

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5738 HOUSE JUDICIARY

NEBRASKA

No changes

✓ NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product

✓ NEW YORK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ OREGON

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

SOUTH CAROLINA

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

1987 - In order to be held jointly liable, a defendant's percentage of responsibility must reach certain thresholds:

1. In negligence and malpractice cases.
  - a. "Texas Rule" - defendant's percentage of responsibility must be greater than the plaintiff's; and
  - b. 21 % threshold - defendant's percentage of responsibility must be greater than 20 %.
2. In products liability cases a defendant must reach the 21 % threshold.
3. Where the plaintiff is fault free the defendant must reach a 11 % threshold.
4. There is no threshold for defendants in pollution injury cases and toxic torts.

#### UTAH

1986 - Total abolition.

#### VERMONT

1981 - Abolished the doctrine in favor of several liability. Ut. Stat. Ann. Tit. 12, Sec. 1036.

#### VIRGINIA

Contributory no changes

#### ✓ WASHINGTON

1986 - Abolished except for:

1. fault free plaintiff
2. defendants acted in concert
3. hazardous waste
4. business torts
5. manufacturing of generic products

#### WEST VIRGINIA

1980 - Abolition except in cases where defendants are more than 25 % at fault.

#### WISCONSIN

No changes

#### WYOMING

1986 - Total abolition



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-2345

## HB 68 STRICT LIABILITY FOR HAZARDOUS SUBSTANCE RELEASE

Alaska's financial burden of cleaning up hazardous substances is just emerging. DEC will soon publish their inventory on 200 known and new sites documented on the Kenai Peninsula alone. There are an estimated 500 sites statewide awaiting solutions.

HB 68 would strengthen Alaska statutes that determine responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows past operators, generators, and transporters of the waste to escape responsibility. The State and local communities can no longer be expected to shoulder the enormous costs resulting from another's neglect. For example, the Peters Creek clean up will cost the public 1.2 million dollars. This bill would directly connect the responsible parties to the cost of the cleanup of a release. This would be a powerful incentive to handle and dispose of hazardous substances properly.

The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal Superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

The Alaska Environmental Lobby strongly supports the proposed legislation. This is an important step toward developing public health safeguards and laws necessary for active prevention and alleviating the State's monetary burden.

Issue Paper prepared by Lenore Espington 1/25/89

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • SIERRA GROUP SIERRA CLUB  
ANNA GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY  
DENALI CITIZENS COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • WACHEMAW BAY CONSERVATION SOCIETY  
KENAI PENINSULA AUDUBON SOCIETY • RODDAR AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE  
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL  
AND FISHERIES AND NATURAL RESOURCES



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

CE  
HB 68

January 9, 1989

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to liability for the release or threatened release of a hazardous substance and to recovery of State costs incurred in containing or cleaning up of an oil or hazardous substance spill.

This bill is necessary to clarify who is potentially liable for the damages that might occur, and the expenses that might be incurred, because of the release or threatened release of a hazardous substance. The bill is also necessary to provide the State with an added opportunity to recover the costs associated with responding to the release of oil or a hazardous substance.

Section 1 of the bill repeals and reenacts existing AS 46.03.822, which, in its current form, does not provide the specificity necessary to identify all the potential responsible persons who are liable for the release or threatened release of a hazardous substance. Reenacted AS 46.03.822(a) would identify those persons as follows:

(1) the owner and person controlling the substance at the time of the release or threatened release;

(2) the owner and operator of a facility or vessel from which the release occurred or was threatened; if a facility or vessel is abandoned, the owner, operator and any other person controlling activities on the facility or vessel just before abandonment;

(3) the owner or operator of a facility or vessel from which the release occurred or was threatened, at the time the substance was received by the facility or vessel;

(4) the owner of the substance who arranges for disposal, treatment, or transport for disposal or treatment by a third party, if a release occurs or was threatened at a facility or incineration vessel that contained the substance and was owned or operated by that third party; and

(5) a person who transported or accepted the substance for transport to the place from which the release occurred or was threatened, if in fact the person chose that place.

