ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5417 SLAB SB 498 - SB 513

989

his paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) only if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Any person who operates a new underground injection well in violation of subsection (b), (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1) be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b), he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) For purposes of this section, the term "new underground injection well" means an underground injection well whose operation was not approved by appropriate State and Federal agencies before the date of the enactment of this title.

(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

OPTIONAL DEMONSTRATION BY STATES RELATING TO OIL OR NATURAL GAS

SEC. 1425. (a) For purposes of the Administrator's approval or disapproval under section 1422 of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production *or natural gas storage operations*, or,

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas

in lieu of the showing required under subparagraph (A) of section 1422(b)(1) the State may demonstrate that such portion of the State

program meets the requirements of subparagraphs (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) If the Administrator revises or amends any requirement of a regulation under section 1421 relating to any aspect of the underground injection referred to in subsection (a), in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) has been made, in lieu of the showing required under section 1422(b)(1)(B) the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c)(1) Section 1422(b)(3) shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 1422 in the same manner as provided in such subsection with respect to a determination described in such subsections.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

REGULATION OF STATE PROGRAMS

SEC. 1426. (a) MONITORING METHODS.—Not later than 18 months after enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall modify regulations issued under this Act for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.

(b) REPORT.—The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

(2) The primary contamination problems associated with different categories of these disposal wells.

(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.

SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM

SEC. 1427. (a) PURPOSE.—The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 1424(e) of this Act.

(b) DEFINITION.—For purposes of this section, the term "critical aquifer protection area" means either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 1424(e), has been submitted and approved by the Administrator not later than 24 months after the enactment of the Safe Drinking Water Act Amendments of 1986 and which satisfies the criteria established by the Administrator under subsection (d).

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of the enactment of the Safe Drinking Water Act Amendments of 1986 and for which an areawide ground water quality protection plan has been approved under section 208 of the Clean Water Act prior to such enactment.

(c) APPLICATION.—Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) CRITERIA.—Not later than 1 year after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) CONTENTS OF APPLICATION.—An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinfter in this section referred to as the "plan") for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to municipalities and other public agencies with authority under State law to implement the plan.

(4) The application shall include a hydrogeologic assessment of surface and ground water resources within the critical protection area.

(5) The application shall include a comprehensive management plan for the proposed protection area.

(6) The application shall include the measures and schedule proposed for implementation of such plan.

(f) COMPREHENSIVE PLAN.—

(1) The objective of a comprehensive management plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

(A) A map showing the detailed boundary of the critical protection area.

(B) An identification of existing and potential point and nonpoint sources of ground water degradation.

(C) An assessment of the relationship between activities on the land surface and ground water quality.

(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.

(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(2) Such plan may also include the following:

(A) A determination of the quality of the existing ground water recharged through the special protection area and

the natural recharge capabilities of the special protection area watershed.

(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this Act and State law.

(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.

(D) A comprehensive statement of land use management including emergency contingency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this Act and State law.

(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) PLANS UNDER SECTION 208 OF THE CLEAN WATER ACT.—A plan approved before the enactment of the Safe Drinking Water Act Amendments of 1986 under section 208 of the Clean Water Act to protect a sole source aquifer designated under section 1424(e) of this Act shall be considered a comprehensive management plan for the purposes of this section.

(h) CONSULTATION AND HEARINGS.—During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) APPROVAL OR DISAPPROVAL.—Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (c). The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section.

(j) GRANTS AND REIMBURSEMENT.—Upon entering a cooperative agreement under subsection (i), the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act. The total amount of grants under this section for any one aquifer, designated under section 1424(e), shall not exceed $4,000,000 in any one fiscal year.

(k) ACTIVITIES FUNDED UNDER OTHER LAW.—No funds authorized under this subsection may be used to fund activities funded under other sections of this Act or the Clean Water Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other environmental laws.

(l) REPORT.—Not later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary.

(m) SAVINGS PROVISION.—Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws, or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(n) AUTHORIZATION.—There are authorized to be appropriated to carry out this section not more than the following amounts:

Fiscal year	*Amount*
1987	*$10,000,000*
1988	*15,000,000*
1989	*17,500,000*
1990	*17,500,000*
1991	*17,500,000*

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before the date of the enactment of this section) by the Administrator under section 208 of the Federal Water Pollution Control Act.

STATE PROGRAMS TO ESTABLISH WELLHEAD PROTECTION AREAS

SEC. 1428. (a) STATE PROGRAMS.—The Governor or Governor's designee of each State shall, within 3 years of the date of enactment of the Safe Drinking Water Act Amendments of 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

(1) specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

(2) for each wellhead, determine the wellhead protection area as defined in subsection (e) based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

(3) identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

(4) describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

(5) include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

(6) include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) PUBLIC PARTICIPATION.—To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas. Such procedure shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) DISAPPROVAL —

(1) IN GENERAL.—If in the judgment of the Administrator, a State program (or portion thereof, including the definition of a wellhead protection area), is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof). A State program developed pursuant to subsection (a) shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. If the Administrator determines that a proposed State program (or any portion thereof) is inadequate, the Administrator shall submit a written statement of the reasons for such determination of the Governor of the State.

(2) MODIFICATION AND RESUBMISSION.—Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program, (or portion thereof) is inadequate, the Governor or Governor's designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) FEDERAL ASSISTANCE.—After the date 3 years after the enactment of this section, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a).

(e) DEFINITION OF WELLHEAD PROTECTION AREA.—As used in this section, the term "wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a). Not later than one year after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) PROHIBITIONS.—

(1) ACTIVITIES UNDER OTHER LAWS.—No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act, the Solid Waste disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or other sections of this Act.

(2) INDIVIDUAL SOURCES.—No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) IMPLEMENTATION.—Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such report shall include amendments to the State program for wa uells sited during the biennial period.

(h) FEDERAL ENCIES.—Each department, agency, and instrumentality of th xecutive, legislative, and judicial branches of the

Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) ADDITIONAL REQUIREMENT.—

(1) IN GENERAL.—In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) DEFINITION.—For purposes of this subsection, the term "annular injection" means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) REVIEW.—The Administrator shall conduct a review of each program certified under this subsection.

(4) DISAPPROVAL.—If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) COORDINATION WITH OTHER LAWS.—Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) AUTHORIZATION OF APPROPRIATIONS.—Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the cost incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

Fiscal year	*Amount*
1987	*$20,000,000*
1988	*30,000,000*
1989	*35,000,000*
1990	*35,000,000*
1991	*35,000,000*

PART D—EMERGENCY POWERS

EMERGENCY POWERS

SEC. 1431. (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system *or an underground source of drinking water* may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), *including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment*, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Any person who ~~willfully~~ violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be ~~fined no more than~~ *subject to a civil penalty of not to exceed* $5,000 for each day in which such violation occurs or failure to comply continues.

TAMPERING WITH PUBLIC WATER SYSTEMS

SEC. 1432. (a) TAMPERING.—Any person who tampers with a public water system shall be imprisoned for not more than 5 years, or fined in accordance with title 18 of the United States Code, or both.

(b) ATTEMPT OR THREAT.—Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 3 years, or fined in accordance with title 18 of the United States Code, or both.

(c) CIVIL PENALTY.—The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $50,000 for such tampering or not more than $20,000 for such attempt or threat.

(d) DEFINITION OF "TAMPER".—For purposes of this section, the term "tamper" means—

(1) to introduce a contaminant into a public water system with the intention of harming persons; or

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

PART E—GENERAL PROVISIONS

ASSURANCE OF AVAILABILITY OF ADEQUATE SUPPLIES OF CHEMICALS NECESSARY FOR TREATMENT OF WATER

SEC. 1441. (a) If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a "certification of need") that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b)(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c)(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributions and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationship and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f), any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1), that such delay or failure was caused solely by compliance with such order.

(e)(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1), he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provisions of such order.

(f) No certification of need or order issued under this section may remain in effect—

~~(1) for more than one year; or~~

~~(2) after September 30, 1982,~~

~~whichever occurs first~~ *in effect more than one year.*

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, AND TRAINING OF PERSONNEL

SEC. 1442. (a)(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 1443(c)(1)).

(B) The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) with the Administrator determines to present substantial danger to the public health. Grants provided under this subparagraph shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the

public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subparagraph as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subparagraph.

(3)(A) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 1412.

(B) Not later than eighteen months after the date of enactment of this subparagraph, the Administrator shall submit a report to Congress which identifies and analyzes—

(i) the anticipated costs of compliance with interim and revised national primary drinking water regulations and the anticipated costs to States and units of local governments in implementing such regulations;

(ii) alternative methods of (including alternative treatment techniques for) compliance with such regulations;

(iii) methods of paying the costs of compliance by public water systems with national primary drinking water regulations, including user charges, State or local taxes or subsidies, Federal grants (including planning or construction grants, or both), loans, and loan guarantees, and other methods of assisting in paying the costs of such compliance;

(iv) the advantages and disadvantages of each of the methods referred to in clauses (ii) and (iii);

(v) the sources of revenue presently available (and projected to be available) to public water systems to meet current and future expenses; and

(vi) the costs of drinking water paid by residential and industrial consumers in a sample of large, medium, and small public water systems and of individually owned wells, and the reasons for any differences in such costs.

