents the state from requiring the production of his or her social security number on license applications or from sharing the numbers with child support agencies.

There are other reasons that it is unlikely that a court would find that expectation to be reasonable. In *State v. Chryst*, 793 P.2d 538 (Alaska Ct. App. 1990), the court held there is no reasonable expectation of privacy with respect to a person's name and address and the locations where he receives utility services. The Alaska Supreme Court has held that the right to privacy embodied in the Alaska Constitution is only implicated by the disclosure of personal information about oneself. *Doe v. Alaska Superior Ct., Third Jud. Dist.*, 721 P.2d 617, 629 (Alaska 1986). This is the type of personal information which, if disclosed, could cause embarrassment or anxiety. *Doe*, 721 P.2d at 629; *Falconer v. Alaska Public Offices Commission*, 570 P.2d 469, 479 (Alaska 1977). The disclosure of one's social security number is not likely to evoke such a response.

Furthermore, in AS 44.99.300 - 44.99.350, the Legislature has indicated that "personal information" does not include a person's name, address, or telephone number, if the number is published in a directory. In our opinion, a court is likely to find that a person's social security number is a specific identifying number, like an address or telephone number, that has become so widespread in use that an expectation that one can keep it private is unreasonable. Social security numbers are divulged for identification purposes in a wide variety of circumstances. For instance, social security numbers generally appear on drivers' licenses, which must usually be shown to cash a check.⁵ While there may once have been a higher expectation

⁵ Before passage of PRWORA, Congress gave states permission to use social security numbers to establish the identity of those applying for driver's licenses and to require applicants to provide their social security number on the drivers' license application. See 42 U.S.C. § 405(c)(2)(C)(I). In Alaska, a driver's social security number usually appears on his or her driver's license. Drivers are given the option of not having the number appear on their license. While the Governor's child support

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 5

of privacy for social security numbers, we believe that a court is likely to recognize that, in this day and age, the use of that number for identification purposes has made the expectation of keeping it private an unreasonable expectation.

The inquiry may not end there, however. Perhaps a court will decide that the expectation of privacy in one's social security number is a legitimate one. In such a case, the court would have to determine if the mandated disclosure will serve a compelling state interest. See *Alaska Wildlife Alliance*, 948 P.2d at 980. This involves balancing the state interest served by the mandate provision with the right of privacy asserted. See, e.g., *Welcome to the "Last Frontier," Professor Gardner: Alaska's Independent Approach to State Constitutional Interpretation*, 12 Alaska L. Rev. 1, 21 (1995).

In our opinion, a court reviewing this issue is likely to find that the important issues served by the welfare reform mandates far outweigh the interests of an individual in keeping his or her social security number out of the child support enforcement system. The court would consider the same information about child support enforcement efforts that was considered by the Congress when it enacted the requirements relating to social security numbers in the federal welfare reform act that is implemented by SB 154 and the Governor's child support bill. The Congress found that this use of social security numbers would enhance efforts to locate child support obligors and collect child support payments. The Congress has determined that children's poverty, national and state expenditures on welfare programs, and other societal problems could be decreased by more effective methods of child support enforcement.

The Alaska Legislature has consistently recognized that there is a compelling public policy favoring enforcement of child support obligations. *Anderson v. Anderson*, 736 P.2d 320, 323 (Alaska 1987). The Legislature attempted to enhance the collection of child support in 1977 when it passed the Child Support Enforcement Act. The Legislature stated that the act was passed for the following reasons:

The state . . . declares that the common law and Alaska statutes pertaining to the establishment and enforcement of child support obligations shall be augmented by additional remedies in order to meet the needs of children. It is declared to be the public policy of this state that this Act be construed

bill would require production of the social security number on the driver's license application, it would not require that the number appear on the driver's license.

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 6

and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently born by the general citizenry through welfare and welfare-related programs.

Section 1, ch. 126, SLA 1977.

In 1984, the Alaska Legislature passed amendments to the Child Support Enforcement Act "to encourage the efforts of those persons who seek to enforce the payment of child support obligations by noncustodial parents having the duty of support." Section 1, ch. 144, SLA 1984.

In its statement of findings and purpose for the 1984 amendments, the Legislature made the following finding:

a disproportionately high percentage of lower-income, single-parent families are headed by women. The difficulties in obtaining child support from non-custodial parents contributing significantly to the hardship of those families The legislature also finds that the hardship experienced by children in families who may rely on support from a noncustodial parent should not be a necessary condition that must be endured by those families.

