

ALASKA LEGISLATURE

2370

HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002

SB

152

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
APR 24 2001
SENATE FINANCE
COMMITTEE

DATE: 4/11/01

FURTHER:

DATE TURNED
IN TO OFFICE:

25 April 01

Finance Committee considered

SENATE BILL NO. 152

DOTPF-RELATED CONTRACT CLAIMS

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."
and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
D.CED/AIDFA	4/19/01	*		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOT & PF	9/10/01		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>				
<i>[Signature]</i>		X	X	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>				
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

APR 24 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 152
 (S) Publish Date: 4/11/01
 Dept. Affected: DOT&PF
 BRU: _____
 Component: _____
 Component Number: _____

Revision Date/Time (Note if correction): _____
 Title: An act related to the handling of interest on
contract controversies involving the Department of Transp...
 Sponsor: Senator Cowdery
 Requester: Senate Transportation

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	0.0**	0.0**	0.0**	0.0**	0.0**	0.0**
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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

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

**This bill will result in additional interest payments on contract related claims. The additional interest could range from \$500.0 to several million dollars per year. Although this won't affect our capital budget request, these payments will reduce the amount available for other capital projects. Most of the additional interest payments will be eligible for 90% federal funding with a 10% GF match.

Prepared by: Dennis R. Poshard, Special Assistant Phone 465-3904
 Division: Commissioner's Office Date/Time 4/10/01 12:00 AM
 Approved by: Commissioner Joseph L. Perkins, P.E. Date 4/10/01
 Agency: Department of Transportation and Public Facilities

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 152
() Publish Date: _____

Revision Date/Time (Note if correction): 04/19/2001 10:55a.m. Dept. Affected: DCED
Title: DOTPF - Contract Related Claims BRU: AIDEA
Sponsor: Senator Cowdery Component: AIDEA
Requester: Senate Finance Component Number: 1234

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	*	*	*	*	*	*
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						
1156 RSS						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2001) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

*AIDEA has a delegation of authority from DOTPF for construction of AIDEA Development Finance projects (AIDEA owned and operated). This bill will result in additional interest payments on contract related claims. There is no way to predict the costs in the future. AIDEA Development Finance projects generally do not use General Funds (Healy Clean Coal Plant and the DeLong Mountain Transportation System funding included slate grants). Additional costs, such as claims, are charged to the project proponent or are funded by AIDEA funds. In the past AIDEA has had small and multi-million dollar claims on construction projects. The claims have resulted in negotiated settlements. For example, a \$1.17 million claim was paid on the Healy Clean Coal Plant in 1999. If this legislation were in effect, AIDEA would have had to pay an additional \$188,018 (10% compounded interest for 18 months). Originally the claim was upwards of \$10 million. If AIDEA funds are required, AIDEA's net income declines, decreasing the annual dividend AIDEA pays to the General Fund.

Prepared by: Robert G. Poe, Jr., Executive Director Phone 907-269-3000
Division: AIDEA Date/Time 04/19/2001 10:55a.m.
Approved by: Commissioner Deborah B. Sedwick Date 4/19/2001
Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

4/24

Bill Number SB 152			
Amendment			
Motion Pass			
<u>Motion by</u> Donley			
<u>Objection by</u> Hoffman			
Removed			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	Vote	N
Senator Leman	✓		
Senator Olson			✓
Senator Ward	✓		
Senator Wilken	✓		
Senator Austerman			
Senator Green			
Senator Hoffman			✓
Co-Chair Donley	✓		
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	5		
Nay	2		
Absent			
<u>MOTION</u> PASSED			

From the office of . . . Senator John J. Cowdery

State Capitol Building, Rm #101

Juneau, AK 99801

907-465-3879 phone

907-465-2069 fax

MEMORANDUM

Sponsor Statement for SB 152

Relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies.

This proposed legislation would simply require that when a contract settlement with DOTPF is in dispute and finally settled in favor of the contractor that interest must be paid to the contractor on the settlement amount for the time the contract was in dispute.

Interest accrues at the rate applicable to judgements and the interest accrues from the date the claim was filed through the date of the decision.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

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April 6, 2001

Re: SB 152 – Interest on Contract Controversies

Dear Senator:

On public works projects in the State of Alaska, a contractor encountering a condition that requires a change in the contract, is required to perform the work even if there is a dispute as to the appropriate adjustment. Resolution of such a claim frequently takes as long as four years and the State currently disallows interest on the amount of the ultimate settlement.

Most, if not all, public works contracts include contract adjustment clauses that provide a method for adjusting the contract amount when the contractor encounters changed conditions or the owner desires to change the contract in some manner. The purpose of this clause is to assure that the contractor is fairly compensated for the extra work occasioned by the change.

Alaska courts generally recognize that awarding prejudgment interest to a plaintiff is necessary to make him "whole" by compensating him for the use of money rightfully his between the time of injury and trial. The courts have held that prejudgment interest should be denied only in the most unusual cases and place the burden of proving the unusual situation on the party opposing the award of prejudgment interest. The State of Alaska apparently believes that contractor claims in general represent an "unusual case" and therefore prejudgment interest should not be applied to these claims.

We urge you to support SB 152. This bill allows construction contract claims to be treated the same as all other claims in the State of Alaska. There is no public interest in discriminating against the entire construction industry in these matters.

Sincerely,

Richard Cattanach
Executive Director

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INTEREST ON CONTRACT CONTROVERSIES
SB 152 & HB235

Position Paper of
The Associated General Contractors of Alaska

ISSUE: Given the complexity of construction projects, it is not unusual that differences sometimes develop between the owner and contractor regarding the scope of work covered in the contract. In those instances when the differences cannot be successfully resolved, the parties can avail themselves of the claims process set forth in the Alaska procurement code. One problem with this process is the inherent delay in the ultimate payment of the claim. The position of the State of Alaska is that they do not owe interest on the ultimate awards. Contractors believe that the delayed payment costs them not only foregone interest but also the costs of preparing and defending their claim, and that the avoidance of interest is not only contrary to common practice, it is bad public policy.

ADVANTAGES: For the State of Alaska, delaying claims allows them to earn interest on money they ultimately owe the contractor. Through such delays the State derives an economic interest in postponing the claims process. Another advantage enjoyed by the State accrues from its superior financial strength and legal resources, which sometimes can be used to force financially, strapped companies to settle their claims at a fraction of the claims value.

The current system offers no advantages to the contractor.

DISADVANTAGES: The primary disadvantage to the State will be derived from the addition of interest to the cost of a claim for the period the claim is being contended. The proposed law will put a premium on the expeditious settlement of construction claims. The State will have to change its procedures to handle such claims in a more timely manner.

There are no disadvantages to the contractor.

AGC POSITION

The current process regarding the settlement of a claim places the contractor at an economic disadvantage. Since the expenses underlying a claim have to be paid, the contractor incurs these costs plus the costs of preparing and defending its position. During this entire process the State is allowed to invest those funds for its own economic gain as well as using its superior resources to threaten the economic viability of the claimant. Payment of interest on claims is not only good public policy, but it is consistent with prior practices of the Department of Transportation regarding such claims. Currently the State of Alaska must pay prejudgment interest for virtually all other contract claimants. Contractors, however, have been singled out for disparate treatment.

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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April 16, 2001

The Hon. Vic Kohring, Chair,
and Members, House Transportation Committee
State Capitol, Room 24
Juneau, AK 99801

Re: HB 235 – An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies.

Dear Representative Kohring,

I am the attorney assigned by the Alaska Department of Law to provide testimony on HB 235, which provides for prejudgment interest on administrative claims. Due to litigation demands in another case, I am in Ketchikan today and unable to testify. As a consequence, I respectfully submit this letter in place of in-person testimony. If any committee member has questions regarding the contents of this letter, I would be happy to meet with that member in person, or respond in writing to the entire committee. I can be reached by phone at 465-6712, and by fax at 465-6735.

• **Prejudgment Interest on Administrative Claims Not Allowed in Majority of Other States**

We have not undertaken a survey of every state in the country. However it appears that a fair number of states do not pay prejudgment interest on administrative contract claims either outright or because the law in those states limits payment of interest to "liquidated" claims, i.e., claims that are capable of calculation under some contractual formula that does not require the exercise of discretion by agency personnel.

The Honorable Vic Kohring, Chair,
and Members, House Transportation Committee
April 16, 2001
Page 2

Alaska law, AS 36.90.200(a), already requires payment of interest on "payment requests" for work satisfactorily performed on state construction projects. If the state gives notice to the contractor that the work covered under the payment request is unsatisfactory, no interest is paid on that payment request until 21 days after the unsatisfactory work is corrected. AS 36.90.200(c). While this statute does not cover payment of interest on contract claims filed under the State Procurement Code, it is an example of the type of "liquidated" amount on which interest would ordinarily be paid if timely payment were not made by the state.

Where contract claims are concerned, there may be good policy reasons to withhold the payment of prejudgment interest. There may be policy reasons why the agency should have the opportunity to examine such claims before prejudgment interest begins accruing.

- **Cost of Application of HB 235 to Construction Contracts**

Under the Alaska Procurement Code, the Alaska Department of Transportation has the procurement authority for all construction projects conducted in the state. AS 36.30.005(b). The Department of Transportation may delegate that authority to other agencies under AS 36.30.632. Therefore, since all construction is either being performed by DOT&PF or by other agencies under delegation of authority by DOT&PF, prejudgment interest will affect all agencies conducting construction that are either subject to AS 36.30 or that are required to have similar procurement procedures.

The costs to the state for prejudgment interest if HB 235 became law could be substantial. For example, DOT&PF estimates that annual interest indebtedness could be between \$500,000 and several million dollars if the companion bill to HB 235 (SB 152) were to become law, although federal matching money would be available to cover some of that cost. Fiscal Note 1, SB 152. On just three recent claims of which we are aware, prejudgment interest totaling approximately \$1,200,000 would have been paid by the state if prejudgment interest were due on those claims.

- **If HB 235 Becomes Law, How Will the State Pay Prejudgment Interest?**

FHWA Projects: DOT&PF does most of its construction in the State of Alaska by using funding from the Federal Highway Administration (FHWA). While the budget process for federal funding is beyond the scope of this letter, it appears that FHWA will participate in payment of interest on construction claims according to

The Honorable Vic Kohring, Chair,
and Members. House Transportation Committee

April 16, 2001

Page 3

a federal participation rate that typically is 90 percent. Of course, payment of interest on a project means that fewer dollars will be available for projects in the state. In other words, prejudgment interest paid on one project may mean that the state is unable to fund another project somewhere else in the state.

FAA Projects: DOT&PF also conducts construction activities at airports throughout the state to build new, or expand existing, facilities utilizing Federal Aviation Administration ("FAA") funding). FAA grants operate differently than those for FHWA-funded projects. In FAA projects, the amount of a grant is based on the state's total estimate of all costs to design and construct the project. Increases in the grant amount are limited to 15 percent of the original grant. Any additional costs incurred above the grant plus 15 percent must be covered entirely by the state. If interest exceeds the amount of the FAA grant, the state will have to fund all additional expenses without FAA participation.

HB 235 affects all agencies in the state that conduct construction activities under a delegation of authority from DOT&PF. Many of these projects are supported by programs that include funding and grants from federal agencies other than FHWA and FAA. As a consequence, it may be that federal participation in administrative claims is limited in certain situations, depending on the funding source, and that state funds will have to be used to pay interest claims. Because we have not undertaken a study of the way other agencies performing construction with a delegation from DOT&PF fund projects, it is unclear that federal participation will be available to fund interest payments owed as HB 235 is currently drafted.