The report required by this subparagraph shall identify and analyze the items required in clauses (i) through (v) separately with respect to public water systems serving small communities. The report required by this subparagraph shall include such recommendations as the Administrator deems appropriate.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after the date of enactment of this title, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants

which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after the date of enactment of this title, he shall transmit to the Congress the initial of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(11) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(b) In carrying out this title, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this title;

(3) make grants to and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water, or

(C) to develop and expand the capability of programs of State and municipalities to carry out the purposes of this title (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 1443(c))).

(c) Not later than eighteen months after the date of enactment of this subsection, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data compiled by the National Water Commission and others shall be utilized to the extent possible.

(d) The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies of units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(e) The Administrator is authorized to make grants to a public water system which is required, under State or local law, to meet standards relating to drinking water turbidity which are more stringent than the standards in effect pursuant to this title. Such grants shall be used by the public water system for the development and demonstration (including construction and installation) of any water filtration system which will demonstate a new or improved method of meeting such more stringent standards.

(f) There are authorized to be appropriated to carry out the provisions of this section, other than subsection (a)(2)(B) and provisions relating to research, $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; $35,000,000 for the fiscal year ending June 30, 1977; $17,000,000 for each of the fiscal years 1978 and 1979; $21,405,000 for the fiscal year ending September 30, 1980, $30,000,000 for the fiscal year ending September 30, 1981; and $35,000,000 for the fiscal year ending September 30, 1982. There are authorized to be appropriated to carry out subsection (a)(2)(B) $8,000,000 for each of the fiscal years 1978 through 1982. *There are authorized to be appropriated to carry out subsection (a)(2)(B) not more than the following amounts:*

Fiscal year	Amount
1987	$7,650,000
1988	7,650,000
1989	8,050,000
1990	8,050,000
1991	8,050,000

There are authorized to be appropriated to carry out the provisions of this section (other than subsection (g), subsection (a)(2)(B), and provisions relating to research), not more than the following amounts:

Fiscal year	Amount
1987	$35,600,000
1988	35,600,000
1989	38,020,000
1990	38,020,000
1991	38,020,000

(g) The Administrator is authorized to provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include "circuit-rider" programs, training, and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991. Not less than the greater of—

(1) 3 percent of the amounts appropriated under this subsection, or

(2) $280,000

shall be utilized for technical assistance to public water systems owned or operated by Indian tribes.

GRANTS FOR STATE PROGRAMS

SEC. 1443. (a)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water system within the State

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintained primary enforcement responsibility for public water systems within the State. *The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.*

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1). *Provided*, That the Administrator may by regulation, reduce such percentage in accordance with the criteria specified in this paragraph. *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallotted for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made,

whichever is later.

(7) For the purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. *For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:*

Fiscal year	Amount
1987	$17,200,000
1988	37,200,000
1989	40,150,000
1990	40,150,000
1991	40,150,000

(b)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 1421. *The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.*

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, an underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. *For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:*

Fiscal year	Amount
1987	$19,700,000
1988	19,700,000
1989	20,850,000
1990	20,850,000
1991	20,850,000

(c) For purposes of this section:

(1) The term "public water system supervision program" means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416) which are no less stringent than the national primary drinking water regulations under section 1412, and for keeping records and making reports required by section 1413(a)(3).

(2) The term "underground water source protection program" means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 1421 and for keeping records and making reports required by section 1422(b)(1)(A)(ii). Such term includes, where applicable, a program which meets the requirements of section 1425.

SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS; GUARANTEED LOANS

SEC. 1444. (a) The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependable safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility, and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national drinking water regulations ~~(including interim regulations)~~ prescribed under section 1412. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial

assistance necessary to comply with regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

RECORDS AND INSPECTIONS

SEC. 1445. (a)(1) Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422(d)), who is or may be subject to the permit requirement of section 1424 or to an order issued under section 1441, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, in administering any program of financial assistance under this title, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. *In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.*

(2) Not later than 18 months after enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by the system and shall vary the frequency and schedule of monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found. Each system shall be required to monitor at least once every 5 years after the effective date of the Administrator's regulations unless the Administrator requires more frequent monitoring.

(3) Regulations under paragraph (2) shall list unregulated contaminants for which systems may be required to monitor, and shall include criteria by which the primary enforcement authority in each State could show cause for addition or deletion of contaminants from the designated list. The primary State enforcement authority may delete contaminants for an individual system, in accordance with these criteria, after obtaining approval of assessment of the contaminants potentially to be found in the system. The Administrator shall approve or disapprove such an assessment submitted by a State within 60 days. A State may add contaminants, in accordance with these criteria, without making an assessment, but in no event shall such additions increase Federal expenditures authorized by this section.

(4) Public water systems conducting monitoring of unregulated contaminants pursuant to this section shall provide the results of such monitoring to the primary enforcement authority.

(5) Notification of the availability of the results of the monitoring programs required under paragraph (2), and notification of the availability of the results of the monitoring program referred to in paragraph (6), shall be given to the persons served by the system and the Administrator.

(6) The Administrator may waive the monitoring requirement under paragraph (2) for a system which has conducted a monitoring program after January 1, 1983, if the Administrator determines the program to have been consistent with the regulations promulgated under this section.

(7) Any system supplying less than 150 service connections shall be treated as complying with this subsection if such system provides water samples or the opportunity for sampling according to rules established by the Administrator.

(8) There are authorized to be appropriated $30,000,000 in the fiscal year ending September 30, 1987 to remain available until expended to carry out the provisions of this subsection.

(b)(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 1412, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a), or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) or which are pertinent to any financial assistance under this title.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under

this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Whoever fails or refuses to comply with any requirement of subsection (a) or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) ~~may be fined not more than $5,000~~ *shall be subject to a civil penalty of not to exceed $25,000*.

(d)(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or to committees of the Congress, or when relevant in any proceeding under this title, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term "information required under this section" means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) For purposes of this section, (1) the term "grantee" means any person who applies for or receives financial assistance by grant, contract, or loan guarantee under this title, and (2) the term "person" includes a Federal agency.

NATIONAL DRINKING WATER ADVISORY COUNCIL.

SEC. 1446. (a) There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occuring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after the date of enactment of this title, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this title.

(c) Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at the rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(d) Section 14(a) of the Federal Advisory Committee Act relating to termination, shall not apply to the Council.

FEDERAL AGENCIES

SEC. 1447. (a) Each Federal agency (1) having jurisdiction over any federally owned or maintained public water system or (2) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 1421(d)(2)) shall be subject to, and comply with, all Federal, State, and local requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water and respecting any underground injection program in the same manner, and to the same extent, as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process or sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply, notwithstanding any immunity of such agencies, under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty under this title with respect to any act or omission within the scope of his official duties.

(b) The Administrator shall waive compliance with subsection (a) upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted

and make such record available for in camera examination when relevant in a judicial proceeding under this title. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives.

(c)(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this Act, the term "Federal agency" shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

JUDICIAL REVIEW

SEC. 1448. (a) A petition for review of—

~~(1) action of the Administrator in promulgating any national primary drinking water regulation under section 1412, any regulation under section 1412(b)(1), any regulation under section 1414(c), any regulation for State under, and injection control programs under section 1421, or any general regulation for the administration of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and~~

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

~~(2) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for the appropriate circuit.~~

(2) any other action of the Administrator under this Act may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(b) The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 1415 or 1416 or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this title required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

CITIZEN'S CIVIL ACTION

SEC. 1449. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this title, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this title which is not discretionary with the Administrator.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this title which occurred within the 27-month period beginning on the first day of the month in which this title is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this title or to order the Administrator to perform an act, or duty described in paragraph (2), as the case may be.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this title—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) to require a State to prescribe a schedule under section 1415 or 1416 for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this title or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction,

against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this title, except as provided in section 1448. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 1447.

GENERAL PROVISIONS

SEC. 1450. (a)(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

(2) The Administrator may delegate any of his functions under this title (other than prescribing regulations) to any officer or employee of the Agency.

(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this title.

(c) Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this title.

(d)(1) The Administrator may make payments of grants under this title (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term "nonprofit agency or institution" means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a-276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(f) The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this title to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) The provisions of this title shall not be construed as affecting any authority of the Administrator under part G of title III of this Act.

(h) Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a report respecting the activities of the Agency under this title and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this title. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit

o such committees of Congress its comments repecting any such eport.

(i)(1) No employer may discharge any employee or otherwise dis- riminate against any employee with respect to his compensation, erms conditions, or privileges of employment because the employ- e (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title or a proceeding for the administration or enforcement of drinking w r regulations or underground injection control programs of a State.

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this title.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the

Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28 of the United States Code.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this title.

INDIAN TRIBES

SEC. 1451. (a) IN GENERAL.—Subject to the provisions of subsection (b), the Administrator—

(1) is authorized to treat Indian Tribes as States under this title,

(2) may delegate such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided by this title.

(b) EPA REGULATIONS.—

(1) SPECIFIC PROVISIONS.—The Administrator shall, within 18 months after the enactment of the Safe Drinking Water Act Amendments of 1986, promulgate final regulations specifying those provisions of this title for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:

(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this title and of all applicable regulations.

(2) PROVISIONS WHERE TREATMENT AS STATE INAPPROPRIATE.—For any provision of this title where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this title, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that wil achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

Sections of P.L. 99-339 Which Do Not Amend the Safe Drinking Water Act

SEC. 109. (c) BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY.—

(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Administrator of the Veterans' Administration may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term "lead free"—

(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act.