Reenacted AS 46.03.822(b) would provide relief from strict liability for a person who proves by clear and convincing evidence that an incident was caused by an act of war, by an act of God, or intentional or negligent conduct by certain third parties. The relief from strict liability for an act of God or for the intentional or negligent conduct of certain third parties must be premised upon the fact that the person, within a reasonable time, discovers the release or the threatened release and begins to contain and clean it up.

Reenacted AS 46.03.822(c) would clarify that the relief from strict liability for the intentional or negligent conduct of a third party is also limited by factors relating to the way a facility is acquired, including (1) that the person did not know and had no reason to know that the facility had a hazardous substance disposed on, in, or at it; (2) that a government entity acquired the facility by escheat, eminent domain, or another involuntary type of transfer; or (3) that the facility was acquired by inheritance or bequest.

Reenacted AS 46.03.822(d) would establish the standards by which a person can, under subsec. (c), be considered to have had "no reason to know."

Reenacted AS 46.03.822(e) would provide that the liability of a previous owner or operator of a facility is not lessened if that owner or operator is otherwise liable and if that owner or operator transfers ownership without disclosing the fact of a release or threatened release. Such a person may not obtain relief from strict liability under this section.

Reenacted AS 46.03.822(f) would clarify that the liability of a person who causes or contributes to a release or a threatened release is not affected by AS 46.03.822. Such a person is liable in any event.

Reenacted AS 46.03.822(g) would provide that a person otherwise liable may not transfer liability by agreement. However, this subsection makes clear that persons who are liable under AS 46.03.822 may be insured or indemnified, and may enforce such agreements against other persons.

Section 2 of the bill amends AS 46.03.826 by broadly defining the term "facility," and defines the terms "natural resources" and "vessel."

Section 3 of the bill is needed because of cases in which parties responsible for oil or hazardous substance spills have declared bankruptcy or left the state. The State could be left to remove the hazard with little hope of recovering the costs. The cleanup of such discharges can be enormously expensive.

Section 3 adds a new section to AS 46.08, the chapter on oil and hazardous substance releases. New AS 46.08.075(a) creates a lien in favor of the State whenever money from the oil and hazardous substance release response fund or any other State fund is used to respond to, contain, clean up, or mitigate an oil or hazardous substance spill, or is used to respond to a substantial threat of such a spill. The lien would be effective against all property of the persons liable for the spill.

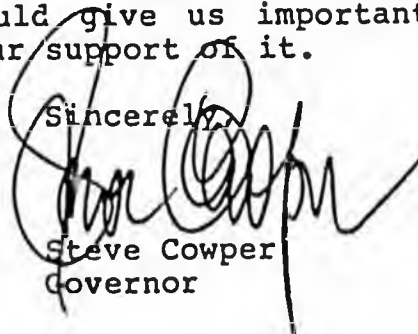
New AS 46.08.075(b) would identify the method for enforcing the lien against real property, including a requirement of recording the certificate of lien and giving notice to the liable party and to anyone else with an interest in the property.

New AS 46.08.075(c) would require the commissioner of the Department of Environmental Conservation to certify that a lien has been reduced or satisfied if payments are made on the liable party's obligation.

New AS 46.08.075(d) would permit the owner of property against which such a lien has been asserted, to seek a court order removing it. The lien may be released by the court, to the extent of the person's ownership interest in it, if that person can show that he or she is not liable for the State's costs in an oil or hazardous substance cleanup or in responding to a threat of such a spill.

In an era when hazardous substances are an increasing part of our environment, and when the State must safeguard the money available to it for protecting the public health, I believe that this bill would give us important tools to respond to both. I urge your support of it.