- **Equal Protection Issues for Other AS 36.30 Claims**

There may be an equal protection problem with this legislation as presently drafted. HB 235 authorizes the payment of interest on claims under AS 36.30.620 - .630 and 36.30.670 - 36.30.685 against DOT&PF and other agencies acting under a delegation from DOT&PF. HB 235 therefore applies to DOT&PF construction claims. Contractors asserting claims against other agencies under AS 36.30.620 - .630 and 36.30.670 - .685 may allege that they are denied equal protection of the law because they are denied prejudgment interest on their claims, while DOT&PF contractors who file claims under the same statute are entitled to interest.

The state would have to demonstrate at least a legitimate state interest in allowing prejudgment interest on some claims while denying it on others. A court might conclude that the legislature's interest in limiting prejudgment interest only to

The Honorable Vic Kohring, Chair,
and Members, House Transportation Committee
April 16, 2001
Page 4

construction claims simply to save the costs of having to pay interest on all AS 36.30 claims does not bear a substantial relationship to a legitimate state objective.¹

- **Equal Protection Issues for Non-AS 36.30 Construction Projects**

The Alaska Railroad Corporation, the Alaska Aerospace Development Corporation, and the Alaska Seafood Marketing Institute must adopt procedures "substantially equivalent" or "substantially similar" to AS 36.30. AS 36.30.015(e), AS 36.30.015(h). Claimants against these agencies may argue that, by virtue of the changes proposed to the procurement code by HB 235, these agencies also have to provide for the payment of prejudgment interest on claims.

Other agencies exempt from AS 36.30 include the University of Alaska, the Alaska Housing Finance Corporation, the Alaska State Pension Investment Board, the Alaska Court System. AS 36.30.005(c), AS 36.30.015(i), and AS 36.30.030. These agencies do not have to adopt procedures equivalent to the State Procurement Code. However, the same or a similar equal protection argument may be advanced with respect to those agencies. In the recent past, at least AHFC and the Court System have faced construction claims.

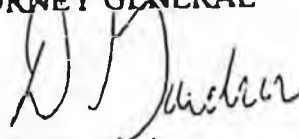
¹ The Alaska Supreme Court has held that Equal Protection Clause of the Alaska Constitution affords greater protection to individual rights than that afforded under the U.S. Constitution. *State v. Enserch Alaska Construction, Inc.*, 787 P.2d 624, 631 (Alaska 1989); *Laborers Local No. 942 v. Lampkin*, 956 P.2d 422, 429 (Alaska 1998). The court uses a sliding scale analysis that determines the relative importance of the individual right and the State interest and, depending on the importance of the individual interest, requires the State interest to "fall somewhere on a continuum from mere legitimacy to a compelling interest." *Enserch*, 787 P.2d at 631. The nexus between the State's interest and the means used by the State to achieve that interest must fall on a continuum from a "substantial relationship to [the] least restrictive means," again, depending on the importance of the individual right at issue. *Id.* at 631-32. *Williams v. State*, 895 P.2d 99, 104 (Alaska 1995); *Herricks Aero-Auto Aqua Repair v. State, DOT&PF*, 754 P.2d 1111, 1114 (Alaska 1988)(economic interests entitled to only minimal protection under Alaska Equal Protection Clause; cost savings alone may not be a legitimate state interest).

The Honorable Vic Kohring, Chair,
and Members, House Transportation Committee
April 16, 2001
Page 5

If you or any committee member has questions regarding the testimony summarized above, please advise.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By: Doug Gardner
Assistant Attorney General

cc: Michael K. Abbot, Legislative Director, Governor's Office
Vern Jones, Chief Procurement Officer, State of Alaska
Legislative Liaisons
Deborah Behr, Legislation Attorney, Department of Law
Chrystal Smith, Legislative Liaison, Department of Law.



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April 23, 2001

The Hon. Dave Donley and Pete Kelly, Co-Chairs
and Members, Senate Finance Committee
State Capital, Room 520
Juneau, Alaska 99801

**Re: The Associated General Contractors, Alaska Chapter's Response to
the Department of Law's Position Paper Regarding SB 152 and HB
235**

Dear Senators and Representatives:

As many of you may know, the AGC is in favor of the passage of SB 152. I believe that the merits of the bill should compel passage but I believe that it is appropriate to address the "smoke screen" raised by the Alaska Department of Law concerning this bill.

I was just provided a copy of the State of Alaska Department of Law's position paper on HB 235, dated April 16, 2001 and authored by Assistant Attorney General Doug Gardner. I feel obligated to respond to a number of statements in the Department of Law's position paper because it glosses over the legal history and the recent Department of Law policy that led the AGC to advocate for the passage of this legislation.

In 1965, the Alaska Supreme Court first addressed the issue of whether a contractor claimant was entitled to prejudgment interest. *Wright Truck & Tractor v. State*, 398 P.2d 216 (Alaska 1965). In that case, the Alaska Supreme Court interpreted the precursor to Alaska Stat. § 09.50.280, [Alaska's waiver of sovereign immunity state], which provided as follows:

Sec. 20.04. Judgment for Plaintiff. If judgment is rendered for the plaintiff, it shall be for the legal amount found due from

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the state with legal interest only from the date of judgment and without punitive damages.

Wright, 398 P.2d at 218.

While upholding the trial court's denial of the contract claimant's request for prejudgment interest pursuant to § 26.04, the Alaska Supreme Court was extremely critical of the inequity and unfairness of the State not having to pay prejudgment interest to contractor claimants:

We are in agreement with appellant's argument that the statutory prohibition can easily work an injustice on a party who has contracted with the state. There are business situations where agents of the state, in good conscience and even with business justification, may withhold for a time or even refuse payment. Where the contracting party is required by contract regulations to continue to perform, subject to later determination, as in the case before us, the problem often facing the contractor is where to get the capital to continue to finance his work. And even if the capital can be obtained the rate of interest required to be paid cannot be ignored. The matter would appear to be one, which the Legislative Council might refer to the legislature for reconsideration in the light of the greatly increased contract authority and activity of the State Department of Public Works.

Wright, 398 P.2d at 220. The Alaska Supreme Court issued the *Wright* decision on January 21, 1965.

In *State v. Phillips*, 470 P.2d 266 (Alaska 1970), the Alaska Supreme Court commented on its decision in *Wright* as follows:

Prior to 1965 the prevailing party in an action against the State of Alaska was entitled to interest 'only from the date of judgment.' In the *Wright Truck* case, decided in 1965, we said that the prohibition against prejudgment interest 'can easily work an injustice on a party who has contracted with the state,' and suggested to the legislature that it consider amending the statute. Two months later, the legislature acted on this suggestion, replacing 'only from the date of judgment' with 'from the date it (the amount found due from the state) became due.' The statute, AS 09.50.280, now reads:

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If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with legal interest from the date it became due and without punitive damages.

State v. Phillips, 470 P.2d at 272.

The March 19, 1965, modifications to Alaska Stat. § 09.50.250 and Alaska Stat. § 09.50.280 discussed in *Phillips* provided as follows:

Sec. 09.50.250. **Actionable Claims Against the State.** A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in superior Court. A person who may present his claim under AS 44.77.010 - 44.77.070 may not bring an action under this section except as set out in AS 44.77.040(c). . . .

Sec. 09.50.280. **Judgment for Plaintiff.** If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with legal interest from the date it became due and without punitive damages.

Thus, in response to the Alaska Supreme Court's suggestion that prejudgment interest be made a component of actionable claims against the State, the 1965 State Legislature acted accordingly and intended, pursuant to Alaska Stat. § 09.50.280, that prejudgment interest begin accruing from the date it became due. Concurrently with this statutory modification expressly permitting the award of prejudgment interest, the legislature mandated that that certain types of claimants pursue and exhaust administrative remedies pursuant to Alaska Stat. § 44.77.010-.070.

In *State v. ZIA, Inc.*, 556 P.2d 1257 (Alaska 1976), the Alaska Supreme Court construed Alaska Stat. § 44.77.010-.070 with Alaska Stat. § 09.50.250 as requiring a contract claimant bringing an action against the State to first exhaust administrative remedies prior to initiating court action.

In *ZIA*, the contractor contracted with the State to install safety canopies on State equipment. *ZIA* then sued the State for breach of

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contract without first pursuing the required administrative review of the claim. The Alaska Supreme Court explained that:

By virtue of AS 09.50.250 we recognize the legislative policy, which dictates that actions against the State first should be considered by the affected administrative agency. While we do not find AS 09.50.250 to be of the jurisdictional nature, . . . we find, with respect to cases which fall within AS 09.50.250, that that statute establishes an administrative procedure which can be characterized as a condition precedent, [to a suit in state court].

ZIA, at 1263.

In 1986, the State Legislature enacted Alaska Stat. § 36.30, et seq. -- the State Procurement Code -- thereby adopting internal administrative procedures for contract claimants. In conjunction with the adoption of the State Procurement Code, the legislature modified Alaska Stat. § 09.50.250 as follows:

09.50.250. **Actionable claims against the state.** A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in a state court that has jurisdiction over the claim. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560-- 36.30.695 may not bring an action under this section except as set out in AS 36.30.685.

Since adopting Alaska Stat. § 09.50.280 in 1965, there has been no statute enacted which limits any contractor claimant's entitlement to prejudgment interest from the date of the claim pursuant to Alaska Stat. § 09.50.280.

Further, the controlling case law does not afford the State any basis to argue that contractor claimants are not entitled to prejudgment interest. State agencies, in particular the Department of Law, have instead taken an arbitrary and unsupportable position on this issue based upon an erroneous interpretation of dicta in a 1996 Alaska Supreme Court Case, *Danco Exploration, Inc. v. State*, 924 P.2d 432 (Alaska 1996).

Succinctly, Danco involved a claim that the State of Alaska Department of Natural Resources declined to return a bid deposit to the

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claimant. The Alaska Supreme Court concluded that Danco was not entitled to prejudgment interest on the bid deposit because it was not an action against the state sounding in contract or tort.

This very argument defies common sense in a state where "prejudgment interest is a form of consequential damages [that] . . . becomes a part of the judgment proper" and where "it is only in the most unusual cases that prejudgment interest is not proper." *Power Constructors, Inc. v. Taylor & Hintze*, 960 P.2d 20, 35 (Alaska 1998).

The Department of Law's position paper must also be placed in historical context. In late 1976, the Department of Law adopted a strategy for handling contractor claims on public works projects. Assistant Attorney General Ray Preston authored the strategy memorandum. It states:

Thus looms the strategy of protracted conflict: the happenstance of one party (the State) with limitless resources and one without. Compounding things is the fact that attorneys fees go to the winner, which will be significantly more flowing from a de novo situation than one where it is review of the Board's decision, and whether that decision is supported by "substantial evidence based upon the record as a whole" (or something close to that). Thus, the State would have the opportunity of winning by attrition, including the factor of hiring a new expert who is even more proficient (and more expensive) than [the contractor] can muster and all the while building up the potential that the contractor will ultimately be liable for those costs. Thus, I believe that the strategy and advantages of protracted conflict in this case is available to the State alone, and that it should seriously be considered in this case.

This strategy of winning through attrition and forcing the contractor to spend literally hundreds of thousands of dollars through a lengthy and protracted claims process is precisely the strategy adopted by the Department of Law for the past several decades.

In 1993, seven years after the enactment of the State Procurement Code, the Alaska Supreme Court explicitly acknowledged that prejudgment interest was an appropriate component of a contractor's claim. *State v. Eastwind, Inc.*, 851 P.2d 1348, 1352 n.5 (Alaska 1993).