(d) LEAD SOLDER AS A HAZARDOUS SUBSTANCE.—

(1) IN GENERAL.—Section 2(f)(1) of the Federal Hazardous Substances Act is amended by adding the following at the end thereof:

"(E) Any solder which has a lead content in excess of 0.2 percent."

(2) LABELING.—Section 4 of the Federal Hazardous Substances Act is amended by adding the following at the end thereof:

"(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of

such solder in the making of joints or fittings in any private or public potable water supply system is prohibited."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall become effective 24 months after the enactment of this Act.

SEC. 201. (c) SECTION 7010.—(1) Section 7010(c) of the Solid Waste Disposal Act is amended by striking "sections 7002 and 7003 of this Act" and inserting in lieu thereof "the provisions of this Act".

(2) Section 7010 of the Solid Waste Disposal Act is renumbered as section 3020 and inserted after section 3019 of such Act. Section 7012 of such Act is renumbered as section 7010. The item relating to section 7010 in the table of contents for such Act is renumbered as section 3020 and inserted after the item relating to section 3019. The item relating to section 7012 in the table of contents for such Act is renumbered as section 7010. Such table of contents is further amended by inserting after section 3015 the following new item:

"Sec. 3016. Inventory of Federal Agency hazardous waste facilities."

SEC. 302. (e) STUDY.—The Administrator of the Environmental Protection Agency, in cooperation with the Director of the Indian Health Service, shall, within 12 months after the enactment of this Act, conduct a survey of drinking water on Indian reservations, identifying drinking water problems and the need, if any, for alternative drinking water supplies.

SEC. 304. (b) COMPARATIVE HEALTH EFFECTS ASSESSMENT.—The Administrator of the Environmental Protection Agency shall conduct a comparative health effects assessment, using available data, to compare the public health affects (both positive and negative) associated with water treatment chemicals and their byproducts to the public health effects associated with contaminants found in public water supplies. Not later than 18 months after the date of the enactment of this Act, the Administrator shall submit a report to the Congress setting forth the results of such assessment.

O

SB

502

5-2095B
Cook
4/20/88

Original sponsor: Finance Committee

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 502 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the economic stabilization program; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) financial institutions that are chartered in the state and have a principal place of business in the state provide a substantial portion of consumer, housing, and small business loans in the state and are an important source of financing for the state's small businesses;

(2) these financial institutions have, in the last two years, lost a portion of their capital due to some circumstances not of their making;

(3) some of these financial institutions are having problems adequately serving the communities in which they maintain branches and fulfill their historic role of providing an alternative source of financing in the state's marketplace;

(4) the state can invest money in these financial institutions, thereby reducing the risk of future problems in the real estate market;

(5) these financial institutions will be able to increase their lending by a factor of at least 10 times the amount of money received by them from the state investments.

(b) The purpose of the legislature in establishing the economic stabilization program is to provide a source of money that can be invested in financial institutions that are chartered in the state and have a principal place of business in the state so that their capital can be in-

creased. The legislature intends to achieve this purpose by authorizing the Alaska Industrial Development and Export Authority to invest in interest-bearing debentures of these financial institutions which shall be repaid or redeemed at maturity.

* Sec. 2. ECONOMIC STABILIZATION PROGRAM. (a) The economic stabilization program is established in the Alaska Industrial Development and Export Authority. Under this program the authority is authorized to use up to $15,000,000 for investments in debentures issued by a financial institution with

(1) a charter issued by the state;

(2) its principal office located in the state; and

(3) assets that totaled on December 31, 1987, less than $150,000,000 when combined with assets of all its affiliates.

(b) The Alaska Industrial Development and Export Authority may not make an investment under this section until

(1) at least one public hearing has been held on the proposed investment; and

(2) the authority and the director of banking, securities and corporations make a written finding that the proposed investment is in the public interest.

(c) The Alaska Industrial Development and Export Authority may charge a fee in connection with investments under this section that the authority considers to be reasonable. The authority may only invest in debentures that

(1) pay interest quarterly or more often;

(2) bear interest at a rate established by the authority that is not less than one and one-half percent above the prime rate as determined by the authority; in establishing interest the authority shall consider the cost of brokered deposits;

(3) are due for repayment 10 years after the date of issue, but may be repaid sooner at the discretion of the issuer;

(4) are secured by the full faith and credit of the issuing institution and other collateral as required by the authority;

(5) create rights of payment superior to rights of stockholders of the financial institution, as determined by the authority;

(6) will be fully repaid before any dividends are paid to stockholders; and

(7) comply with other requirements that may be established by the authority.

(d) The amount of debentures that may be purchased by the Alaska Industrial Development and Export Authority under this section from an institution may not exceed the amount of that institution's capital, surplus, and undivided profits on December 31, 1985, as certified by the director of banking, securities and corporations. The combined amount that may be purchased from a holding company and its subsidiary bank may not exceed the amount of capital, surplus, and undivided profits of the subsidiary bank on December 31, 1985, as certified by the director of banking, securities and corporations.

(e) Notwithstanding AS 06.05.307(a), debentures purchased by the Alaska Industrial Development and Export Authority under this section may be issued without regard to the principal amount of the notes and debentures of the institution that are outstanding on the date of issuance. The authority may only purchase debentures under this section after the director of banking, securities and corporations certifies that the issuance of the debentures otherwise complies with AS 06.05.307 and that the purchase meets the requirements of this section.

(f) The Alaska Industrial Development and Export Authority may purchase debentures under this section only from an institution that agrees to

invest at least 15 percent of the purchase price in areas of the state outside of metropolitan areas within three years after receipt of the purchase price. The authority shall by regulation define "metropolitan areas" for purposes of this subsection.

* Sec. 3. This Act is repealed July 1, 1990.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

liability of the stockholders is valid until it is approved by the department.

(c) If a state bank fails to maintain its total adjusted capital accounts and reserves in an amount equal to the substandard assets as reported by the Federal Deposit Insurance Corporation or the state in a bank's latest report of examination, the department shall consider the failure as endangering the safety of the depositor and may direct the bank's directors to increase the capital accounts in an amount sufficient to cover substandard assets. (§ 3.202 ch 129 SLA 1951; am § 11 ch 230 SLA 1968; am §§ 6, 7 ch 63 SLA 1969; am § 21 ch 169 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "paid-in capital" for "a paid-up capital," "$250,000" for "$100,000," "paid-in surplus" for "a paid-up surplus," and "of paid-in capital" for "of paid-up capital" in subsection (a), added the language beginning "and it is unlawful" to the end of subsection (a), deleted former subsection (b), designated former subsections (c) and (d) as present subsections (b) and (c), rewrote the second sentence of present subsection (b), and substituted "Federal Deposit Insurance Corporation" for "FDIC" in subsection (c).

Editor's note. — Section 55, ch. 169, SLA 1978, contains a severability clause

C.J.S. reference. — 9 C.J.S. Banks and Banking § 58.

Sec. 06.05.307. Capital notes or debentures. (a) A bank organized under the laws of this state may, with the approval of stockholders owning two-thirds of the stock of the bank entitled to vote or without this approval if authorized by its articles of incorporation, issue convertible or nonconvertible capital notes or debentures with the written consent of the department. The principal amount of notes and debentures outstanding at any time may not exceed $33^1/_3$ per cent of the capital stock and surplus fund of the bank at the date of issue. The rate and term are subject to the approval of the department but in no event may the term be more than 20 years after the date of issue.

(b) No bank may retire capital notes or debentures if the retirement creates an impairment of its capital. Capital notes and debentures are subordinated in right of payment in the event of insolvency or liquidation of the bank to the prior payment of all deposits and all claims of other creditors except the holders of securities on a parity with the capital notes and debentures and the holders of securities expressly subordinated to the capital notes and debentures.

(c) Bank assets may not be pledged to secure capital notes and debentures but the bank may, for the security and the protection of the holders of the capital notes and debentures, agree through its board of directors to restrict the payment of dividends.

(d) The amount of outstanding notes and debentures not maturing within one year shall be added to the capital, surplus account, and undivided profits of the issuing bank for the purpose of determining the maximum amount that may be loaned by the bank as provided in § 205 of this chapter.

principal place of business in the state so that their capital can be increased. The legislature intends to achieve this purpose by authorizing the Alaska Industrial Development and Export Authority to invest in interest-bearing subordinated debentures of these financial institutions which shall be repaid or redeemed at maturity.

* Sec. 2. ECONOMIC STABILIZATION PROGRAM. (a) The economic stabilization program is established in the Alaska Industrial Development and Export Authority. Under this program the authority is authorized to use money in the Alaska Industrial Development and Export Authority revolving fund (AS 44.88.060) for investments in [subordinated] debentures issued by a ~~bank, savings bank, or bank holding company with~~ state chartered financial institution

(1) a charter issued by the state;

(2) its principal office located in the state; and

(3) assets that totaled on December 31, 1987, less than $150,000,000 when combined with assets of all its affiliates.

(b) The Alaska Industrial Development and Export Authority may only invest in debentures under this section that

(1) pay interest quarterly or more often;

(2) ~~bear interest at a rate~~ provides for loan fees and that is at least 50 basis points above the average cost of a bond of similar maturity issued by a municipality at the time the debenture is issued, as determined by the authority;

(3) are due for repayment ~~20~~ 10 years after the date of issue, but may be repaid sooner at the discretion of the issuer; and

(4) are secured by the full faith and credit of the issuing institution.