Sincerely,



Steve Cowper  
Governor

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 68 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for the release or  
7 threatened release of a hazardous substance; recovery  
8 of state costs for an oil or hazardous substance  
9 release; liability of response action contractors;  
10 and providing for an effective date."

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

12 \* Section 1. AS 40.17.110(b) is amended by adding a new paragraph to  
13 read:

14 (60) a certificate relating to a lien under AS 46.08.075.

15 \* Sec. 2. AS 46.03.822 is repealed and reenacted to read:

16 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS  
17 SUBSTANCES. (a) Notwithstanding any other provision or rule of law  
18 and subject only to the defenses set out in (b) of this section, the  
19 following persons are strictly liable, jointly and severally, for  
20 damages to persons or property, whether public or private, including  
21 damage to the natural resources of the state or a municipality, and  
22 for the costs of response, containment, removal, or remedial action  
23 incurred by the state or a municipality, resulting from an unpermitted  
24 release of a hazardous substance or, with respect to response costs,  
25 the substantial threat of an unpermitted release of a hazardous sub-  
26 stance:

27 (1) the owner of, and the person having control over, the  
28 hazardous substance at the time of the release or threatened release;

29 (2) the owner, and the operator, of the facility or vessel

1 from which the release occurred or was threatened to occur;

2 (3) in the case of an abandoned facility or vessel, the  
3 owner, the operator, and any other person who controlled activities at  
4 the facility or on the vessel immediately before the abandonment;

5 (4) a person who owned or operated the facility or vessel  
6 from which the release occurred or was threatened to occur at the time  
7 the hazardous substance was received by the facility or vessel;

8 (5) a person who owned, controlled, or possessed the haz-  
9 ardous substance and who arranged for disposal, storage, or treatment  
10 of the substance by another party or entity, or arranged with a trans-  
11 porter to transport the substance for disposal, storage, or treatment  
12 by another party or entity, if the release occurred or was threatened  
13 to occur at a facility or vessel that contained the substance and that  
14 was owned or operated by any other party or entity; and

15 (6) a person who transported the hazardous substance, or  
16 accepted the hazardous substance for transport, to the facility or  
17 vessel from which the release occurred or was threatened to occur, if  
18 the person selected the facility or vessel.

19 (b) In an action to recover damages or costs, a person otherwise  
20 liable under this section is relieved from strict liability if the  
21 person proves

22 (1) that the release or threatened release of the hazardous  
23 substance to which the damages relate occurred solely as a result of

24 (A) an act of war;

25 (B) except as provided under AS 46.03.823(c), an  
26 intentional or negligent act or omission of a third party, other  
27 than a party or its agents in privity of contract with, or em-  
28 ployed by, the person, and that the person

29 (i) exercised due care with respect to the

1 hazardous substance; and

2 (ii) took reasonable precautions against the act  
3 or omission of the third party and against the consequences  
4 of the act or omission; or

5 (C) an act of God; and

6 (2) in relation to (1)(B) or (C) of this subsection, that  
7 the person, within a reasonable period of time after the act occurred,

8 (A) discovered the release or threatened release of  
9 the hazardous substance; and

10 (B) began operations to contain and clean up the  
11 hazardous substance.

12 (c) For purposes of (b)(1)(B) of this section, a third party or  
13 an agent of a third party is in privity of contract with the person  
14 who is otherwise liable, if the third party or its agent and the  
15 person are parties to a land contract, deed, or other instrument  
16 transferring title or possession of the real property on which the  
17 facility in question is located, unless that property was acquired by  
18 the person after the disposal or placement of the hazardous substance  
19 on, in, or at the facility, and the person establishes that the person  
20 has satisfied the requirements of (b)(1)(B) of this section and estab-  
21 lishes that

22 (1) at the time the person acquired the facility the person  
23 did not know and had no reason to know that a hazardous substance that  
24 is the subject of the release or threatened release was disposed of  
25 on, in, or at the facility; or

26 (2) the person is a governmental entity that acquired the  
27 facility by escheat, or through another involuntary transfer or acqui-  
28 sition, or through the exercise of eminent domain authority by pur-  
29 chase or condemnation.