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Up until 1998, State agencies recognized that contractors who prosecuted claims were entitled to an award of prejudgment interest on the ultimately claim amount awarded. For example, in a letter authored by Commissioner Perkins to the attorney for a successful contractor claimant, Commissioner Perkins directed Tony Johansen to "initiate payment in the amount of \$1,945,857.39, . . . plus statutory interest compounded at 10.5 % from October 10, 1996, . . ."

Even as late as March of last year, Commissioner Perkins personally advised me that:

On the issue of paying prejudgment interest on a claim appeal, we are not avoiding making such payments by choice. Rather, we are following the advice of the Attorney General's Office that such payments are contrary to law.

Thus, it is not the Department of Transportation and Public Facilities that opposes awards of prejudgment interest to contractor claimants. Rather, it is the Department of Law that opposes this legislation because it undermines their strategy of "protracted wars of attrition."

With that historical perspective in mind, I wish to address a number of statements submitted by the Department of Law in opposition to the passage of SB 152 and HB 235.

1. Prejudgment Interest on Administrative Claims Not allowed in Majority of Other States.

In the State of Alaska, every contract claim filed against a municipality, city, or federal agency requires an award of prejudgment interest. The state simply cannot argue that every individual who brings a contract action against the state of Alaska that does not fall within an administrative review process is entitled to an award of prejudgment interest. The department of law's assertion that "a fair number of states do not pay prejudgment interest on administrative contract claims . . . because the law in those states limits payments of interest to "liquidated" claims. . ." is sophistry. Contractors who file claims and certify that they are accurate are requesting a specific sum of money that is "liquidated."

Alaska's Prompt Payment Act, AS 36.90.200, was enacted to ensure that the State did not delay paying undisputed amounts to contractors.

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Thus, where the State delays in making prompt payment for work accepted, the State must pay interest as a penalty for its dilatory processing of contractor pay requests.

The Department of Law's position paper suggests that "there may be good policy reasons to withhold the payment of prejudgment interest" and that "there may be policy reasons why the agency should have the opportunity to examine such claims before prejudgment interest begins accruing." No policy reasons are articulated for either proposition. A concrete reason to mandate the award of prejudgment interest on contractor claims lies in the same underlying rationale that resulted in the enactment of the Prompt Payment Act. It would encourage the State to make payment quickly when payment is due and it would encourage prompt and timely resolution of contractor claims.

2. Cost of Application of HB 235 to Construction Contracts.

The Department of Law's position paper states, "[t]he costs to the state for prejudgment interest if HB 235 became law could be substantial." My members and I dispute this for a number of reasons.

First, the availability of prejudgment interest on contractor claims would serve as an incentive for State agencies to quickly evaluate and resolve construction disputes. Contractors who suffer losses on state public works projects are only interested in resolving the claim and moving on to the next project. The State Agency and the Department of Law are the only entities that have no interest in timely resolving construction disputes. Rather, they perceive it is in their best interests to delay, make the contractor incur the costs of prosecuting his or her claim, and essentially "break" the contractor by adversely impacting the contractor's bonding capacity and ability to continue to exist.

Second, when state agencies refuse to negotiate or settle a contractor claim, they force the contractor to spend \$200,000 to \$300,000 to retain lawyers and expert consultants to prosecute the claim. As a general observation, most contractors would be content to recover a percentage of their liquidated claim rather than pay attorneys and consultants. When one adds in \$200,000 - \$300,000 in fees on top of that liquidated claim amount, the contractor is forced to pursue the administrative process vigorously to the end just to break even.

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Third, for all FHWA projects, 23 CFR 635.124, describes those situations wherein the Federal Highway Authority will contribute its 90.97 percent of funds awarded to successful contractor claimants. Specifically:

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.

Lastly, cost considerations are clearly appropriate in these budget-conscious times. I submit that creating a clearly identifiable incentive and downside risk for State agencies [and the Department of Law] to promptly settle these claims would result in cost savings in the long run. You should be aware that incurring costs is a two-way street. State agencies at issue and the Department of Law also incur tremendous expenses from retained attorneys, retained consultants, and retained experts for the purpose of defending against contractor claims. In some cases, state agencies have prospectively applied for hundreds of thousands of dollars in FHWA funds for the purpose of defending against a contractor's affirmative prosecution of a construction claim. It is our position that that those funds would be better spent by settling the claim in a timely fashion.

3. If HB 235 Becomes Law, How will the State Pay Prejudgment Interest?

This question ignores the fact that the State must pay prejudgment interest to virtually all other claimants. The better question is: Why have state agencies and the Department of Law made the arbitrary decision to treat construction contractors differently than any other contract or tort claimant? I assure you that neither the Department of Transportation & Public Facilities nor the Department of Law will provide you with a satisfactory answer to this question.

4. Equal Protection Issues for Other AS 36.30 Claims.

The AGC agrees that this statute should define Department as all state administrative agencies authorized to procure construction or contracts under the State Procurement Code, AS 36.30 et seq.

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5. Equal Protection for Non-AS 36.30 Construction Projects.

The Department of Law's Equal Protection arguments appear to be designed to scare these honorable committees into inactivity with respect to this needed legislation. Notwithstanding these arguments, these committees should recognize that, based upon the institutional knowledge of the agency I represent, the Alaska Railroad Corporation, The University of Alaska, and the Alaska Court System have all had construction claims which were timely settled rather than drawn out through a 3 - 5 year claims process. These agencies, unlike the Department of Transportation and Facilities, recognize that timely resolution of claims avoids attorney's fees, consultant's costs, and expert witness fees, and the associated costs of defending a claim for several years.

Lastly, my apologies for the length of this letter. It was necessary to give the committee members a historical context and perspective into the Department of Law's opposition to this essential legislation. The Associated General Contractors of Alaska support this legislation, as it would give its members equal treatment to that accorded other tort and contract claimants who have claims against the state of Alaska.

If any of you has any questions regarding this letter, please advise me at your earliest convenience.

Very truly yours,

Richard Cattanach

Executive Director

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AURORA ELECTRIC DATATEL

April 23, 2001

Senator Pete Kelly
Alaska State Senate

Dear Senator Kelly:

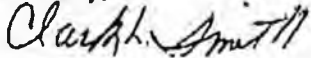
I am writing to urge your support in passage of Senate Bill 152 and House Bill 235 "An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

As a subcontractor who has been involved in construction in the State of Alaska for 19 years, this bill is especially important to me and other members of the construction industry. I am aware that the State of Alaska Department of Transportation & Public Facilities always paid prejudgment interest on claims until just very recently. I disagree with the State's position because prejudgment interest is, has been, and will continue to be an appropriate component of a contractor's damages. Why the State has decided to discontinue paying prejudgment interest is apparent. Prejudgment interest served as a valuable incentive for the Department to expeditiously handle contractor claims and subcontractor pass-through claims. Since the Department recently made the decision it would no longer pay prejudgment interest, I have heard several accounts of the Department literally dragging out its claims handling process for as long as three to four years. In some cases State maladministration of these contracts has resulted in good, reputable firms suffering tremendous financial burdens and even going under.

As a large subcontractor, my company cannot afford to finance State projects for these periods of time. As a result of this, we have even considered avoiding submitting bids on DOTPF projects or we factor DOTPF's retributive project maladministration into our bid to cover for these eventualities. While this may be wasteful of public funds for construction projects, it is essential for our survival in the competitive construction industry. I believe that the threat of prejudgment interest will result in State agencies treating general contractors and subcontractors more favorably. In addition to urging that you pass this legislation immediately, I urge you to make it apply to every claim that is pending as of the effective date of the legislation. This would provide relief for those contractors who successfully prosecuted claims through DOTPF's administrative process during the 3 1/2 year period that DOTPF arbitrarily and wrongly declined to pay prejudgment interest.

Please give this matter your immediate attention.

Sincerely,



Clark L. Smith
Business Development
Aurora Electric/DataTel
1118 E. 70th Avenue
Anchorage, Alaska 99688
(907) 868-2239

Tamsher Construction Inc.
PO Box 878990
Wasilla, AK 99687
(907) 373-3828
(907) 373-3822 FAX

April 18, 2001

President Rick Halford
State Capital, room 107
Juneau, AK 99801-1182

RE: Passage of Senate Bill 152 and House Bill 235

Dear Senator Halford:

I am writing to urge that you support passage of Senate Bill 152 and House Bill 235, "An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public facilities delegated the responsibility for handling the controversies."

As a general contractor who has been involved in construction in the State of Alaska for 10 years, this bill is especially important to me and other members of the construction industry. I am aware that the State of Alaska Department of Transportation and Public Facilities always paid prejudgment interest on claims until just very recently. I disagree with the State's position because prejudgment interest is, has been, and will continue to be an appropriate component of a contractor's damages. Why the State has decided to discontinue paying prejudgment interest is apparent. Prejudgment interest served as a valuable incentive for the Department to expeditiously handle contractor claims and subcontractor pass-through claims. Since the Department recently made the decision it would no longer pay prejudgment interest, I have heard several accounts of the Department literally dragging out its claims handling process for as long as three to four years. In some cases State maladministration of these contracts has resulted in good, reputable firms suffering tremendous financial burdens and even going under.

As a small contractor, my company cannot afford to finance State projects for these periods of time. As a result of this, we have even considered avoiding submitting bids DOTPF projects or we factor DOTPF's retributive project maladministration into our bid to cover for these eventualities. While this may be wasteful of public funds for construction projects, it is essential for our survival in the competitive construction industry. I believe that the threat of prejudgment interest will result in State agencies treating general contractors and subcontractors more favorably.

In addition to urging that you pass this legislation immediately, I urge you to make apply to every claim that is pending as of the effective date of the legislation. This would provide relief for those contractors who successfully prosecuted claims through DOTPF'S administrative process during the 3 ½ year period that DOTPF arbitrarily and wrongly declined to pay prejudgment interest.

Please give this matter you immediate attention.

Sincerely,

Sharon Wessels
Office Manager



GENERAL & ENVIRONMENTAL CONTRACTORS

April 19, 2001

Honorable Senators and Representatives.
State of Alaska

RE: Senate Bill 152, and House Bill 235

Dear Legislators,

Currently, there are 2 bills before the state legislature that require vigorous support of our state representatives and senators. Those are Senate Bill 152, and House Bill 235. My husband and I have been involved in construction in the State of Alaska for over 20 years. The State DOT always used to pay prejudgment interest on successful claims until recently. This policy provides a disincentive for the State to handle claims expeditiously. In the long run, it only costs the State more time and money.

In April of 1997, we were the low bidder on a State of Alaska project, Ft. Richardson Fish Hatchery, for approximately \$2.5M. As the project started we became instantly aware of differing site conditions and design defects. The owner (State of AK ADF&G) acknowledged the problems and the delay and asked us to continue with the project and they would issue a change order at the end of the project after all the differing site conditions, design defects and delay was a completely known factor. We complied with the directive but put our objection in writing, that we wanted to be paid for the changes as they became known. The state refused and continued to direct us to perform 6 months of additional work to correct the design defects, then they backcharged us for not being complete with the additional work within the confines of the original schedule. The additional work and delay cost us \$1,020,000. The liquidated damages cost us \$168,000. It cost us an additional \$250,000 for an attorney and \$50,000 for expert witnesses and testimony.

In December of 1997, we filed a claim with the State of Alaska. The claim process mandated by the State of Alaska is very lengthy. We spent 2 years going through the process. In the summer of 1999 we were preparing for the Administrative Hearing level of the claim. In July of 1999 we spent 3-1/2 weeks in a Administrative Hearing trial. I knew I would need to provide inducement to the Department of Law to get them to settle the lawsuit because by now we did not have the additional funds to pay the attorney to continue to pursue the lawsuit.