(5) are limited, under this program, to an aggregate total of $15,000,000.

(c) The amount of debentures that may be purchased by the Alaska Industrial Development and Export Authority under this section from an institution may not exceed the amount of that institution's capital, surplus, and undivided profits on December 31, 1985, as certified by the

(6) places the repayment of the debenture in a superior position to shareholders and the payment of dividends.

principal place of business in the state so that their capital can be increased. The legislature intends to achieve this purpose by authorizing the Alaska Industrial Development and Export Authority to invest in interest-bearing subordinated debentures of these financial institutions which shall be repaid or redeemed at maturity.

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(c) The amount of debentures that may be purchased by the Alaska Industrial Development and Export Authority under this section from an institution may not exceed the amount of that institution's capital, surplus, and undivided profits on December 31, 1985, as certified by the

(6) places the repayment of the debenture in a superior position to shareholders and the payment of dividends.

director of banking, securities and corporations. The combined amount that may be purchased from a holding company and its subsidiary bank may not exceed the amount of capital, surplus, and undivided profits of the subsidiary bank on December 31, 1985, as certified by the director of banking, securities and corporations.

(d) Notwithstanding AS 06.05.307(a), debentures purchased by the Alaska Industrial Development and Export Authority under this section may be issued without regard to the principal amount of the notes and debentures of the institution that are outstanding on the date of issuance. The authority may only purchase debentures under this section after the director of banking, securities and corporations certifies that the issuance of the debentures otherwise complies with AS 06.05.307 and that the purchase meets the requirements of this section.

(e) The Alaska Industrial Development and Export Authority may purchase debentures under this section only from an institution that agrees to invest at least 15 percent of the purchase price in areas of the state outside of metropolitan areas within three years after receipt of the purchase price. The authority shall by regulation define "metropolitan areas" for purposes of this subsection.

* Sec. 3. This Act is repealed July 1, 1990.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Number 334

Willis Kirkpatrick, Director, Division of Banking and Securities, Department of Commerce & Economic Development, came forward to testify and answer questions. Mr. Kirkpartrick stated that he had observations that he would like to make. It is the responsibility of the Division of Banking to do what it can to provide and safe and sound financial institution system in the State of Alaska. He stated that he is in a position where in some instances that he has asked certain financial institutions to increase their capital account primarily due to erosion of the capital accounts. In that scenario he finds himself in the position where it is necessary for them to raise capital. In the determination to which capital is available there is a determination both by the Legislature and the state to make some assumptions where that capital should come from. As a regulator of financial institutions that has some institutions in need of capital he is not opposed to this bill. There are certain things that they may wish to consider in this and some of them are if a financial institution in the State of Alaska and especially a state chartered financial institution if it is serving a clientle maybe they should be also considered in this type of legislation. If any financial institution fails whether it is a credit union, savings or loan, commercial bank, or a mutual savings bank if they are serving a constituentcy and they are having particular problems and it may result

in some disfranchising their customers and all of our constituents maybe they should also be considered in this type of legislation, at least to some degree. It has been suggested that we have to space this legislation at the department level and it is also suggested that if funds are used to shore up the capital accounts of financial institutions that possibly not only making it available to other institutions, state chartered, but also at a rate high enough that it would discourage those who are not necessarily in need of capital assistance not to apply so that it would increase the cost of funds. It has also been suggested within the department that any funds dispersed or issued to to financial institutions carry collateral other than collateral for stock such as any facilities real estate that the bank may own and its fixed assets as additional collateral.

Senator Kelly asked if they can do that and it would still count at capital. Mr. Kirkpatrick stated that we would have to change that section of law that prohibits it. But in considering this law that would be an amendment to this bill.

Senator Kelly asked what would that amendment say. Mr. Kirkpatrick responded that it would delete the prohibition of not counting a pledge of assets to the bond as far as using it for the capital account.

Senator Kelly asked what result would that have on the ability of the banks to function. Mr. Kirkpatrick said that it would be the question of whether or not the bank would have enough capital then to function rather than not having enough capital which would jeopardize the existence of the financial institition. Senator Kelly stated that in your judgment you think even if they were forced to collateralize the bonds with assets they could still function. It could be counted as capital and they could still function. Mr. Kirkpatrick concurred. The only hesitance I have Mr. Chairman is whether or not the accounting profession would allow that to be counted as capital. As far as the regulatory capital within the state structure that provision would be deleted out so the state would recognize it as capital.

Number 412

Senator Fahrenkamp stated that she was confused. If that collateral area is changed by the amendment are we changing what we are trying to do in this legislation. Mr. Kirkpatrick responded that there is a provision of law that states that banks assets, and this is under capital notes and debentures under Title 6, may not be pledged to secure capital notes and debentures but the bank may for security and the protection of the holders of the capital notes and debentures agree through its board of directors to restrict

the payment of dividends. What he is saying here is a prohibition of allowing the pledging of assets for the debentures. The repeal of this under the subtitle of capital notes and debentures would allow it.

Senator Kelly asked if it is possible to restrict the payment of dividends until this subordinated debenture is paid off. Mr. Kirkpatrick responded yes, that is in the system now. Senator Kelly asked if that is adequately covered in the measure that is in front of the committee. Mr. Kirkpatrick replied yes. Senator Kelly asked is it quite clear that there will be no dividends issued until such time as these are paid off. Mr. Kirkpatricks responded that he didn't believe that it is stated firmly in this but in investing in this that certain expenses of the financial institution would be under scrutiny to the investor that this should be a consideration, this and other types of expenses.

Number 442

Senator Kelly asked what do we have to do in this legislation to make absolutely certain that the state comes first in terms of coming before shareholders and payment of dividends if the state invests capital in these organizations. Mr. Kirkpatrick suggested that the state provide a policy statement in this that would say that AIDA

would have to make sure that certain guidelines are setforth and that the state would recover their funds before any other types of expenses would be considered and that could range from limitations on increases of salaries, bonuses, expenses, dividends. The general type of expenses that aren't needed for the operation of a financial instittuion but are generally recognized as rewards for successful operation of a financial institution. If there is a statement in the legislation that that was the intent of the legislation then it would be quite clear upon regulations to spell out which one of those factors have to be considered before those expenses could be paid out i.e. dividends.

Number 460

Senator Fahrenkamp noted that one of the first things Mr. Kirkpatrick mentioned was the prevention of banks taking money when they don't need it. She stated that she understood that only two banks that weren't in serious trouble. Do you really think that we need to amend this to correct two banks. Mr. Kirkpatrick replied that they have some financial institutions that they have on their "watch list." In other words, they have certain conditions in their financial statement that gives them some concern. They also have several financial institutions that are not on the "watch list." They have more than three on their

"watch list" but they have more that are not. What he is trying to say that there are financial institutions out there that would not want or need the use of this law.

Senator Fahrenkamp asked if that means that we would be undoing what we are trying to do by adding a higher interest rate to debenture bonds.

5-2095B
Cook
4/19/88

Original sponsor: Finance Committee

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 502 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the economic stabilization program; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) financial institutions that are chartered in the state and have a principal place of business in the state provide a substantial portion of ~~the~~ consumer, housing and small business loans in the state and are an important source of financing for the state's small businesses;

(2) these financial institutions have, in the last two years, lost ~~some~~ a portion of their capital due to some circumstances not of their making;

(3) some of these financial institutions are having problems adequately serving the communities in which they maintain branches and fulfill their historic role of providing an alternative source of financing in the state's marketplace;

(4) the state can invest money in these financial institutions, thereby reducing the risk of future problems in the real estate market;

(5) these financial institutions will be able to increase their lending by a factor of at least 10 times the amount of money received by them from the state investments.

(b) The purpose of the legislature in establishing the economic stabilization program is to provide a source of money that can be invested in financial institutions that are chartered in the state and have a principal place of business in the state so that their capital can be

increased. The legislature intends to achieve this purpose by authorizing the Alaska Industrial Development and Export Authority to invest in interest-bearing [subordinated] debentures of these financial institutions which shall be repaid or redeemed at maturity.

* Sec. 2. ECONOMIC STABILIZATION PROGRAM. (a) The economic stabilization program is established in the Alaska Industrial Development and Export Authority. Under this program the authority is authorized to use up to $15,000,000 from the Alaska Industrial Development and Export Authority revolving fund (AS 44.88.060) for investments in debentures issued by a financial institution with

(1) a charter issued by the state;

(2) its principal office located in the state; and

(3) assets that totaled on December 31, 1987, less than $150,000,000 when combined with assets of all its affiliates.

(b) The Alaska Industrial Development and Export Authority may not pay any processing or other fee in connection with an investment under this section and may only invest in debentures that

(1) pay interest quarterly or more often;

(2) bear interest at one and one-half percent above the prime rate ~~at the time the debenture is issued~~ as determined by the authority;

(3) are due for repayment 10 years after the date of issue, but may be repaid sooner at the discretion of the issuer;

(4) are secured by the full faith and credit of the issuing institution; and ~~or~~ collateral as determined by the authority.

~~(5)~~ (5) create rights of payment superior to rights of stockholders of the financial institution, as determined by the authority. are repaid before any stockholder dividends are paid.