Section 1, ch. 144, SLA 1984.

We believe that a court, looking at this type of information, is likely to find that, even if there is some right of privacy in one's social security number, that right is outweighed in this instance by the societal interests in more effective child support enforcement.

If the first two criteria were met, the final prong of Alaska's right to privacy test would require the court to determine whether the necessary disclosure will occur in the manner which is least intrusive with respect to one's interest in the right to privacy. See *Alaska Wildlife Alliance*, 948 P.2d at 980. Here again, we believe the proposed legislation, and SB 154, meet this requirement.

SB 154 and the Governor's child support bill use the existing state licensing system to collect social security numbers. Since this approach involves self disclosure on forms that the license applicants will have to complete anyway, it is less intrusive than other systems that could be used to obtain the applicants' social security numbers. The Alaska Supreme Court has found that, generally, self-disclosure, accompanied by the appropriate use of the summons power, constitutes the least intrusive method of obtaining information. *State, Dep't of Revenue. v. Oliver*, 636 P.2d 1156, 1167 (Alaska 1981). While applicants must provide their social security

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 7

numbers on the license applications, there is no requirement that an applicant's social security number appear on the license itself, thereby reducing the chance of unnecessary disclosure. See, footnote 4, above. The child support bills provide that social security numbers may only be shared with child support agencies for child support purposes. These provisions will help to ensure that the mandated disclosure not exceed what is necessary to serve the compelling state interest that justifies it.

Almost all of the programs affected by SB 154 and the Governor's child support bill are carried out by state employees. The system for dispensing hunting and sport fishing licenses is an exception. It relies upon private vendors to sell these licenses to applicants. This might raise some concern that the social security numbers of fish and game license applicants will be more at risk of unwarranted disclosure. 42 U.S.C. § 405(c)(2)(C)(viii)(I) should alleviate those concerns. It provides that social security numbers obtained by any provision of law enacted after October 1, 1990, shall be kept confidential. This mandate extends to government employees or anyone who has legal access to the numbers. See 42 U.S.C. § 405(c)(2)(C)-(viii)(III). Therefore, the federal privacy mandate extends to private vendors who sell sport fish and hunting licenses to the public. Violation of the mandate could result in conviction, in federal court, of a felony punishable by fine and a maximum five-year jail sentence under 42 U.S.C. § 408(a)(8).

New Hire Information

The Governor's child support bill would require all employers and labor unions in the state to report all new hires and rehires to the state child support enforcement agency. Each report will contain the name, address and social security number of each newly hired employee, and the name, address, and federal tax identifying number of the employer. Currently, only those Alaskan businesses that employ more than 19 employees are required to provide this information for long-term employees. See AS 25.27.075.⁶

We do not believe a court would find that AS 25.27.075, as amended by the Governor's child support bill, would violate the right to privacy guaranteed by article I, section 22, of the Alaska Constitution. Any court considering such a challenge would apply the three-prong test discussed above. The first prong would require the court to determine if the party asserting the right to privacy has a legitimate expectation that the information will not be disclosed. *Alaska Wildlife Alliance*, 948 P.2d at 980.

AS 25.27.075 requires employers to report the social security numbers and other personal identifiers like names and addresses to the state child support agency. In *State v. Christ*,

⁶ AS 25.27.075 was rewritten into its current form in 1992 and has not been challenged in court.

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 8

793 P.2d 538 (Alaska App. 1990), the Court of Appeals held that a defendant did not have a reasonable expectation of privacy with respect to address information given to an electric utility for purposes of obtaining utility service. There is no reason to believe that a person would have a greater expectation of privacy if the information is given to an employer rather than to a utility.

Furthermore, all of the information sought is shared on income tax returns and other government records where, in the course of their use, they are bound to be seen by others. Therefore, the legitimate expectation of privacy is lower. *See Oliver*, 636 P.2d at 1167.

Even if a person did have a legitimate expectation that his or her name, address, and date of hire would not be disclosed by the employer, a court is likely to uphold AS 25.27.075 because its disclosure requirements serve the compelling state interest of enforcing child support obligations. *Alaska Wildlife Alliance*, 948 P.2d at 980. The analysis is similar to that for disclosure of social security numbers as set out above.