We sued the state and "won" at the Administrative Hearing level. However the state of Alaska by statute, does not have to pay attorney fees or interest. The Hearing Officer's decision was rendered in December 1999. The Administrative Hearing Officer did not consider distinct costs for distinct work and simply awarded a lump sum of \$225,000 and a remission of \$80,000 in liquidated damages. We appealed to the Superior Court. In April of 2000, The State agreed to settle the suit with Linder Construction for \$460,000, no interest, no attorney fees.

To add insult to injury, Linder had to get a legislative appropriation to give the state a 'vehicle' and funding approval to pay us. If the State Department of Law did not have so much legislative pressure, they would have strung Linder out even longer. The \$460,000 was written into the supplemental funding bill. We got paid in June of 2000. But the damage had already been done to our business. Linder Construction is a small business. The normal reserves that we use as our operating capital were depleted by this devastating \$1.5M loss on the Fish Hatchery job. In the aftermath of the Fish Hatchery Claim, this small company could not withstand other negative impacts. Therefore, sadly we have made the strategic decision to avoid bidding on all state jobs. This lack of competition also costs the state additional money. I am on the board of directors of Associated General Contractors and I know many other contractors who have had the same negative experience with a State claim causing tremendous financial impact. They too have made the decision not to do business with the state.

It is for all the above stated reasons that I strongly urge you to pass Senate Bill 152, and House Bill 235. I believe this will afford the state a competitive slate of contractors and will result in State Agencies treating contractors more fairly. It will also promote the Governors policy that the state is '*Open for Business*'

In addition to passing this legislation, please make it apply retroactively to every pending claim and claims settled during the 3-1.2 year period that DOTPF arbitrarily and wrongly declined to pay prejudgment interest.

Sincerely,

LINDER CONSTRUCTION, INC.

S/b

Linda J. E. Henrikson
President & CEO

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/20/01

FURTHER:

Date of 5-Day Notice: 4/05/01
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/00/01

Transportation Committee considered SENATE BILL NO. 152

DOTPF-RELATED CONTRACT CLAIMS

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOT	4/10/01	**		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>Adrian L. Taylor</i>	✓			
<i>Greg Wilbur</i>	✓			
<i>John W. ...</i>	✓			
CHAIR: <i>John J. ...</i>	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

SB 152 - DOTPF-RELATED CONTRACT CLAIMS

NAME: Douglas Gardner Subject/Bill No: 152
Co./Dept./Title: Ass't Atty Gen. Phone: 465-3600
Address: Junow Ct. Bldg. Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: Pam LaBalle Subject/Bill No: 152
Co./Dept./Title: At. Staff Liaison Phone: 526-2323
Address: 217 2nd St SW 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

S I G N - I N

SB 152 - DOTPF-RELATED CONTRACT CLAIMS

NAME: Doucy Gardner Subject/Bill No: SB 152
Co./Dept./Title: Asst. AG Phone: 465-3600
Address: Dimond Courthouse Zip: 94801

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

153

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 153
 (S) Publish Date: 2/6/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title An Act replacing the storage tank assistance BRU Spill Prevention and Response
fund with the underground storage tank revolving loan fund... Component Contaminated Sites
 Sponsor Senator Leman
 Requester Senate Finance Committee Component No. 2386

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 153 replaces the underground storage tank grant and loan program with a revolving loan program. Operating costs to oversee cleanups will be the same regardless of whether the financial assistance is given in the form of a grant or loan as it is assumed that those operators currently eligible to receive grants will request loans. Additionally, regulations will need to be changed to repeal the grant program and establish loan requirements. This will be done by existing staff.

The amount needed to capitalize the loan program will need to be determined.

Prepared by: Larry Dietrick Phone 465-5255
 Division Spill Prevention and Response Date/Time 1/30/02 1:52 PM
 Approved by: Kurt Fredriksson Date 1/30/02
 Agency Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 153
 (S) Publish Date: 2/6/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
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fund with the underground storage tank revolving loan fund... Component Contaminated Sites
 Sponsor Senator Leman
 Requester Senate Finance Committee Component No. 2386

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 153 replaces the underground storage tank grant and loan program with a revolving loan program. Operating costs to oversee cleanups will be the same regardless of whether the financial assistance is given in the form of a grant or loan as it is assumed that those operators currently eligible to receive grants will request loans. Additionally, regulations will need to be changed to repeal the grant program and establish loan requirements. This will be done by existing staff.

The amount needed to capitalize the loan program will need to be determined.

Prepared by: Larry Dietrick
 Division: Spill Prevention and Response
 Approved by: Kurt Fredriksson
 Agency: Department of Environmental Conservation

Phone 465-5255
 Date/Time 1/30/02 1:52 PM
 Date 1/30/02

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX



During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX

Senator Loren Leman

Sponsor Statement CS SB 153(FIN): Underground Storage Tank Loan Fund

Owners of underground storage tanks had until December 22, 1998 to either upgrade or close their underground storage tanks in response to nationwide concern over possible contamination of drinking water from leaking underground storage tanks.

The Alaska Legislature responded to this federal mandate by offering grants and loans to owners of underground storage tanks to help offset the costs of the new requirements. To date, \$38.9 million has been appropriated for upgrade, closure and cleanup grants and loans for underground storage tanks.

All applications for grant assistance under the Upgrade, Closure and Cleanup programs are in. There can be no new applicants. The Department and the Board of Storage Tank Assistance have ranked the applicants according to the changes made by SB 128 (ch 70 SLA 99).

CS SB 153 (FIN) ends the upgrade and closure grant program by June 30, 2002 and the tank cleanup grant program by June 30, 2004 after almost \$49.0 million in assistance to underground storage tank owners. It retains the cleanup loan program and changes it to a revolving loan program. The revolving loan program retains the current means test of self-insurance which guarantees assistance to the "Mom & Pop" companies the grants and loans were intended to assist, rather than larger companies.

The balance in the storage tank assistance fund on the effective date of SB 153 is transferred to the revolving loan fund. This capitalization with all repayments of principal and interest on loans, income earned on money in the fund and money appropriated to the fund will support the revolving loan fund.



Senator Loren Leman

Sectional Analysis CS SB 153(FIN): Underground Storage Tank Loan Fund

Section 1: Amends the responsibilities of the Board of Storage Tank Assistance and the Department to comport with the intent of SB 153, which is to repeal the UST grant programs by 2004 and to have the Department and the Board adjudicate disputes involving the revolving loan fund. (EFD 7/01/04)

Sections 2 and 3: Amends the Board of Storage Tank Assistance section to comport with the intent of SB 153. The Board will continue to hear disputes and adopt regulations related to loans under AS 46.03.422. (EFD 7/1/02)

Section 4: Amends the regulations governing UST systems to delete reference to grants under the tank cleanup program. (EFD 7/01/04)

Section 5: Tank Registration Fees: Sets up automatic deposit of storage tank registration fees to the renamed "revolving loan" fund.(EFD 7/1/02)

Section 6: Deletes reference to grants under the tank cleanup program. (EFD 7/01/04)

Section 7: Changes the Underground Storage Tank Assistance Fund to a revolving loan fund incorporating money appropriated to it by law, storage tank registration fees, repayments of principal and interest on loans and income earned on the money in the fund. Gives commissioner permission to use money in the fund to pay the costs of administering the fund, costs of the Board of Storage Tank Assistance, and the tank cleanup loan program (EFD 7/1/02)

Section 8: Becomes law in 2004, deletes references to tank cleanup grants. (EFD 7/01/04)

Section 9: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Section 10: Amends tank cleanup grant program to cover any overlap of grant/loan combinations after the grant program is repealed, so no unintentional harm comes to a loan recipient. (EFD 7/1/02)

Section 11: Program receipts received under the tank cleanup program will be deposited into the revolving loan fund. (EFD 7/1/02)

Section 12: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Sections 13, 14 and 16: Effective 2004 amends tank cleanup loan program statutes to clarify that this section only applies to loans available under this program (not loans and grants). (EFD 7/01/04)

Section 15: Acknowledges Tank upgrade and closure grants are repealed 7/1/02. (EFD 7/1/02)

Section 17: Allows department to deposit loan repayments and interest into the revolving loan fund. (EFD 7/1/02)

Section 18: New "means" test provision for the revolving loan fund - if the owner/operator is eligible for self-insurance under U. S. EPA regulations (\$10 million), the owner/operator is ineligible for a loan under this program. Municipalities are excluded from the means test. (EFD 7/1/02)

Section 19: Amends the Oil and Hazardous Substance Prevention and Response Account statute to reflect the UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Section 20: Repeals the UST upgrade and closure grant program. (EFD 7/1/02)

Section 21: Repeals the UST cleanup grant program (EFD 7/01/04)

Section 22: (a) Transfers the funds the Legislature has appropriated to the Underground Storage Tank Assistance Fund into the UST Revolving Loan Fund.

(b) Makes plain that the upgrade and closure grant program will not be funded past June 30, 2002; and the tank cleanup grant program will not be funded past June 30, 2004. (EFD immediate)

Section 23: Effective Dates for establishing Revolving Loan fund and means test; and repeal of the UST upgrade and closure grant program.

Section 24: Effective Dates for continuation of Revolving Loan Fund and repeal of UST cleanup grant program.

Section 25: Immediate effective date for transitional provisions.

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 fax



During Intern, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 fax

Senator Loren Leman

Sponsor Statement

CS SB 153(FIN): Underground Storage Tank Loan Fund

Owners of underground storage tanks had until December 22, 1998 to either upgrade or close their underground storage tanks in response to nationwide concern over possible contamination of drinking water from leaking underground storage tanks.

The Alaska Legislature responded to this federal mandate by offering grants and loans to owners of underground storage tanks to help offset the costs of the new requirements. To date, \$38.9 million has been appropriated for upgrade, closure and cleanup grants and loans for underground storage tanks.

All applications for grant assistance under the Upgrade, Closure and Cleanup programs are in. There can be no new applicants. The Department and the Board of Storage Tank Assistance have ranked the applicants according to the changes made by SB 128 (ch 70 SLA 99).

CS SB 153 (FIN) ends the upgrade and closure grant program by June 30, 2002 and the tank cleanup grant program by June 30, 2004 after almost \$49.0 million in assistance to underground storage tank owners. It retains the cleanup loan program and changes it to a revolving loan program. The revolving loan program retains the current means test of self-insurance which guarantees assistance to the "Mom & Pop" companies the grants and loans were intended to assist, rather than larger companies.

The balance in the storage tank assistance fund on the effective date of SB 153 is transferred to the revolving loan fund. This capitalization with all repayments of principal and interest on loans, income earned on money in the fund and money appropriated to the fund will support the revolving loan fund.