(c) The amount of debentures that may be purchased by the Alaska Industrial Development and Export Authority under this section from an

institution may not exceed the amount of that institution's capital, surplus, and undivided profits on December 31, 1985, as certified by the director of banking, securities and corporations. The combined amount that may be purchased from a holding company and its subsidiary bank may not exceed the amount of capital, surplus, and undivided profits of the subsidiary bank on December 31, 1985, as certified by the director of banking, securities and corporations.

(d) Notwithstanding AS 06.05.307(a), debentures purchased by the Alaska Industrial Development and Export Authority under this section may be issued without regard to the principal amount of the notes and debentures of the institution that are outstanding on the date of issuance. The authority may only purchase debentures under this section after the director of banking, securities and corporations certifies that the issuance of the debentures otherwise complies with AS 06.05.307 and that the purchase meets the requirements of this section.

(e) The Alaska Industrial Development and Export Authority may purchase debentures under this section only from an institution that agrees to invest at least 15 percent of the purchase price in areas of the state outside of metropolitan areas within three years after receipt of the purchase price. The authority shall by regulation define "metropolitan areas" for purposes of this subsection.

* Sec. 3. This Act is repealed July 1, 1990.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

5-2095B
B Cook
4/19/88

Original sponsor: Finance Committee

Sen. Kelly

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 502 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the economic stabilization program; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) financial institutions that are chartered in the state and have a principal place of business in the state provide a substantial portion of consumer, housing, and small business loans in the state and are an important source of financing for the state's small businesses;

(2) these financial institutions have, in the last two years, lost some portion of their capital due to circumstances not of their making;

(3) these financial institutions are having problems adequately serving the communities in which they maintain branches and fulfill their historic role of providing an alternative source of financing in the state's marketplace;

(4) the state can invest money in these financial institutions, thereby reducing the risk of future problems in the real estate market;

(5) these financial institutions will be able to increase their lending by a factor of at least 10 times the amount of money received by them from the state investments.

(b) The purpose of the legislature in establishing the economic stabilization program is to provide a source of money that can be invested in financial institutions that are chartered in the state and have a principal place of business in the state so that their capital can be in-

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(1) a charter issued by the state;

(2) its principal office located in the state; and

(3) assets that totaled on December 31, 1987, less than $150,000,000 when combined with assets of all its affiliates.

(b) The Alaska Industrial Development and Export Authority may not make an investment under this section until

(1) at least one public hearing has been held on the proposed investment; and

(2) the authority and the director of banking, securities and corporations make a written finding that the proposed investment is in the public interest.

(c) The Alaska Industrial Development and Export Authority may not pay any processing or other fee in connection with an investment under this section and may only invest in debentures that

(1) pay interest quarterly or more often;

(2) bear interest at one and one-half percent above the prime rate at the time the debenture is issued, as determined by the authority;

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(d) The amount of debentures that may be purchased by the Alaska Industrial Development and Export Authority under this section from an institution may not exceed the amount of that institution's capital, surplus, and undivided profits on December 31, 1985, as certified by the director of banking, securities and corporations. The combined amount that may be purchased from a holding company and its subsidiary bank may not exceed the amount of capital, surplus, and undivided profits of the subsidiary bank on December 31, 1985, as certified by the director of banking, securities and corporations.

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5-2095B
Cook
4/19/88

Original sponsor: Finance Committee

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 502 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the economic stabilization program; and providing for an effective date."

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

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(3) these financial institutions are having problems adequately serving the communities in which they maintain branches and fulfill their historic role of providing an alternative source of financing in the state's marketplace;

(4) the state can invest money in these financial institutions, thereby reducing the risk of future problems in the real estate market;

(5) these financial institutions will be able to increase their lending by a factor of at least 10 times the amount of money received by them from the state investments.

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* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FEDALASKA
FEDERAL
CREDIT UNION

April 18, 1988

Senator Tim Kelly
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

I am writing to voice my opposition to Senate Bill 502, known popularly as the "Small Bank Bailout." It's my opinion, and I expect the opinion of most of FedAlaska's 34,000 members, that legislation of this sort will benefit a very limited number of individuals at the expense of everyone else.

First, it seems inconceivable to me that the state would consider a bailout of only a portion of an industry. There are nearly 40 financial institutions in Alaska and all of them have suffered from the downturn in our economy. Those who were especially greedy during the good times made loans that were imprudent by anybody's standards. Now they come to the state with their hands out looking for a subsidy. I'm sure the stockholders and employees of First Interstate, Alaska National Bank of the North, Peninsula Savings and the other failed institutions are going to feel just a little regret that no one came to their rescue.

And what of those of us who suffered yet made tough decisions and have survived? Quite frankly, I didn't lay off friends and associates of many years and spend countless sleepless nights just to be in competition with a state supported bank. It's bad enough watching the federally propped up Alliance Bank's million dollar ad campaign on television.

FedAlaska will celebrate it's 40th Anniversary this November. Our nine branches in Juneau, Fairbanks, Kodiak and Anchorage survived this recent unpleasantness and will be here another 40 years.

Do us a favor, Senator Kelly, and oppose this legislation. Your opposition may create a handful of losers, but thousands of Alaskan consumers will benefit.

Sincerely,

Roger Aldrich
President

cc: Commissioner Tony Smith
Governor Steve Cowper
Senator Rick Halford
Representative Sam Cotten
Representative Randy Phillips

P.O. Box 107505 Anchorage, Alaska 99510-7061 (907) 276-1011
ANCHORAGE • KODIAK • FAIRBANKS • JUNEAU

ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE
ANCHORAGE, ALASKA 99503-6647
(907) 562-1255

April 19, 1988

APR 19 1988

The Honorable Tim Kelly
PO Box V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for the opportunity to testify on SB 502. I regret the teleconference at the Anchorage end was very sporatic and we did not get a clear understanding of the committee's intent. However, I would like to reiterate the credit unions' position on this issue. We oppose SB 502, not because we were excluded from the legislation, but because we strongly feel it is bad public policy for the state to artificially and selectively "bail-out" private enterprises.

Credit unions do not wish to be included in this legislation and we will make every effort to oppose its adoption.

Thank you again for your consideration of our views.

Sincerely yours,

Nancy B. Usera
President

NBU/tc
cc: Senate Labor & Commerce
Senate Finance
Commissioner Tony Smith

Denali Federal Credit Union

April 15, 1987

Senator Tim Kelly
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

RE: Senate Bill to provide state financial assistance for state-chartered banks

Dear Senator Kelly,

I would like to express strong opposition to a new Senate bill, introduced by the Finance Committee, that would provide state financial assistance for state-chartered banks. We all know the economy is weak and many companies and industries are taking a real beating right now, including the average homeowner. In light of this, it would be wrong for state government to invest in, and support in effect, one select group of financial institutions so as to be better able to compete against the other financial institutions that have not asked for assistance.

Alaska has too many financial institutions for the size of the market as it is. Why disrupt normal competition in the market place by investing in one select group. All the financial institutions, including us, chose to make the lending decisions that we did. We will live with the consequences; should the others not do the same?

If the state is going to invest or bail out private industry, how should it be done? To be really fair the state would need to invest in or bail out the construction industry, the oil support companies, merchants, and let us not forget the average home-owner who has really had it tough. The state of course can not bail out every one so why start giving financial assistance to one special interest group.

If the legislature is going to seriously consider this bill, I ask that you please give it full and public hearings. Almost 70 percent of all Alaskans belong to a credit union and we would like to hear how the legislature proposes to invest our state money in one select group of banks when we are sitting with negative equity in our homes, failing businesses and struggling to keep our credit union competitive and financially strong. We have over 17,000 members in Alaska with branches in Fairbanks and Anchorage. We have served our member's financial needs for many years and plan to continue doing so in the future the Alaskan way; on our own, without state assistance.

FRONTIER
ALASKA
STATE CREDIT UNION

MAIN OFFICE:
3500 EIDE STREET
ANCHORAGE, AK 99503
563-3766

DIMOND BRANCH:
300 E. DIMOND BLVD.
ANCHORAGE, AK 99515
344-5144

SOLDOTNA BRANCH
131-A WAREHOUSE
SOLDOTNA, AK 99669
262-7600

EAGLE RIVER BRANCH:
16516 CENTERFIELD DRIVE
EAGLE RIVER, AK 99577
694-644[illegible]

CAMPUS BRANCH:
2601 PROVIDENCE DRIVE
ANCHORAGE, AK 99508
561-3151

April 14, 1988

The Honorable Tim Kelly
State Capitol
Mail Stop 3100, Room 101
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

I am writing to you to express my opposition to SB 502, a bill we in the Credit Union business in a not so fond manner refer to as the "bank bailout bill."

As the President of Frontier Alaska State Credit Union, and the Chairman of the Alaska Credit Union League's Governmental Affairs Committee, I am extremely distressed that the legislature would contemplate an infusion of state money in the form of subordinated debentures into state chartered banks. I feel strongly that the action I just described is a poor public policy and gives the general public the impression that the state is willing to randomly "bail out" selective businesses during the economic downturn.

A "bailout" of this nature puts the financial institutions that have good management and sound lending policies at a competitive disadvantage. Those institutions have also suffered losses because of the economy, however; those institutions have survived without government assistance because they have taken steps necessary, i.e., reducing staff, wage freezes, and branch closings necessary to maintain profitability and an adequate capital base. A state infusion of cash into ailing banks will allow those banks to continue their operations as they always have without making any of the changes necessary to survive during these depressed economic times.