Finally, the method of employer reporting, designated by AS 25.27.075 to ensure that the state child support agency obtains new hire information, meets the third prong of the Alaska privacy test because it is least intrusive on the right to privacy. *Alaska Wildlife Alliance*, 948 P.2d at 980. We believe a court would find that employer reporting, like self-disclosure, constitutes the least intrusive method of obtaining the needed information. *Oliver*, 636 P.2d at 1167.

Access to Government Records For Child Support Purposes

SB 154 gave child support enforcement agencies access to information in the following government records: vital statistics, state and local taxes, real and personal property, employment security, public assistance, motor vehicles, and corrections. The information may only be used for child support purposes. Under the *Alaska Wildlife Alliance* test, the first question to ask is whether residents have a legitimate expectation that these government records will not be disclosed for child support purposes. 948 P.2d at 980.

This question must be viewed in light of Alaska's policy favoring open state records. AS 09.25.110 mandates that, unless specifically provided otherwise, the public records of all state agencies are open to inspection by the public. *See AS 09.25.110; see also City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982) (the statute articulates a broad policy of open records).

Specific exemptions to AS 09.25.110 could give rise to a legitimate expectation that the state records protected by the statutory exemptions will not be disclosed. For example, Vital Statistics records are protected from public inspection. *See AS 09.25.120(a)(1) and AS 18.50.310.* On the other hand, statutory sections like those contained in SB 154, which require that designated portions of state records be made available to child support agencies, make any

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0246

February 24, 1998
Page 9

such expectation of privacy unreasonable.⁷ Therefore, it is unlikely that a court would find that Alaska residents have a legitimate expectation that information concerning them in state records would not be shared with child support agencies.

The analysis of the second prong of the Alaska privacy test is the same as for social security numbers and employer hire information. We believe that the strong state interest in securing payment of child support, and in complying with federal mandates, would greatly outweigh any interest a resident might have in preventing a child support enforcement agency from having access to the information needed to establish or enforce a child support obligation.

02/13/01 If a court found that residents did have a legitimate expectation of privacy, and that disclosure of state records serves a compelling state interest, it would have to determine if the necessary disclosure will occur in that manner which is least intrusive with respect to the privacy right. *Alaska Wildlife Alliance*, 948 P.2d at 980. We believe the court would make such a finding.

The disclosure statements only require agency-to-agency production of information already in the state records. This limits the scope of information to be released. Without access to government records, child support agencies would be required to make more intrusive investigations which could result in a far greater invasion of privacy.

Financial Records

SB 154 amended the Banking Code, AS 06.05, to require that a bank provide child support agencies, upon request, with a certified copy of a record concerning an individual who either owes or is owed child support. The information could be provided by electronic means and may only be used for child support purposes.

Starting down the now familiar road, we first must determine whether someone who owes or is owed child support has a legitimate expectation that information contained in his or her bank account will not be disclosed to a child support agency. *Alaska Wildlife Alliance*; 948 P.2d 976 (Alaska 1997); *Jones v. Jennings*, 788 P.2d 732 (Alaska 1990).

⁷ For example, SB 154 amended AS 18.50.330 to provide child support agencies access to vital statistic records for child support purposes. See AS 18.50.333(6).

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 10

The United States Supreme Court has ruled that bank customers have no legitimate expectation of privacy concerning their bank records. *United States v. Miller*, 425 U.S. 435, 442, 96 S. Ct. 1619, 1624 (1976). In reaching this conclusion the Court observed:

The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including statements and deposit slips contain only information voluntarily conveyed to banks and exposed to their employees in the ordinary course of business.

02/13/98 *Miller*, 425 U.S. at 442; 96 S. Ct. at 1624.

While the *Miller* Court's findings concerning expectations of privacy do not foreclose a challenge under the Alaska Constitution,⁸ they do help establish that one may not have a legitimate expectation, under the Alaska Constitution, that bank records will not be disclosed to a government child support agency.

Even if participants in a child support case had a legitimate expectation that their bank records would not be disclosed to child support agencies, the compelling state interest in establishing and enforcing child support obligations justifies the disclosure. This satisfies the second prong of the Alaska privacy test. *Alaska Wildlife Alliance*, 948 P.2d at 980.