FACT SHEET ON UNDERGROUND STORAGE TANK (UST) PROGRAM
(applicable statutes: AS 46.03.360-450)

- Owners of underground storage tanks had until 12/22/98 to either upgrade or close their underground storage tanks.
- Prior to SB 128 (ch 70 SLA 1999) there were four UST grant and loan programs:
 - *Tank Tightness (AS 46.03.415)
 - *Reimbursement program (sec. 7, ch 96 SLA 90)
 - Upgrade & Closure Grants
 - Tank Clean Up Loans & Grants
 - * repealed by SB 128
- All applications for grant assistance under the Upgrade and Closure program (AS 46.03.430) are in. **THERE CAN BE NO NEW APPLICANTS.** Under the law prior to SB 128, DEC estimated it would use \$3.5 million of the \$5.0 million in the UST fund to give all of the qualified applicants grants. Under SB 128's provisions, the Upgrade and Closure grant list was last year valued at around \$32,200 to satisfy the qualified applicants. **CS SB 153 (FIN) will now phase this program out effective June 30, 2002, rather than June 30, 2004 because all eligible costs have been paid. It was the Senate's desire during the debate on SB 128 that the Storage Tank Assistance Fund be fully capitalized so that the Upgrade & Closure program could be finished in 2000. Clean up assistance was to end shortly after.**
- The Tank Clean Up Grant program (AS 46.03.420) under SB 128 now requires a one million dollar tangible net worth limitation, which reduces the number of qualified applicants on the Clean-up list which in FY 00 totaled \$23.3 million. This change moved off the list, applicants such as Unocal, Tesoro, Chevron Mapco and Providence Hospital, and retains the smaller "mom and pop" requests. Applying the \$1.0 million limitation to the Tank Clean Up grants has left about \$9.0 million of eligible costs. **Under CS SB 153 (FIN) this program will be phased out June 30, 2004, as all eligible costs are expected to have been paid by then. There can be no new applications (July 1, 1994 was the deadline).**
- The Tank Clean Up Loan Program (created by SB 128) (AS 46.03.422) requires that to receive a loan, the applicant must have submitted an application before July 1, 1994 (see: AS 46.03.422 (a) reference to AS 46.03.420). There can be no new applications for the tank clean up loan program.
- DEC RSA's money to the Division of Investments to handle the loans for these programs.

STATUTE CITATIONS FOR
CS SB 153 (FIN): UST Loan Fund

AS 46.03.360: Board of Storage Tank Assistance statutes

.420: Underground Storage Tank (UST) cleanup grant program

.422: Underground Storage Tank (UST) cleanup **loan** program

.430: Underground Storage Tank (UST) upgrade and closure grants

SB

153

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/01

FURTHER:

FEB 06 2002
SENATE FINANCE
COMMITTEE

DATE TURNED
IN TO OFFICE: 02/06/02

Finance Committee considered

SENATE BILL NO. 153

UNDERGROUND STORAGE TANK LOAN FUND

"An Act replacing the storage tank assistance fund with the underground storage tank revolving loan fund and relating to that revolving loan fund; repealing the tank cleanup program and the tank upgrading and closure program; and providing for an effective date."

and recommends:

- be replaced with CS SB 153 (FIN)
- adopt previous CS CS attached forthcoming ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DEC	11/30/02		✓	

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>Alan Gustafson</i>	✓			
<i>James Hoff</i>	✓			
<i>William</i>	✓			
<i>James W. ...</i>	✓			
<i>Loren A. ...</i>	✓			
<i>...</i>	✓			
COCHAIR: <i>...</i>	✓			
COCHAIR: <i>Pete Kelly</i>	✓			

FISCAL NOTE

REPORTED OUT

STATE OF ALASKA
2002 LEGISLATIVE SESSION FEB 06 2002

SENATE FINANCE
COMMITTEE

Fiscal Note Number: _____
Bill Version: SB 153
() Publish Date: _____

Revision Date/Time (Note if correction): _____
Title An Act replacing the storage tank assistance
fund with the underground storage tank revolving loan fund...
Sponsor Senator Leman
Requester Senate Finance Committee
Dept. Affected: Environmental Conservation
BRU Spill Prevention and Response
Component Contaminated Sites
Component No. 2386

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type- Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 153 replaces the underground storage tank grant and loan program with a revolving loan program. Operating costs to oversee cleanups will be the same regardless of whether the financial assistance is given in the form of a grant or loan as it is assumed that those operators currently eligible to receive grants will request loans. Additionally, regulations will need to be changed to repeal the grant program and establish loan requirements. This will be done by existing staff.

The amount needed to capitalize the loan program will need to be determined.

Prepared by: Larry Dietrick Phone 465-5255
Division: Spill Prevention and Response Date/Time 1/30/02 1:52 PM
Approved by: Kurt Fredriksson Date 1/30/02
Agency: Department of Environmental Conservation

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

22-LS0696L
Cook
1/30/02

CS FOR SENATE BILL NO. 153()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act replacing the storage tank assistance fund with the underground storage tank
2 revolving loan fund and relating to that revolving loan fund; repealing the tank cleanup
3 program and the tank upgrading and closure program; and providing for an effective
4 date."

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

6 * Section 1. AS 46.03.360(e) is amended to read:

7 (e) Under AS 44.62 (Administrative Procedure Act), the board shall adopt
8 regulations under which the department shall

9 (1) rank requests for assistance under AS 46.03.422 [AS 46.03.420
10 AND 46.03.422];

11 (2) determine which costs of risk assessment, containment, corrective
12 action, and cleanup are eligible costs under AS 46.03.422 [AS 46.03.420 AND
13 46.03.422].

14 * Sec. 2. AS 46.03.360(f) is amended to read:

1 (f) If the department determines that an owner or operator is not eligible for
2 assistance under AS 46.03.410 - 46.03.422 [AS 46.03.410 - 46.03.430] or that a cost is
3 not eligible [UNDER AS 46.03.415 - 46.30.430] and the affected owner or operator
4 disputes that determination, or if an owner or operator disputes the ranking assigned to
5 the [A] request for assistance [UNDER AS 46.03.420 OR 46.03.422], the owner or
6 operator may apply to the board for resolution of the dispute. The board may issue a
7 decision in a dispute brought to it under this subsection. The decision is binding on
8 the owner, operator, and department.

9 * Sec. 3. AS 46.03.360(g) is amended to read:

10 (g) The board may adopt regulations to limit the number of sites per calendar
11 year for which an owner or operator may be awarded financial assistance under
12 AS 46.03.410 - 46.03.422 [AS 46.03.420 - 46.03.430]. The department shall
13 implement the regulations.

14 * Sec. 4. AS 46.03.365(c) is amended to read:

15 (c) When [EXCEPT AS PROVIDED IN AS 46.03.420(c)(2)(A), WHEN] the
16 regulations adopted under this section address areas governed by federal laws or
17 regulations, the state regulations must be consistent with federal laws and regulations
18 and may not be more stringent than the federal laws and regulations.

19 * Sec. 5. AS 46.03.385(e) is amended to read:

20 (e) The department shall deposit fees collected under this section into
21 [LEGISLATURE MAY APPROPRIATE THE ANNUAL ESTIMATED BALANCE
22 OF THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF
23 ADMINISTRATION UNDER AS 37.05.142 TO] the underground storage tank
24 revolving loan [ASSISTANCE] fund established under AS 46.03.410.

25 * Sec. 6. AS 46.03.405 is amended to read:

26 **Sec. 46.03.405. Prohibitions.** A person, including a governmental entity or
27 institution [,] or a public corporation, may not operate an underground petroleum
28 storage tank or tank system unless

29 (1) the tank and tank system are [IS] registered with the department as
30 provided in AS 46.03.360 - 46.03.450 or other law; and

31 (2) [EXCEPT AS PROVIDED IN AS 46.03.420(c)(1)(D),] the person

1 has provided to the department proof of financial responsibility to the extent required
2 under regulations adopted under AS 46.03.365 or proof of application for
3 arrangements that would satisfy state financial responsibility requirements.

4 * Sec. 7. AS 46.03.410 is amended to read:

5 **Sec. 46.03.410. Underground storage [STORAGE] tank revolving loan**
6 **[ASSISTANCE] fund.** (a) There is established the underground storage tank
7 revolving loan [ASSISTANCE] fund. It consists of money appropriated to it by law,
8 repayments of principal and interest on loans made or fees collected under
9 AS 46.03.385 - 46.03.450, and income earned on money in the fund [. THE
10 DEPARTMENT SHALL DEPOSIT EARNINGS ON MONEY IN THE FUND IN
11 THE GENERAL FUND. THE LEGISLATURE MAY USE THE ESTIMATED
12 BALANCE IN THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF
13 ADMINISTRATION UNDER AS 37.05.142 TO MAKE APPROPRIATIONS TO
14 THE FUND]. The legislature may appropriate unencumbered money from the fund
15 for the cost of risk assessment, containment, corrective action, and cleanup relating to
16 an underground petroleum storage tank system owned or operated by the state, the
17 University of Alaska, a public corporation, a school district, or another political
18 subdivision or instrumentality of the state. The legislature may also appropriate
19 unencumbered money from the fund for state legal and regulatory expenses associated
20 with underground petroleum storage tanks. An application for funds under
21 AS 46.03.420 and [,] 46.03.422 [, AND 46.03.430] is not considered an encumbrance
22 for purposes of this subsection.

23 (b) The commissioner may use money in the underground storage tank
24 revolving loan fund to pay for

25 (1) grants and loans under AS 46.03.420 and 46.03.422 for risk
26 assessment, containment, corrective action, and cleanup costs; [AND]

27 (2) costs of administering the fund and the tank cleanup loan
28 program under AS 46.03.422; and

29 (3) costs of the Board of Storage Tank Assistance (AS 46.03.360)
30 [GRANTS UNDER AS 46.03.430 FOR TANK SYSTEM UPGRADING AND
31 CLOSURE].

1 (c) The commissioner shall prepare a report on the status of the underground
2 storage tank revolving loan [ASSISTANCE] fund and notify the legislature not later
3 than the 10th day following the convening of each regular session of the legislature
4 that the report is available. The report may include information considered significant
5 by the commissioner but must include

6 (1) the amount and source of money received by the fund during the
7 preceding fiscal year;

8 (2) the amount of money expended during the preceding fiscal year for
9 each type of expense authorized under (b) of this section;

10 (3) a detailed summary of department activities paid for from the fund
11 during the preceding fiscal year, including how many requests for assistance have
12 been made to the department to use the fund for grants or loans for testing, site
13 assessment, risk assessment, upgrading, closure, containment, corrective action, and
14 cleanup costs, and the number of requests funded in each activity area;

15 (4) the projected cost for the next fiscal year of monitoring, operating,
16 and maintaining sites where department activities have been completed or are
17 expected to start or be continued during the fiscal year;

18 (5) the priority list of tank system sites for which the department
19 expects to provide financial assistance in the next fiscal year.

20 * Sec. 8. AS 46.03.410 is amended to read:

21 **Sec. 46.03.410. Underground storage tank revolving loan fund.** (a) There
22 is established the underground storage tank revolving loan fund. It consists of money
23 appropriated to it by law, repayments of principal and interest on loans made or fees
24 collected under AS 46.03.385 - 46.03.450, and income earned on money in the fund.
25 The legislature may appropriate unencumbered money from the fund for the cost of
26 risk assessment, containment, corrective action, and cleanup relating to an
27 underground petroleum storage tank system owned or operated by the state, the
28 University of Alaska, a public corporation, a school district, or another political
29 subdivision or instrumentality of the state. The legislature may also appropriate
30 unencumbered money from the fund for state legal and regulatory expenses associated
31 with underground petroleum storage tanks. An application for funds under

1 AS 46.03.422 [AS 46.03.420 AND 46.03.422] is not considered an encumbrance for
2 purposes of this subsection.

3 (b) The commissioner may use money in the underground storage tank
4 revolving loan fund to pay for

5 (1) [GRANTS AND] loans under AS 46.03.422 [AS 46.03.420 AND
6 46.03.422] for risk assessment, containment, corrective action, and cleanup costs;

7 (2) costs of administering the fund and the tank cleanup loan program
8 under AS 46.03.422; and

9 (3) costs of the Board of Storage Tank Assistance (AS 46.03.360).