All Alaskan financial institutions are facing a challenge at this time. However, I feel strongly that the legislature should allow the market to settle and adjust without governmental interference. The financial institutions that make the hard decisions and are well managed will survive and prosper.

Admittedly, the end result may be fewer financial institutions, however the surviving institutions will be stronger and more efficient, which will result in reduced costs and better service to the consumers who utilize those institutions.

Again, I strongly urge you to oppose the passage of SB 502. If you would like to discuss this issue or desire any additional information, please feel free to contact me at the Credit Union's main office.

Thank you for your time and attention.

Sincerely,

Leslie Ellis

Leslie Ellis
President

LE:am

TESTIMONY OF NANCY USERA, PRESIDENT
ALASKA CREDIT UNION LEAGUE
SL&C 4/18/88, SB 502

Nancy Usera, President, Alaska Credit Union League, testified via teleconference in opposition to SB 502.

The Alaska Credit Union League represents all state credit unions. There are two state chartered credit unions, 15 federally chartered. Their asset sizes range from half a million dollars to eight hundred and fifty million dollars. There are approximately 350,000 resident of Alaska who belong to credit unions, which are member owned and operated financial cooperatives.

The credit union movement in Alaska is opposed to this legislation. They are philosophically opposed to it from the standpoint that they don't believe that the state should be in the business of bailing out private enterprise. But specifically, they don't think that the state should selectively chose one type of enterprise over another. Its like blessing one child and condemning the other to an uncertain future. Contrary to the language of the bill they don't think that this proposal promotes fair competition but rather gives an advantage to those institutions that will be able to receive capital through this program. It's sort of the Burger King vs McDonalds analogy. How do you say, here are two competing institutions and the state chooses to help Burger King and

let McDonalds go it on their own through good management and the tough things that have to be done.

Recently they have had a lot of articles in the Anchorage papers and on television about some of the trials and tribulations that credit unions have gone through and its true that a fair portion, less than half, of the credit unions this year lost money for year end 1987. Because they are having the same affect and have to make the same decisions on their day to day basis, they are fighting the economy like the banks are. They have real estate losses and have to cut back staff, lower operating costs, and are doing all the tough things that have to be done to get through this tough time. They don't think that it is something that was unforeseen. As early as 1985 there were indicators that the real estate market would was turning. All the financial institutions were in the same position, they had to do the hard things that were going to be necessary to be able to survive in a down turned economy. Right now there are some 40 financial institutions in the State of Alaska, or 1 per 10,000 residents. Obviously there is an over saturation of the market. While they certainly don't want to see any of these financial institutions fail it does come down somewhat to a question of survival of the fittest. Those institutions that get mean and lean and can compete and provide a viable good service to the consumers are going to survive and those

that won't make those tough decisions aren't going to make it. They don't think that the state should be in the business of deciding who will and who will not. As a matter of fact the program of artificially propping up one institution over another will create debts. We may still have 40 financial institutions but they will be 40 weakened institutions instead of perhaps 35 strong ones. They don't know that all of the credit unions are going to make it through these. They don't know, they think that the hard decisions are going to be made but they understand that this is part of doing business and its part of taking the risks in private enterprise. Credit unions for the most part are directly competing with the smaller state chartered banks for the same deposits and for the same lending dollar. The credit unions, probably a good half of them, are in a position that they do make small business loans, to owner/operators, to individuals who have businesses that they need to keep going on a day to day basis. The difficult part is finding good loans. One of the reasons that everyone is in a tough position right now is when they made those loans they sure looked good but the market turned around on them. We are all in the same position. Credit unions have a lot of liquidity, they are ready, willing and able to make loans for worthwhile purposes to the residents of the State of Alaska. They don't want to come across opposing this legislation as "sour grapes." You know, gosh its not fair that they

should help them and not us. But rather they think that financial institutions should be allowed to succeed or fail based on their viability in the market place.

End of Testimony.

Alaska Continental Bank

A PLAN TO MAINTAIN A STATE BANKING SYSTEM AND PROVIDE ECONOMIC STABILITY FOR ALASKA

An Overview

Historically, Alaskan owned and operated financial institutions have provided a substantial number of housing and business loans and have been an important source of financing for Alaska's small businesses. However, over the past few years, these institutions have experienced a major erosion of capital due, in large part, to circumstances outside their control.

As a result, these institutions can no longer fulfill their traditional role to provide an alternative source of financing in the state's marketplace. The failure of other financial institutions has disenfranchised many borrowers leaving them at the mercy of the FDIC, and unable to obtain innovative financing to survive in this economic downturn.

This proposal calls for an investment by the state to bolster the capital of state chartered banks.

* No cash would be required from the state.

* The state would receive a substantial cash profit over the life of the program.

* Alaskan financial institutions will be able to multiply the state investment at least ten times injecting that amount of actual cash into the Alaskan economy.

* The state's interest is safeguarded.

The result from the program will be one of stabilizing a shaky economy while protecting and preserving Alaskan businesses, jobs and the dual banking system Alaska has enjoyed for many years.

BANKING IN ALASKA: THE CURRENT STATUS

Historically, the State of Alaska has benefitted from two distinct banking systems;

(1) National Banks supervised by the Controller of the Currency and which are outside state supervision or regulation; and

(2) State chartered banks administered by the Alaska Department of Commerce, Division of Banking, which are fully responsive to state needs and regulations.

The banking industry has suffered a tremendous negative impact in just over a year's time. Five banks have failed. Three were closed, and two were merged into a new FDIC controlled bank. The merger consolidated United Bank Alaska and Alaska Mutual Bank into the new Alliance Bank. Two savings and loans and two credit unions also failed.

As a result of these events and the severe downturn in the economy, the majority of banking within Alaska is now controlled by two huge national banks and three banks which are fully controlled by outside interests!

National Banks
National Bank of Alaska
First National Bank of Alaska

Banks Controlled by Outside Interests
Ranier Bank Alaska
Controlled by Ranier Bank-Seattle and Security Pacific Bank of Los Angeles

Key Bank of Alaska
Controlled by interests in Albany, New York

Alliance Bank
Controlled by the FDIC and by private interests centered in Monaco.

The remaining state banks are locally controlled. They are:

Alaska Continental Bank	Anchorage
Alaska Statebank	Anchorage
Home Savings Bank	Anchorage
Denali State Bank	Fairbanks.
B.M. Behrends Bank	Juneau
First Bank in Ketchikan	Ketchikan

The only independent state institutions surviving in Anchorage are Alaska Continental Bank, Alaska Statebank and Home Savings Bank, all specializing in small business and home loans.

1987 was a disastrous year for all but two banks which are headquartered in Anchorage. Statistics from the Department of Commerce, Division of Banking and Securities illustrate the severe impact upon banks. (These figures do not include the assets controlled by the FDIC.)

12/31/86 to 12/31/87 CALL REPORT

Cash dropped	$ 58.0 million
Loans dropped	$704.9 million
Deposits dropped	
Individual	$ 51.0 million
Government	$ 4.7 million
State of Alaska	$307.0 million
Checking accounts down	$ 97.0 million
Savings accounts down	$202.0 million

The net worth of all banks dropped to $482.7 million even with the injection of $360 million from the FDIC to assist the UBA-AMB merger into Alliance Bank. Without that assistance, total bank capital would have been reduced to $122.7 million!

Other Real Estate Owned (OREO), not counting FDIC's, increased to $129,108,000.

Total Past Due Loans - not counting FDIC.

38-89 days past due	$126.0 million
Over 90 days and accruing	$ 36.4 million
Non-accruing	$305.4 million
TOTAL non-performing loans	$467.8 million
OREO in bank portfolios	$129.1 million
GRAND TOTAL	$596.9 million

Total non-performing assets were 11.9 percent of all bank assets.

The impact of bank failures and reduced capital has been keenly felt by business owners statewide who are struggling to preserve their businesses and the jobs they create despite a severe economic downturn. The closure of several banks has left these entrepreneurs disenfranchised and their loans under the management of FDIC.

Without management by an Alaskan controlled bank attuned to the unique characteristics of the Alaskan economy, those disenfranchised can no longer obtain extensions, modifications or renewals of their loans, much less the ability to borrow new capital for continuation of their businesses.

One of our larger national banks continues to try and help those large disenfranchised borrowers while the other national bank has been forcefully reducing its loan portfolio and is not making new loans.

Alliance Bank, assisted by the FDIC, is now controlled by outside interests. With it's current problems, it is not able to respond to the needs of those borrowers. The other national bank and the other state banks which are all controlled from outside have turned "conservative" making few, if any, loans to new borrowers.

As a result, only three banks previously mentioned, Alaska Continental Bank, Alaska Statebank and Home Savings Bank remain as the small, locally-owned institutions which are trying hard to both survive the economic recession and service new borrowing needs.

Alaska Continental Bank's Role

Alaska Continental Bank has a unique nitch in the community. When it opened in 1982, ACB's stated purpose was to be the bank for small businesses needing less than $500,000 on a term basis with the support of the Small Business Administration Guaranty Loan program. ACB is now the leading lender in urban and rural Alaska in providing SBA term loans for the purchase, acquisition or refinancing of business assets.

ACB specializes in providing federally insured SBA loans having developed over $40 million of this type of financing statewide representing over 930 commercial business loans. ACB is the 27th leading lender in the entire nation in providing this type of financing. ACB continues to be the only bank advertising for small business loans statewide.