The only remaining question is whether the bank record provisions of SB 154 provide that the records disclosure will be made in the manner which is least intrusive with respect to the right to privacy. *Alaska Wildlife Alliance*, 948 P.2d at 980.

The bank record disclosure requirement of SB 154 is contained in AS 06.05.537. That statute only requires disclosure of bank records of the assets and liabilities of individuals who owe or are owed child support. The agency receiving the information may only use it for legal child support purposes. It is hard to imagine a less intrusive way to obtain this information.

Public Utilities Records

⁸ The right to privacy embodied in the Alaska Constitution is broader than that provided by the U.S. Constitution. *Pratt v. Kirkpatrick*, 718 P.2d 962 (Alaska 1986).

Deborah Vogt, Deputy Commissioner
Department of Revenue
A.G. file no: 663-98-0248

February 24, 1998
Page 11

—SB 154 also requires public utilities to give child support agencies access to locate information concerning their customers. The Alaska Court of Appeals has ruled that a utility customer does not have a reasonable expectation of privacy concerning information about the customer's name and address contained in the utility's records. *Chryst*, 793 P.2d at 542. Therefore, the customer cannot have a legitimate expectation that the information will not be disclosed and the information is not protected by article I, section 22, of the Alaska Constitution.

CONCLUSION

SB 154 increased the access of child support enforcement agencies, to personal information, such as social security numbers, concerning Alaskan residents. The Governor's child support bill would make even more information available to the agencies. You asked whether these informational mandates would violate the right to privacy of an affected individual, guaranteed by the Alaska Constitution. We believe the answer is no. Federal law required Alaska to adopt laws providing child support agencies such access to personal information for child support purposes. After passage of the federal mandates, it is not reasonable for the residents of Alaska to expect that the designated information about themselves in government and other affected records will not be made available to child support agencies for child support purposes.

Even if such an expectation were reasonable, an Alaskan court would be still likely to order disclosure of mandated information because the disclosure would serve the important state interest in seeing that child support obligations are honored. Finally, the informational disclosure provisions of SB 154 and the Governor's child support bill provide for least intrusive disclosure of personal information.

If this memo does not fully answer your questions, or if I can be of other assistance on this matter, please let me know.

DNB:bap

TONY KNOWLES
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January 8, 2001

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Halford:

Alaska's Child Support Enforcement Division collected and distributed a record \$85 million in Fiscal Year 2000 and is headed toward a new record this year. This bill I transmit today guarantees the state can retain the tools that enabled this success in helping thousands of children receive the financial support they need. It also keeps Alaska in compliance with federal welfare reform laws and eligible for nearly \$80 million in annual federal funding to operate Alaska's family assistance and child support programs.

This bill continues the state program begun in 1997 and 1998 as part of Alaska's compliance with federal welfare reform which has reduced dependence on government-funded public assistance programs by increasing child support collections. The Alaska legislature chose to sunset those compliance measures on July 1, 2001

This bill is important to the lives of the children and parents who make up the nearly 48,000 child support cases in Alaska. It will keep in place those successful provisions of the 1997 and 1998 legislation which have improved child support collections, including:

- Enhanced due process protections in paternity proceedings.
- Requirements that all employers report newly hired employees to the child support agency.
- Authorization to use financial institution data matches to locate assets of delinquent parents.
- Immunity from civil liability for employers and financial institutions that comply with child support income-withholding orders.

The Honorable Rick Halford

January 8, 2001

Page 2

- Prohibitions against disclosing identifying information of a parent or child when there is evidence of domestic violence.
- Requirements for Social Security numbers on certain vital statistics and court records, and on applications for some state licenses. To protect an individual's privacy, the numbers are not required on the actual licenses but only on the applications.
- Authorization for the child support agency to obtain orders requiring delinquent parents to seek work and orders to set aside a parent's fraudulent transfer of property if it was done to avoid a child support obligation.
- Improved access to records of other government agencies and financial institutions to locate delinquent parents and their assets.

I also want to point out that this bill repeals one controversial part of the earlier legislation. Alaska recently received a waiver from the federal requirement to collect Social Security numbers on applications for sport fishing and hunting licenses, allowing us to remove that requirement from law.

In the years since passage of the 1997 and 1998 legislation, the state has found the provisions of those bills effective at ensuring children receive the support they need from both parents. Failure to adopt this bill would jeopardize several years of progress in helping Alaska's families.

Sincerely,



Tony Knowles
Governor