10 (c) The commissioner shall prepare a report on the status of the underground
11 storage tank revolving loan fund and notify the legislature not later than the 10th day
12 following the convening of each regular session of the legislature that the report is
13 available. The report may include information considered significant by the
14 commissioner but must include

15 (1) the amount and source of money received by the fund during the
16 preceding fiscal year;

17 (2) the amount of money expended during the preceding fiscal year for
18 each type of expense authorized under (b) of this section;

19 (3) a detailed summary of department activities paid for from the fund
20 during the preceding fiscal year, including how many requests [FOR ASSISTANCE]
21 have been made to the department to use the fund for [GRANTS OR] loans for testing,
22 site assessment, risk assessment, upgrading, closure, containment, corrective action,
23 and cleanup costs, and the number of requests funded in each activity area;

24 (4) the projected cost for the next fiscal year of monitoring, operating,
25 and maintaining sites where department activities have been completed or are
26 expected to start or be continued during the fiscal year;

27 (5) the priority list of tank system sites for which the department
28 expects to provide loans [FINANCIAL ASSISTANCE] in the next fiscal year.

29 * Sec. 9. AS 46.03.420(a) is amended to read:

30 (a) The commissioner may make a grant from the underground storage tank
31 revolving loan [ASSISTANCE] fund to an owner or operator of an underground

1 petroleum storage tank system, other than the state or federal government, for the costs
2 of risk assessment, containment, corrective action, and cleanup resulting from a
3 release of petroleum from or associated with an underground petroleum storage tank
4 system if the owner or operator meets the requirements of this section. Applications
5 for assistance under this section must be submitted to the department before July 1,
6 1994. Under regulations of the board, the department shall rank requests under this
7 section in order of priority, giving greatest priority to those tank systems that present
8 the greatest threat or potential threat to human health.

9 * **Sec. 10.** AS 46.03.420(e) is amended to read:

10 (e) A request for a grant under this section, and a grant payment made under
11 this section, may not exceed \$250,000, less the amount not payable as a grant under
12 (b) of this section. Furthermore, a grant payment under this section

13 (1) when combined with a grant payment under former AS 46.03.430
14 to the same owner or operator, may not exceed \$250,000; and

15 (2) when combined with grants and loans to the same owner or
16 operator under AS 46.03.422 and former AS 46.03.430 [46.03.430], may not exceed
17 \$500,000.

18 * **Sec. 11.** AS 46.03.420(i) is amended to read:

19 (i) The department shall deposit money collected under this section into
20 [LEGISLATURE MAY APPROPRIATE THE ANNUAL ESTIMATED BALANCE
21 OF THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF
22 ADMINISTRATION UNDER AS 37.05.142 TO] the underground storage tank
23 revolving loan [ASSISTANCE] fund established under AS 46.03.410.

24 * **Sec. 12.** AS 46.03.422(a) is amended to read:

25 (a) The commissioner may make a loan from the underground storage tank
26 revolving loan [ASSISTANCE] fund to an owner or operator of an underground
27 petroleum storage tank system for the costs of risk assessment, containment, corrective
28 action, and cleanup resulting from a release of petroleum from or associated with an
29 underground petroleum storage tank system if the owner or operator submitted a
30 timely application for a grant under AS 46.03.420 and agrees

31 (1) to accept a loan in the same or lesser amount instead of a grant for

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the same project;

(2) to provide additional security or collateral for the loan if requested by the department;

(3) [EITHER] to

(A) upgrade all underground petroleum storage tanks located at the facility from which the release occurred to the standards set by state and federal regulations according to a time line established by the department; or

(B) remove and properly dispose of all liquids and sludges from the underground petroleum storage tanks located at the facility from which the release occurred, conduct a site assessment, and either fill the tanks with inert solid material or properly dismantle, remove, and dispose of the tanks in accordance with applicable state and federal regulations; and

(4) to submit a plan for risk assessment, containment, corrective action, and cleanup to the department for its review and approval; if the department and the owner or operator cannot reach agreement on a plan, on later changes in the plan, or on a cleanup decision, the owner or operator may apply to the board to review the dispute; the board may issue a recommendation to the department in a dispute brought to it under this paragraph; the recommendation may include a suggested time limit for completing appropriate cleanup activities or reaching a cleanup decision.

* Sec. 13. AS 46.03.422(a) is amended to read:

(a) The commissioner may make a loan from the underground storage tank revolving loan fund to an owner or operator of an underground petroleum storage tank system for the costs of risk assessment, containment, corrective action, and cleanup resulting from a release of petroleum from or associated with an underground petroleum storage tank system if the owner or operator submitted a timely application for a grant under former AS 46.03.420 and agrees

(1) to accept a loan in the same or lesser amount instead of a grant for the same project;

(2) to provide additional security or collateral for the loan if requested by the department;

(3) to

1 (A) upgrade all underground petroleum storage tanks located at
2 the facility from which the release occurred to the standards set by state and
3 federal regulations according to a time line established by the department; or

4 (B) remove and properly dispose of all liquids and sludges
5 from the underground petroleum storage tanks located at the facility from
6 which the release occurred, conduct a site assessment, and either fill the tanks
7 with inert solid material or properly dismantle, remove, and dispose of the
8 tanks in accordance with applicable state and federal regulations; and

9 (4) to submit a plan for risk assessment, containment, corrective
10 action, and cleanup to the department for its review and approval; if the department
11 and the owner or operator cannot reach agreement on a plan, on later changes in the
12 plan, or on a cleanup decision, the owner or operator may apply to the board to review
13 the dispute; the board may issue a recommendation to the department in a dispute
14 brought to it under this paragraph; the recommendation may include a suggested time
15 limit for completing appropriate cleanup activities or reaching a cleanup decision.

16 * Sec. 14. AS 46.03.422(e) is amended to read:

17 (e) This section does not affect

18 (1) the liability under state or federal law of a person or entity that
19 receives a loan [ASSISTANCE] under this section for the costs of risk management,
20 containment, corrective action, and cleanup resulting from a release of petroleum; or

21 (2) the authority of the department to seek recovery from the owner or
22 operator of costs other than [GRANTS OR] loans actually made to an owner or
23 operator under this section.

24 * Sec. 15. AS 46.03.422(g) is amended to read:

25 (g) A loan payment under this section, when combined with loans and grants
26 to the same owner or operator under AS 46.03.420 and former AS 46.03.430
27 [46.03.430], may not exceed \$500,000.

28 * Sec. 16. AS 46.03.422(g) is amended to read:

29 (g) A loan payment under this section, when combined with loans and grants
30 to the same owner or operator under former AS 46.03.420 and former AS 46.03.430,
31 may not exceed \$500,000.

1 * Sec. 17. AS 46.03.422(h) is amended to read:

2 (h) The department shall deposit loan repayments and other money
3 collected under this section into [LEGISLATURE MAY APPROPRIATE TO] the
4 underground storage tank revolving loan [ASSISTANCE] fund established under
5 AS 46.03.410 [THE ANNUAL ESTIMATED BALANCE OF THE ACCOUNT
6 MAINTAINED UNDER AS 37.05.142 BY THE COMMISSIONER OF
7 ADMINISTRATION TO KEEP TRACK OF LOAN REPAYMENTS, INCLUDING
8 INTEREST PAYMENTS, UNDER THIS SECTION].

9 * Sec. 18. AS 46.03.422 is amended by adding a new subsection to read:

10 (i) To be eligible for a loan under this section, an owner or operator shall
11 provide the department with a written sworn statement on a form provided by the
12 department that the owner or operator has not been eligible for self-insurance under 40
13 CFR 280.95 at any time on or after July 1, 2002. This subsection does not apply to an
14 owner or operator that is a municipality. For purposes of this subsection, "sworn
15 statement" has the meaning given in AS 11.56.240.

16 * Sec. 19. AS 46.08.040(a) is amended to read:

17 (a) In addition to money in the response account of the fund that is transferred
18 to the commissioner of community and economic development to make grants under
19 AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the
20 commissioner of environmental conservation may use money

21 (1) from the response account in the fund

22 (A) when authorized by AS 46.08.045, to investigate and
23 evaluate the release or threatened release of oil or a hazardous substance, and
24 contain, clean up, and take other necessary action, such as monitoring and
25 assessing, to address a release or threatened release of oil or a hazardous
26 substance that poses an imminent and substantial threat to the public health or
27 welfare, or to the environment;

28 (B) to provide matching funds in the event of a release of oil or
29 a hazardous substance for which use of the response account is authorized by
30 AS 46.08.045 for participation

31 (i) in federal oil discharge cleanup activities; and

1 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
2 Environmental Response, Compensation, and Liability Act of 1980);
3 and

4 (C) to recover the costs to the state, a municipality, a village, or
5 a school district of a containment and cleanup resulting from the release or the
6 threatened release of oil or a hazardous substance for which money was
7 expended from the response account;

8 (2) from the prevention account in the fund to

9 (A) investigate and evaluate the release or threatened release of
10 oil or a hazardous substance, except a release described in AS 46.08.045(a),
11 and contain, clean up, and take other necessary action, such as monitoring and
12 assessing, to address a release or threatened release of oil or a hazardous
13 substance, except a release described in AS 46.08.045(a);

14 (B) pay all costs incurred

15 (i) to establish and maintain the oil and hazardous
16 substance response office;

17 (ii) under agreements entered into under AS 46.04.090
18 or AS 46.09.040;

19 (iii) to review oil discharge prevention and contingency
20 plans submitted under AS 46.04.030;

21 (iv) to conduct training, response exercises, inspections,
22 and tests, in order to verify equipment inventories and ability to prevent
23 and respond to oil and hazardous substance release emergencies, and to
24 undertake other activities intended to verify or establish the
25 preparedness of the state, a municipality, or a party required by
26 AS 46.04.030 to have an approved contingency plan to act in
27 accordance with that plan; and

28 (v) to verify or establish proof of financial
29 responsibility required by AS 46.04.040;

30 (C) pay, when presented with appropriate documentation by the
31 Department of Military and Veterans' Affairs, the expenses incurred by the

1 Department of Military and Veterans' Affairs for Alaska State Emergency
2 Response Commission activities, including staff support, when the activities
3 and staff support relate to oil or hazardous substances, and for the costs of
4 being prepared for responding to a request by the department for support in
5 response and restoration, but not including the costs of maintaining the
6 response corps and the emergency response depots under AS 26.23.045;

7 (D) pay all costs incurred to acquire, repair, or improve an asset
8 having an anticipated life of more than one year and that is acquired, repaired,
9 or improved as a preparedness measure by which the state may respond to,
10 recover from, reduce, or eliminate the effects of a release or threatened release
11 of oil or a hazardous substance;

12 (E) pay the costs, if approved by the commissioner, that were
13 incurred by local emergency planning committees to carry out the duties
14 assigned them by AS 26.23.073(g);

15 (F) provide matching funds in the event of the release of oil or
16 a hazardous substance, except a release of oil for the containment and cleanup
17 of which use of the response account is authorized by AS 46.08.045, for
18 participation

19 (i) in federal oil discharge cleanup activities; and

20 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
21 Environmental Response, Compensation, and Liability Act of 1980);

22 (G) pay or reimburse the underground storage tank revolving
23 loan [ASSISTANCE] fund established in AS 46.03.410 for expenditures from
24 that fund authorized by AS 46.03.410(b);

25 (H) transfer to the Department of Community and Economic
26 Development for payment by the commissioner of community and economic
27 development of

28 (i) municipal impact grants when authorized under
29 AS 29.60.510(b)(2);

30 (ii) assessments of the social and economic effects of
31 the release of oil or hazardous substances as required by AS 29.60.560

1 when, in the judgment of the commissioner, the release of oil or a
2 hazardous substance is not one that is described in AS 46.08.045; and

3 (iii) grants to repair, improve, or replace fuel storage
4 facilities under the bulk fuel system emergency repair and upgrade
5 program;

6 (I) recover the costs to the state, a municipality, a village, or a
7 school district of a containment and cleanup resulting from the release or
8 threatened release of oil or a hazardous substance for which money was
9 expended from the prevention account;

10 (J) prepare, review, and revise

11 (i) the state's master oil and hazardous substance
12 discharge prevention and contingency plan required by AS 46.04.200;
13 and

14 (ii) a regional master oil and hazardous substance
15 discharge prevention and contingency plan required by AS 46.04.210;
16 and

17 (K) restore the environment by addressing the effects of an oil
18 or hazardous substance release.