The majority of loans provided are for working capital and have been made for business development in locations which include Anchorage, Bethel, Homer, Wasilla, Palmer, Soldotna, Juneau, Kodiak, Cantwell, Houston, Whittier, Fairbanks, Seward, Kenai, Talkeetna, Skwentna, Eagle River, the North Slope, Moose Pass and Aleknagik.

Alaska Continental Bank made a commitment and fulfilled a promise to Alaskans to help create new business and jobs for Alaskans statewide.

In contrast to ACB's focus on business, Home Savings Bank is required by its state charter to make 60 percent of all its loans for housing. It is the leading lender of home loans in the Matanuska-Susitna Borough and the greater Anchorage area,

Compounding the Problem: Loss of Capital

All but two banks in Anchorage have lost money in the last two years. Borrowers who have become unable or unwilling to pay their loans when due have impaired bank capital. State and federal agencies have followed their established regulations and have required those banks to write off non-performing loans that now may be undercollateralized.

Those write-offs have further eroded capital reserves. For example, three years ago a bank might have made a $100,000 loan backed by $130,000 in real estate. But, with the decline in real estate values, today that real estate collateral may be worth $65,000, and the borrower is having difficulty meeting the payments. Even if the bank now reduces payments and interest rates, it would still be required to write off at least $35,000 because of the drop in collateral values against capital.

As a bank's capital is reduced physically or through paper write-offs, the bank's ability to expand and initiate new deposits and investments is severely limited by regulation.

This relationship is at the heart of the current banking crisis and a potential solution to allow Alaskan banks to play an active and effective role in economic recovery.

Bank capital is like a three legged stool. In order to be in compliance with banking regulations, a bank is allowed to have $12 in deposits and $10 in loans for each $1 of capital. As capital declines, so does the ability to generate deposits and make loans. Without profits to support losses, deposits and loans must be proportionately reduced to stay in compliance with regulatory guidelines.

Just when there is a need for Alaskan banks to help Alaskan businesses the most, the reduction in capital severely limits the amount of money which can be injected into the economy through loans. A bank is therefor unable to help borrowers refinance, obtain new credit or assist in obtaining a moratorium.

To provide this critically needed assistance, banks must increase capital.

One traditional way of increasing capital would be through additional sale of stock. ACB is in the process of spending $75,000 to register with the State of Alaska and the Securities and Exchange Commission to conduct a $7.5 million stock offering. However, as a result of the depressed market, all local bank stock is being offered at dramatically reduced prices compared to one year ago. This reduces the potential of a successful offering to raise the necessary capital for ACB or any other state chartered bank.

ACB will need to sell at least $1.5-2 million of new stock to just stay even. The alternatives for ACB, if stock is not sold, are to either reduce bank size by approximately one half or to sell out to an outside bank. The state will then have lost control of another bank to outside interests. Those same consequences loom for other state chartered banks which face the same situation.

AN ALTERNATIVE AND SOLUTION

Increasing a bank's capital directly or indirectly will allow expansion of loan activity necessary for business owners to survive the current economic downturn.

To provide Alaskan chartered banks the ability to achieve that goal and to insure the continuity of a dual banking system, it has been suggested that the State of Alaska assist the state chartered banks with some form of capital assistance through the Alaska Industrial Development and Export Authority (AIDEA) or the Alaska Housing Finance Corporation (AHFC).

AIDEA's historical role is assisting the business community has been one of success. The Alaska Industrial Development and Export Authority was originally funded with $166 million in loans from an emergency loan appropriation that Gov. Jay Hammond made in 1980. At that time he perceived tremendous need for emergency financing and saved the businesses of many people.

Two years later a portion of those funds were reappropriated to AIDEA which, through good management, had increased its net worth to $519 million as of June 30, 1987 with government and short term investments of over $420 million and profits for 1987 of over $24 million. AIDEA has a net worth greater than all off the banks in the state combined. It is suggested that those loans still held unpledged by the Department of Commerce and Economic Development be delegated as a source of cash for payment of state notes to any bank if ever demanded by the FDIC.

How the Program Would Work

An alternative to an unsure stock sale and the risk of losing the few state controlled banks Alaska has is to grant the Department of Commerce, Division of Banking, the authority to invest in subordinated debentures of a bank up to the amount necessary to better meet federal regulatory capital guidelines or the amount of capital the bank had on December 31, 1985.

The beauty of this plan is that it would not require any cash to implement and the state would actually make money!

Using Alaska Continental Bank as an example, with such a program in place, ACB would have the ability to borrow $3-3.5 million from the State of Alaska on a term basis with a fair rate of return back to the State. The state could invest in subordinated debentures by giving the bank a note due in 20 years at no interest but payable on demand if the demand is made by the FDIC.

No cash would physically be exchanged. In effect the state would issue a bank a note and, in return, the state would receive a certificate from the bank for that investment. The state, as an investor, would be paid annual 1% dividends.

The total amount of state participation would be less than $25 million. The program should be open to all state administered institutions regardless of size with a limitation of $6 million of capital assistance to any one state bank.

Notes would be payable in twenty years. At the end of the twenty year period, the note would be cancelled. While the state would never have actually spent any cash, it would have reaped the benefits of annual dividends, and a small paper investment would have resulted in millions of dollars in actual cash being injected into the Alaskan economy.

The State's Interest is Protected

Certainly, with state funds potentially at risk, the state would have an added interest in ensuring a bank holding a state note is run prudently and profitably. That protection is guaranteed and can be further strengthened.

If it's felt a bank is operating improperly, the Division of Banking and Securities has the power and authority to remove any state bank officer or director for unsafe or unsound banking practices. It also has the authority to request the FDIC to come in, liquidate a bank and pay off the depositors.

Additional protection can and should be built into this program as well. Any state bank requiring a loan such as this from the state must, by necessity, demonstrate to the Division of Banking and Securities that it has a viable plan to continue in operation. The applying bank would have to agree that no dividends could be paid to its shareholders while any funds are due the State.

Further, the bank would have to agree to pay the state immediately should the bank be sold to an outside bank holding company, and would have to agree to other reasonable conditions as may be developed by the Division of Banking and Securities.

THE BENEFITS

The State Earns a Profit

If the state did not request that action of the FDIC then the note the state gave the bank to pay for its subordinated debentures would never be called.

Assuming the full $25 million set aside for state investment is utilized by state banks, and a 1% dividend is paid annually to the state over a period of ten years with compound interest, the state would earn a profit of $3.75 million in cash at the end of the ten year period, even though no cash was physically paid out by the state to accomplish this program.

A Small Investment Will Create Many Times Its Worth

As previously noted, every $1 in capital allows creation of $12 in deposits and $10 in loans. Using ACB as an example, the ability to draw only $3 million of capital assistance from the state will enable it to increase:

Deposits:	by at least $30 million
Loans	by $24 million

And since ACB utilizes a significant amount of SBA guaranteed loans, $24 million could be leveraged into over $220 million of new loans or refinances, cash which would be injected into the economy and made available to assist Alaskans survive the economic downturn.

The Consequences of Failing to Act

Without the assistance of a capital investment from the state or one of its wholly owned corporations, the previously mentioned banks are not going to be able to help with the economic recovery. In fact, the necessary steps required of banks to remain in compliance with regulations to maintain adequate capital will further compound problems being experienced by Alaskan businesses.

As banks strive to maintain mandated capital reserves, this predicament could force many borrowers into liquidation or bankruptcy.

It will be a political decision whether or not to assist state chartered banks and to maintain the dual banking system. As it pertains to ACB, if the decision is made not to support the dual banking system, it will be next to impossible for ACB to continue to work with borrowers.

In an effort to survive, ACB will have to reduce its size by at least 50 percent. That means calling on borrowers to pay their notes in full immediately when they come due. Many people cannot do this, and ACB will be forced to compound the economic difficulty being experienced by businesses.

But, with state assistance of a capital investment, ACB will be able to provide the critical financing needed by business owners statewide.

The ability to provide innovative and unique loan repayment plans geared to a shifting economic picture will be provided. The future need for state assistance will be negated and the original goals and need for which ACB was established in 1982 can continue to be met.

We will either see a strengthening or the demise of our state banking system depending on the action or inaction of the Legislature and the Governor. While the examples outlined here refer to Alaska Continental Bank, the economic stabilization program proposed would benefit all state chartered institutions.

This proposal entails minimal risk to the State and will provide economic returns many times over allowing Alaskan businesses to remain viable thus preserving and protecting Alaskan jobs and the economic stability and independence of Alaskan families statewide.

# # # # #

BEST STORAGE
2200 Gambell Street
Anchorage, Alaska 99503
(907) 274-7978

March 29, 1988

Senator Rick Halford
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Halford:

I would like to ask you to help enact the Economic Stabilization Act of 1988 which authorizes the state to purchase income securities of certain Alaska banks.

I have a small business which depends upon my bank's financial base and its ability to serve its customers. The fate of my business and everything I have worked for during my 25 years in Alaska is wrapped up in the fate of my bank. My business, Best Mini Storage, has served the community for 12 years. I am not asking for any kind of "bail-out" for either my bank or myself. I am simply asking that the state make a prudent investment in banks that will enable them to continue to meet their commitments and to otherwise serve their customers in these very difficult times.

I speak from the experience of someone who has personally suffered from an Alaska Bank failure. When First Interstate of Anchorage went under their loan commitment to me, my savings and years of my life went into the limbo land of FDIC. The loan for my business is now with Alaska State Bank which would be affected by the proposed legislation. In my case, I am not suffering from foolish business decisions. In fact, my business has showed steady gains over the past two years. However, I am vulnerable because sources of long term financing have disappeared. The Economic Stabilization Act of 1988 will enable my bank to continue to extend credit to me, and to others in my situation.

The point I want to emphasize is that this investment in banks will have a very direct impact on small businesses such as mine. This legislation will help prevent the financial ruin of people like myself who are long time Alaskans, have worked hard, tried to make a contribution to our community and who plan to stay here the rest of our lives.

Please contact me if you have any questions. Let me know if there will be a hearing on this legislation. And please -- please do what you can to get this legislation passed.

Thanks very much,

Art Davidson

Alaska Continental Bank

A PLAN TO MAINTAIN A STATE BANKING SYSTEM AND PROVIDE ECONOMIC STABILITY FOR ALASKA

An Overview

Historically, Alaskan owned and operated financial institutions have provided a substantial number of housing and business loans and have been an important source of financing for Alaska's small businesses. However, over the past few years, these institutions have experienced a major erosion of capital due, in large part, to circumstances outside their control.

As a result, these institutions can no longer fulfill their traditional role to provide an alternative source of financing in the state's marketplace. The failure of other financial institutions has disenfranchised many borrowers leaving them at the mercy of the FDIC, and unable to obtain innovative financing to survive in this economic downturn.

This proposal calls for an investment by the state to bolster the capital of state chartered banks.

* No cash would be required from the state.

* The state would receive a substantial cash profit over the life of the program.

* Alaskan financial institutions will be able to multiply the state investment at least ten times injecting that amount of actual cash into the Alaskan economy.

* The state's interest is safeguarded.

The result from the program will be one of stabilizing a shaky economy while protecting and preserving Alaskan businesses, jobs and the dual banking system Alaska has enjoyed for many years.

BANKING IN ALASKA: THE CURRENT STATUS

Historically, the State of Alaska has benefitted from two distinct banking systems;

(1) National Banks supervised by the Controller of the Currency and which are outside state supervision or regulation; and

(2) State chartered banks administered by the Alaska Department of Commerce, Division of Banking, which are fully responsive to state needs and regulations.

The banking industry has suffered a tremendous negative impact in just over a year's time. Five banks have failed. Three were closed, and two were merged into a new FDIC controlled bank. The merger consolidated United Bank Alaska and Alaska Mutual Bank into the new Alliance Bank. Two savings and loans and two credit unions also failed.

As a result of these events and the severe downturn in the economy, the majority of banking within Alaska is now controlled by two huge national banks and three banks which are fully controlled by outside interests!

National Banks
National Bank of Alaska
First National Bank of Alaska

Banks Controlled by Outside Interests
Ranier Bank Alaska
Controlled by Ranier Bank-Seattle and Security Pacific Bank of Los Angeles

Key Bank of Alaska
Controlled by interests in Albany, New York

Alliance Bank
Controlled by the FDIC and by private interests centered in Monaco.

The remaining state banks are locally controlled. They are:

Alaska Continental Bank	Anchorage
Alaska Statebank	Anchorage
Home Savings Bank	Anchorage
Denali State Bank	Fairbanks.
B.M. Behrends Bank	Juneau
First Bank in Ketchikan	Ketchikan

The only independent state institutions surviving in Anchorage are Alaska Continental Bank, Alaska Statebank and Home Savings Bank, all specializing in small business and home loans.

1987 was a disastrous year for all but two banks which are headquartered in Anchorage. Statistics from the Department of Commerce, Division of Banking and Securities illustrate the severe impact upon banks. (These figures do not include the assets controlled by the FDIC.)

12/31/86 to 12/31/87 CALL REPORT

Cash dropped		$ 58.0 million
Loans dropped		$704.9 million
Deposits dropped		
	Individual	$ 51.0 million
	Government	$ 4.7 million
	State of Alaska	$307.0 million
Checking accounts down		$ 97.0 million
Savings accounts down		$202.0 million

The net worth of all banks dropped to $482.7 million even with the injection of $360 million from the FDIC to assist the UBA-AMB merger into Alliance Bank. Without that assistance, total bank capital would have been reduced to $122.7 million!

Other Real Estate Owned (OREO), not counting FDIC's, increased to $129,108,000.

Total Past Due Loans - not counting FDIC.

38-89 days past due	$126.0 million
Over 90 days and accruing	$ 36.4 million
Non-accruing	$305.4 million
TOTAL non-performing loans	$467.8 million
OREO in bank portfolios	$129.1 million
GRAND TOTAL	$596.9 million

Total non-performing assets were 11.9 percent of all bank assets.

The impact of bank failures and reduced capital has been keenly felt by business owners statewide who are struggling to preserve their businesses and the jobs they create despite a severe economic downturn. The closure of several banks has left these entrepreneurs disenfranchised and their loans under the management of FDIC.

Without management by an Alaskan controlled bank attuned to the unique characteristics of the Alaskan economy, those disenfranchised can no longer obtain extensions, modifications or renewals of their loans, much less the ability to borrow new capital for continuation of their businesses.

One of our larger national banks continues to try and help those large disenfranchised borrowers while the other national bank has been forcefully reducing its loan portfolio and is not making new loans.

Alliance Bank, assisted by the FDIC, is now controlled by outside interests. With it's current problems, it is not able to respond to the needs of those borrowers. The other national bank and the other state banks which are all controlled from outside have turned "conservative" making few, if any, loans to new borrowers.

As a result, only three banks previously mentioned, Alaska Continental Bank, Alaska Statebank and Home Savings Bank remain as the small, locally-owned institutions which are trying hard to both survive the economic recession and service new borrowing needs.

Alaska Continental Bank's Role

Alaska Continental Bank has a unique nitch in the community. When it opened in 1982, ACB's stated purpose was to be the bank for small businesses needing less than $500,000 on a term basis with the support of the Small Business Administration Guaranty Loan program. ACB is now the leading lender in urban and rural Alaska in providing SBA term loans for the purchase, acquisition or refinancing of business assets.

ACB specializes in providing federally insured SBA loans having developed over $40 million of this type of financing statewide representing over 930 commercial business loans. ACB is the 27th leading lender in the entire nation in providing this type of financing. ACB continues to be the only bank advertising for small business loans statewide.

The majority of loans provided are for working capital and have been made for business development in locations which include Anchorage, Bethel, Homer, Wasilla, Palmer, Soldotna, Juneau, Kodiak, Cantwell, Houston, Whittier, Fairbanks, Seward, Kenai, Talkeetna, Skwentna, Eagle River, the North Slope, Moose Pass and Aleknagik.

Alaska Continental Bank made a commitment and fulfilled a promise to Alaskans to help create new business and jobs for Alaskans statewide.

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The beauty of this plan is that <u>it would not require any cash to implement and the state would actually make money!</u>

Using Alaska Continental Bank as an example, with such a program in place, ACB would have the ability to borrow $3-3.5 million from the State of Alaska on a term basis with a fair rate of return back to the State. The state could invest in subordinated debentures by giving the bank a note due in 20 years at no interest but payable on demand if the demand is made by the FDIC.

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# # # # #

SB

513

5-2154A
Rein
4/15/88

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act limiting the liability of certain contractors for hazardous substance release response actions; and providing for an effective date."

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

* Section 1. AS 46.03.824 is amended by adding new subsections to read:

(b) Notwithstanding other provisions of law, and to the extent not in conflict with federal law, a person, or an employee or subcontractor of a person, who has entered into a contract or agreement to provide a response service for a release or threatened release of a hazardous substance may not be held civilly liable in an amount greater than $1,000,000 to a plaintiff and a total of $3,000,000 to all plaintiffs for damages resulting from a single occurrence of a release or threatened release of a hazardous substance caused by the person's negligent performance of, or failure to perform, the response service.

(c) The limitation on liability under (b) of this section

(1) does not affect any right of indemnification that the person has or may acquire by contract;

(2) does not affect the liability of a person who would otherwise be considered a responsible party under applicable law;

(3) does not apply to gross negligence, recklessness, or intentional misconduct by the person; and

(4) applies to contracts and agreements to provide a response service entered into

(A) on or after the effective date of this Act; or

(B) before the effective date of this Act, but not fully performed before the effective date of this Act.

(d) In this section "response service" means a service provided in connection with the mitigation or cleanup of a hazardous substance, including removal, evaluation, planning, engineering, surveying, mapping, designing, construction, and providing equipment.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

WORK ORDER REQUEST FORM

15-2154

~~14~~XXXXXXXXX

KEYWORDS: hazards

liability

contracts/contractors

ASSIGNED TO Bannister

REQUEST FOR: BILL [X] RESOLUTION [ ] RESEARCH [ ] OTHER [ ]

SUBJECT Hazardous Materials Liability

REQUESTED FOR S L&C BY John Ringstad EXT. 3622

* DELIVER TO Sen. Kelly TAKEN BY Barnes

INSTRUCTIONS, EXPLANATIONS

Draft bill relating to contractor liability and hazardous materials, per attached.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: TBC Director, Legal Services

REVIEWED

IN 4/12/88 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT [X] FINAL [ ]

LA-L 10