19 * Sec. 20. AS 46.03.360(e)(3) and 46.03.430 are repealed.

20 * Sec. 21. AS 46.03.420 is repealed.

21 * Sec. 22. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITIONAL PROVISIONS. (a) The underground storage tank revolving loan
24 fund established in AS 46.03.410, as amended in secs. 7 and 8 of this Act, is the successor to
25 the storage tank assistance fund, and the balance in the storage tank assistance fund on the
26 effective date of sec. 7 of this Act shall be retained in the underground storage tank revolving
27 loan fund. Grants entered into by the Department of Environmental Conservation before the
28 effective date of sec. 7 of this Act that would have been paid from the storage tank assistance
29 fund shall be paid from the underground storage tank revolving loan fund.

30 (b) The Department of Environmental Conservation may not pay grants under
31 AS 46.03.430 after June 30, 2002. The Department of Environmental Conservation may not

1 enter into a grant agreement under other provisions of AS 46.03.410 - 46.03.450 that requires
2 payment by the department after June 30, 2004, of grant money from any source. On or after
3 July 1, 2004, the department may not pay money for a grant from the underground storage
4 tank revolving loan fund.

5 * **Sec. 23.** Sections 2, 3, 5, 7, 9 - 12, 15, and 17 - 20 of this Act take effect July 1, 2002.

6 * **Sec. 24.** Sections 1, 4, 6, 8, 13, 14, 16, and 21 of this Act take effect July 1, 2004.

7 * **Sec. 25.** Section 22 of this Act takes effect immediately under AS 01.10.070(c).

SENATE FINANCE COMMITTEE
1 / 31 / 2002 COMMITTEE ACTION

Bill Number	SB 153		
Amendment	CS "1"		
Motion	adpt		
<u>Motion by</u>	Leman		
<u>Objection by</u>	None		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Austerman			
Senator Green			
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX

During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX

Senator Loren Leman

Sponsor Statement CS SB 153(RES): Underground Storage Tank Loan Fund

Owners of underground storage tanks had until December 22, 1998 to either upgrade or close their underground storage tanks in response to nationwide concern over possible contamination of drinking water from leaking underground storage tanks.

The Alaska Legislature responded to this federal mandate by offering grants and loans to owners of underground storage tanks to help offset the costs of the new requirements. To date, \$38.9 million has been appropriated for upgrade, closure and cleanup grant and loans for underground storage tanks.

All applications for grant assistance under the Upgrade, Closure and Cleanup programs are in. There can be no new applicants. The Department and the Board of Storage Tank Assistance have ranked the applicants according to the changes made by SB 128 (ch 70 SLA 99).

SB 153 ends the grant programs in 2004 after almost \$49.0 million in assistance to underground storage tank owners. It retains the cleanup loan program and changes it to a revolving loan program. The revolving loan program will have a means test of self-insurance to weed out larger companies from state-subsidized loans, leaving the "Mom & Pop" companies the grants and loans were intended to assist.

The balance in the storage tank assistance fund on the effective date of SB 153 is retained in the revolving loan fund. All repayments of principal and interest on loans, income earned on money in the fund and money appropriated to the fund will support the revolving loan fund.

Senator Loren Leman

Sectional Analysis

CS SB 153(RES): Underground Storage Tank Loan Fund

Sections 1, 2, and 3: Amend the responsibilities of the Board of Storage Tank Assistance and the Department to comport with the intent of SB 153, which is to repeal the UST grant programs by 2004 and to have the Department and the Board adjudicate disputes involving the revolving loan fund. (EFD 6/30/04)

Section 4: Amends the regulations governing UST systems to delete reference to grants under the tank cleanup program. (EFD 6/30/04)

Section 5: Tank Registration Fees: Sets up automatic deposit of storage tank registration fees to the renamed "revolving loan" fund. (EFD 7/1/01)

Section 6: Deletes reference to grants under the tank cleanup program. (EFD 6/30/04)

Section 7: Changes the Underground Storage Tank Assistance Fund to a revolving loan fund incorporating money appropriated to it by law, storage tank registration fees, repayments of principal and interest on loans and income earned on the money in the fund. Gives commissioner permission to use money in the fund to pay the costs of administering the fund and the tank cleanup loan program (EFD 7/1/01)

Section 8: Becomes law in 2004, then amended to delete references to tank upgrade and closure grants. (EFD 6/30/04)

Section 9: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/01)

Section 10: Program receipts received under the tank cleanup program will be deposited into the revolving loan fund. (EFD 7/1/01)

Section 11: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/01)

Sections 12, 13 and 14: Effective 6/30/04 amends tank cleanup loan program statutes to clarify that this section only applies to loans available under this program (not loans and grants). (EFD 6/30/04)

Section 15: Allows department to deposit loan repayments and interest into the revolving loan fund. (EFD 7/1/01)

Section 16: New "means" test provision for the revolving loan fund - if the owner/operator is eligible for self-insurance under U. S. EPA regulations (\$10 million), the owner/operator is ineligible for a loan under this program. Municipalities are excluded from the means test. (EFD 6/30/04)

Section 17: Amends the Oil and Hazardous Substance Prevention and Response Account statute to reflect the UST Assistance Fund as a revolving loan fund. (bottom of page 10, top of page 11) (EFD 7/1/01)

Section 18: Repeals the UST cleanup grant program and the UST upgrade and closure grant programs. (EFD 6/30/04)

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

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Section 15: Allows department to deposit loan repayments and interest into the revolving loan fund. (EFD 7/1/01)

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Section 17: Amends the Oil and Hazardous Substance Prevention and Response Account statute to reflect the UST Assistance Fund as a revolving loan fund. (bottom of page 10, top of page 11) (EFD 7/1/01)

Section 18: Repeals the UST cleanup grant program and the UST upgrade and closure grant programs. (EFD 6/30/04)

Section 19: (a) Moves the funds the Legislature has appropriated to the Underground Storage Tank Assistance Fund into the UST Revolving Loan Fund.

(b) Makes plain that the upgrade, closure and cleanup grant programs will not be funded past June 30, 2004.

(EFD 7/1/01)

Section 20: Effective Dates for establishing Revolving Loan fund and means test.

Section 21: Effective Dates for continuation of Revolving Loan Fund and repeal of UST cleanup grant program and the UST upgrade and closure grant programs.

**RESPONSE TO QUESTIONS REGARDING THE STORAGE TANK ASSISTANCE
FUND - LEGISLATIVE REQUEST - From: Annette Kreitzer**

March 29, 2001

VOICE MAIL QUESTIONS - 3/28/01

- 1) **On Page 2 of the STP Assistance Fund, Annual Report, the first sentence states: It was primarily due to the EPA's 1998 UST regulations that the Alaska Legislature introduced the Alaska UST Legislation." Is this a typo? Should the date be 1988?**

Yes, the date is incorrect. The year should be 1988, the year EPA's UST law became effective.

- 2) **On Page 13, 3rd paragraph of the STP Assistance Fund, Annual Report, states" "At the end of FY 99, the grant waitlist shown in Table 5 consisted of 215 new (emphasis added) cleanup applications totaling \$23.9 million;" Were the applications really new? Wasn't the deadline for applying in 1994?**

In this case, "new" means "waitlisted" or "not yet funded". These 215 sites have not yet received funding and are, therefore, considered new for funding purposes. They are not new applicants.

E-MAIL QUESTIONS - 3/28/01

- 1) **As I understand the Storage Tank Assistance Fund annual report, there are 51 applicants who qualify for Cleanup grants (post-SB 128). The total of their requests is \$8,908.0. Is all of the \$8,908.0 eligible costs, or just the aggregate total of the 51 applicants?**

The \$8,908.00 is an *estimate* of the total grant amount needed to fund the remaining cleanup projects. Until projects are initiated, we do not know the extent of the cleanup required for any one site. Cleanup grant funding is phased to most cost effectively utilize grant funds. This typically involves funding release investigations the first year to determine the extent of contamination. Once that has been assessed, the most effective and appropriate remediation can be determined for a site. Funding is also phased for this part of the cleanup as well.

- 2) **Are there any upgrade or closure grants still outstanding (work is still being done, or has not yet begun)? The report seems to imply that there are only 3 projects totaling**

\$32.2 that qualify for the closure grant program, or is that the aggregate total of the request, whether or not all of the costs are eligible costs?

We have a total of three closure grant projects for which funding is still encumbered in the amount of \$24.2. The three projects totaling \$32.2 for the Tank Closure Grant Program are actuals, meaning that was the total amount encumbered for those projects.

3) How many grants/loans of any type are outstanding that would be impacted by the changes in SB 153?

There would be 51 cleanup grant projects affected by changes in SB 153. It would mean some sites will not be able to initiate cleanup because we were only able to fund their release investigation this year. A total of 57 applicants indicated interest in the Tank Cleanup Loan Program (Appendix G of the Annual Report). An additional 163 applicants could potentially apply for loans under the Program.

4) What would be the impact of SB 153 on the Underground Storage Tank program?

While the UST Program itself will not be affected, the impact would be upon the 51 applicants qualified for cleanup grants under the current net worth requirements. These applicants are small businesses seeking grants to comply with federal and state UST cleanup requirements. These sites are legally required to be cleaned up regardless of whether or not there is a grant or loan program. The biggest impact is to eligible operators to whom the availability of financial assistance would be discontinued.

Cheat sheet for statute citations
CS SB 153(): UST Loan Fund

AS 46.03.360: Board of Storage Tank Assistance

.420: Underground Storage Tank (UST) cleanup grant program

.422: Underground Storage Tank (UST) cleanup **loan** program

.430: Underground Storage Tank (UST) upgrade and closure grant program

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION DIVISION OF SPILL PREVENTION AND RESPONSE

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5275
FAX: (907) 465-5244
<http://www.state.ak.us/dec/home.htm>

January 15, 2002

The Honorable Rick Halford
President of the Senate
Alaska State Senate
State Capitol
Juneau, AK 99811-1182

Dear Senator Halford:

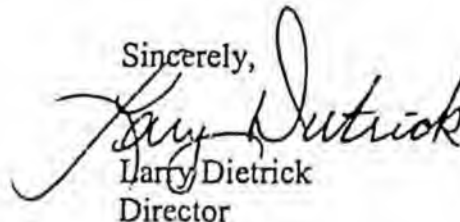
I am pleased to submit to you the Department of Environmental Conservation's Storage Tank Assistance Fund Annual Report for FY01 as required under AS 46.03.363.

The intent of the Financial Assistance Program is to provide technical and financial assistance to owners and operators of underground storage tanks, and thereby ease the burden of compliance with federal standards.

Senate Bill 128 made changes to the program in FY00. As a result, the number of eligible grant applicants dropped significantly. The remaining grants and loans will be limited to a relatively small number of eligible applicants for purposes of cleaning up petroleum spills at their facilities.

We look forward to responding to any questions or comments you may have regarding this report.

Sincerely,



Larry Dietrick
Director

Enclosure: Storage Tank Fund Annual
Report Fiscal Year 2001

cc: Heidi Vogel, Senate Secretary
(with two enclosures)

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION DIVISION OF SPILL PREVENTION AND RESPONSE

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5275
FAX: (907) 465-5244
<http://www.state.ak.us/dec/home.htm>

January 15, 2002

The Honorable Brian Porter
Speaker of the House
Alaska State House of Representatives
State Capitol
Juneau, AK 99811-1182

Dear Representative Porter:

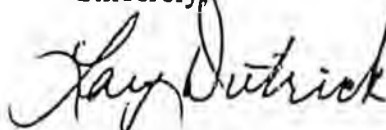
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We look forward to responding to any questions or comments you may have regarding this report.

Sincerely,



Larry Dietrick
Director

Enclosure: Storage Tank Fund Annual Report
Fiscal Year 2001

cc: Suzanne Lowell, Chief Clerk
(with two enclosures)

STORAGE TANK ASSISTANCE FUND ANNUAL REPORT

FISCAL YEAR
2001



Department of Environmental Conservation
Spill Prevention and Response Division



Presented to the Second Session of the Twenty-Second Alaska Legislature
January 30, 2002 ♦ Tony Knowles, Governor ♦ Michele Brown, Commissioner

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 - Appendix D - Board of Storage Tank Assistance Activities
-

I. INTRODUCTION

Preface

Leaking underground storage tanks have impacted a number of public drinking water systems in Alaska. Benzene, a petroleum component and known carcinogen, poses a significant threat to human health and the environment. Over 50 percent of all pre-1998 underground storage tank (UST) systems in Alaska leaked over time, impacting soils and groundwater.

A. Statement of Purpose

On June 7, 1990, the Governor of Alaska signed into law House Bill 220 which amended Alaska Statutes, Title 46, Chapter 3. Effective on September 5, 1990, this law is commonly referred to as the "Underground Storage Tank Statute." Among the provisions in the statute, the Storage Tank Assistance Fund was established to provide technical and financial assistance to tank owners and operators in an effort to prevent new spills and cleanup old spills. The following annual report to the legislature is submitted pursuant to Alaska Statutes Section 46.03.410.

B. Federal Law

Subtitle I to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) requires, in part, that the U.S. Environmental Protection Agency (EPA) regulate USTs containing petroleum and hazardous substances. At that time, the EPA estimated that tens of thousands of USTs nationwide were leaking. By 9/30/99, over 400,000 releases nationwide have been confirmed, proving the initial estimate to be far too low. The resultant groundwater contamination threatens a major source of the country's drinking water.

Congress directed the EPA to develop regulations for the design, construction, and installation of new tanks, as well as for the addition of leak detection, corrosion prevention, and spill and overflow protection to existing tanks. The EPA regulations went into effect on December 22, 1988.

Congress also mandated that all UST owners, except state and federally owned or operated tanks, be able to demonstrate specific levels of financial responsibility for corrective action and cleanup associated with releases from their USTs, including third party loss and bodily injury. The most common type of financial responsibility is commercial pollution insurance. Tank owners are now required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate.

C. State Law

It was primarily due to the EPA's 1998 UST regulations that the Alaska legislature introduced the Alaska UST Legislation. During the legislative process, the EPA informed Alaskan lawmakers that federal funds would not be available to assist with the newly mandated performance requirements. The EPA program would consist of enforcement only, and failure to meet performance standards could result in fines of \$10,000 per day. However, the EPA would authorize states to implement their own UST program in place of the federal requirements if the state's requirements are "no less stringent" than EPA's and provide for adequate regulatory enforcement.

It was evident to lawmakers that Alaska tank owners covered by EPA's UST regulations would be hard pressed to meet the new standards. The lawmakers also recognized that the regulations governing underground storage tanks systems might not be easily understood by the public.

Rather than relying solely on a federal enforcement program after problems developed, the Alaska legislature passed proactive legislation (HB 220), providing technical and educational assistance as well as incentives for compliance

with federal and state requirements by: setting performance standards for both new and existing UST systems; providing for corrective action activities and cleanup standards for leaking USTs; mandating that the Department of Environmental Conservation provide educational assistance to UST owners and operators; requiring the certification of UST workers; requiring registration of all USTs; establishing a Board of Storage Tank Assistance; and providing guidelines for the administration of the Storage Tank Assistance Fund.

Many changes have occurred in the State's Storage Tank Program since its inception in 1990. Table 1 lists a current summary of various financial assistance options.

Effective July 1, 1999, Senate Bill 128 established a new cleanup loan program, set owner/operator net worth ceilings for grant cleanup eligibility, and established a June 30, 1999 sunset date (subsequently extended to 6/30/01 by House Bill 432) for the Board of Storage Tank Assistance. The Board is currently operating in its sunset year.

Table I SUMMARY OF UST FINANCIAL ASSISTANCE PROGRAMS (AFTER SENATE BILL 128)				
PROGRAM	DESCRIPTION	ELIGIBLE COSTS	NET WORTH/PAYMENT LIMITATIONS AS OF 7/1/99	ASSISTANCE PROVIDED
Tank Tightness Testing & Site Assessment Incentive Program	Repealed effective 7/1/99	Provided funds directly to the owner/operator specifically to reimburse costs for tank tightness tests or site assessments to determine if there had been a release of petroleum.	Not Applicable	Repealed effective 7/1/99.
Tank Cleanup Grant Program	Program active. Application period sunset June 30, 1994*.	Provides funds directly to the owner/operator specifically to cover costs of risk assessment, containment, corrective action, and cleanup.	The tangible net worth of both owner and operator limited to \$1 million or less each. Grant payments under this program may not exceed \$250,000 less the 10% for owner/operator's deductible (not to exceed \$25,000.) When combined with a grant payment under the tank upgrade and closure program, payment may not exceed \$250,000. When combined with tank cleanup loans under AS 46 03 422 or tank upgrade/closure grants to same owner/operator, payments cannot exceed \$500,000.	Up to \$250,000 and owner/operator is responsible for 10% of total cleanup costs (not to exceed \$25,000) which is excluded from the grant. A tank cleanup loan for no interest is available for this deductible.
Tank Cleanup Loan Program	Program active. Application period sunset June 30, 1994*.	Provides funds directly to the owner/operator specifically to cover costs of risk assessment, containment, corrective action, and cleanup.	Loans when combined with grants to same owner or operator may not exceed \$500,000. When combined with tank cleanup or tank upgrade/closure grants and loans to same owner/operator, payments cannot exceed \$500,000.	Newly established in FY00, an owner/operator may borrow up to \$500,000 for cleanup at a rate equal to the 12th Federal Reserve District discount rate as of Jan. 1 of the year in which the loan is approved plus one-half percentage point. (The Federal Reserve Rate for January 2000 is 5.0%, therefore, the loan interest rate is 5.5% for calendar year 2000.)
Tank Upgrade & Closure Grant Program	Program complete. Application sunset December 30, 1994.	Provides funds directly to the owner/operator specifically to cover costs of removal, upgrade or replacement of UST system.	The tangible net worth of both owner and operator limited to \$250,000 each. Grant payments under this program cannot exceed a total of \$250,000 for the same owner or operator. When combined with tank cleanup or tank upgrade/closure grants and loans to same owner/operator, payments cannot exceed \$500,000.	Grants for upgrade, replacement or closure of an UST comprising up to 60% of the total eligible costs up to \$60,000 per facility.
Reimbursement Program	Repealed effective 7/1/99	Provided reimbursement of the costs of risk assessment, containment, cleanup, corrective action, upgrade or closure activities on or after December 22, 1988 and before September 5, 1990.	Not Applicable	Repealed effective 7/1/99.

*Cleanup applications were accepted through June 30, 1995 for those applicants that had an upgrade and closure application on file on or before December 30, 1994 and discovered an UST reported contamination before July 1, 1996 and can prove that contamination occurred before December 22, 1993.

D. Storage Tank Assistance Fund

The Alaska legislation establishing the Storage Tank Assistance Fund made funds available for program implementation, staffing, and administration of the following financial assistance programs: reimbursement incentives for tank tightness testing or site assessments (AS 46.03.415); grants and loans for risk assessment, containment, corrective action, and cleanup costs (AS 46.03.420); and grants for tank system upgrades and closure (AS 46.03.430). Table 1 (Summary of UST Financial Assistance Programs), briefly describes the eligible costs and the assistance provided in each of these programs.

Senate Bill 128, effective July 1, 1999, further modified Alaska's UST law, establishing a new cleanup loan program and owner/operator net worth ceilings for cleanup grant eligibility.

The latest changes to the program occurred under House Bill 432, effective June 7, 2000, extending the Board sunset date to June 30, 2001; expanding Board authority to review of cleanup decisions and issuance of a recommendation to the Department; and exempts non-profit entities from the tangible net worth ceilings of SB 128.

Following are the annual appropriations to the Storage Tank Assistance Fund since inception:

	(In millions)
FY 1991	\$6.0
FY 1992	\$0.0
FY 1993	\$5.0
FY 1994	\$4.9
FY 1995	\$3.5
FY 1996	\$3.1
FY 1997	\$2.9
FY 1998	\$2.9
FY 1999	\$4.4
FY 2000	\$5.2
FY 2001	<u>\$1.0</u>
Total	\$38.9

II. ABSTRACT

This report summarizes:

- The amount and source of money received by the fund during fiscal year 2001 (FY 01);
- The amount of money expended during FY 01 for each type of expense authorized under AS 46.03.410(b);
- The Department activities paid for from the fund during FY 01 including the number of requests for assistance which have been made to the Department to use the fund and the number of requests funded in each activity area; projected costs for FY 2002.
- The financial assistance program from inception through December 31, 2001.
- The priority list of UST cleanup sites for which the Department expects to fund financial assistance in the next fiscal year.

III. FY 01 FUND SUMMARY

A. Funding & Appropriations

The Oil and Hazardous Substance Response Prevention Fund Served as the of the Storage Tank Assistance Fund's appropriation in FY 01.

Table 2 reflects appropriations from the Fund to finance program operations, fiscal and other services provided by the Department.

TABLE 2
Storage Tank Assistance Fund
Financial Summary Fiscal Year 2001

Fiscal Year 2001 State Appropriations

	<u>Budget</u>	<u>Actual</u>
FY 01 Appropriations To The Storage Tank Assistance Fund		
Fund Transfer From The Oil & Hazardous Substance Response Prevention Fund		
Fund - Chapter 133, Section 38	1,020,612	1,020,612
Total Appropriations To The Storage Tank Assistance Fund	<u>1,020,612</u>	<u>1,020,612</u>
FY 01 Appropriations From the Storage Tank Assistance Fund		
Storage Tank Program Administration	820,400	790,093
Division of Administrative Services	134,500	134,500
Division of Statewide Public Service	500	500
Total Appropriations From The Storage Tank Assistance Fund	<u>955,400</u>	<u>925,093</u>

Financial Detail For The Storage Tank Assistance Program

	<u>Authorization</u>	<u>Expenditures</u>	<u>Obligations</u>	<u>Balance</u>
Administration				
Personal Services	623,489	522,683	0	100,806
Travel	55,339	44,071	0	11,268
Contractual	105,111	157,243	33,116	(85,229)
Supplies	25,035	15,041	709	9,285
Equipment	11,406	17,195	36	(5,825)
Subtotal	<u>920,400</u>	<u>756,212</u>	<u>33,861</u>	<u>30,307</u>
Other				
Administrative Services	134,500	134,500	0	0
Statewide Public Service	500	500	0	0
Storage Tank Grants	6,223,019	1,104,231	1,703,589	3,415,199
Subtotal	<u>6,358,019</u>	<u>1,239,231</u>	<u>1,703,589</u>	<u>3,415,199</u>
Total	<u>7,178,419</u>	<u>1,995,463</u>	<u>1,737,450</u>	<u>3,445,506</u>