1 (d) To establish that a person had no reason to know that the  
2 hazardous substance was disposed of on, in, or at the facility, as  
3 provided in (c)(1) of this section, the person must have undertaken,  
4 at the time of acquisition, all reasonable inquiries into the previous  
5 ownership and uses of the property consistent with good commercial or  
6 customary practice in an effort to minimize liability. For purposes  
7 of this subsection a court shall take into account all relevant facts,  
8 including

9 (1) any specialized knowledge or experience the person has;

10 (2) the relationship of the purchase price to the value of  
11 the property if it were uncontaminated;

12 (3) commonly known or reasonably ascertainable information  
13 about the property;

14 (4) the obviousness of the presence or likely presence of  
15 contamination at the property; and

16 (5) the ability to detect contamination by appropriate  
17 inspection.

18 (e) This section does not diminish the liability of a person who  
19 previously owned or operated a facility or vessel and who would other-  
20 wise be liable. If the person obtained actual knowledge of the re-  
21 lease or threatened release of a hazardous substance at the facility  
22 or vessel and subsequently transferred ownership to another without  
23 disclosing that knowledge, the person is liable under (a)(2) of this  
24 section, and a defense under (b)(1)(B) of this section is not avail-  
25 able to the person.

26 (f) This section does not diminish the liability of a person  
27 who, by an act or omission, caused or contributed to the release or  
28 threatened release of a hazardous substance that is the subject of the  
29 action relating to the facility or vessel.

1 (g) An indemnification, hold harmless, or similar agreement, or  
2 conveyance of any nature is not effective to transfer liability under  
3 this section from the owner or operator of a facility or vessel or  
4 from a person who might be liable for a release or substantial threat  
5 of a release under this section. This subsection does not bar an  
6 agreement to insure, hold harmless, or indemnify a party to the agree-  
7 ment for liability under this section. This subsection does not bar a  
8 cause of action that an owner, operator, or other person subject to  
9 liability under this section, or a guarantor, has or would have, by  
10 reason of subrogation or otherwise against another person.

11 (h) The state or a municipality is not liable under this section  
12 for costs or damages as a result of actions taken in response to an  
13 emergency created by a release or threatened release of a hazardous  
14 substance generated by or from a facility or vessel owned by another  
15 person unless the actions taken by the state or municipality consti-  
16 tute gross negligence or intentional misconduct.

17 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

18 Sec. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

19 (a) A person who is a response action contractor with respect to a  
20 release or threatened release of a hazardous substance is not civilly  
21 liable for injuries, costs, damages, expenses, or other liability that  
22 results from the release or threatened release unless the release or  
23 threatened release is caused by an act or omission of the response  
24 action contractor that is negligent or grossly negligent or consti-  
25 tutes intentional misconduct. To show negligence by a response action  
26 contractor, a claimant must show that the acts or omissions of the  
27 contractor under the response action contract were not in accordance  
28 with generally accepted professional standards and practices at the  
29 time the response action services were performed.

1 (b) The liability limitation under (a) of this section does not  
2 apply to a response action contractor who would otherwise be strictly  
3 liable under any other provision of state or federal law.

4 (c) The defense provided in AS 46.03.822(b)(1)(B) is not avail-  
5 able to a potentially liable person with respect to costs or damages  
6 caused by an act or omission of a response action contractor.

7 (d) Except as provided in (c) of this section, this section does  
8 not affect the liability under this chapter or under any other state  
9 law of a person other than a response action contractor.

10 (e) This section does not affect the liability of a response  
11 action contractor that may arise from the response action contractor's  
12 failure to comply with the terms or conditions of a response action  
13 contract or a remedial action plan if one has been approved by the  
14 department.

15 (f) This section does not affect the liability of an employer  
16 who is a response action contractor with respect to an employee of the  
17 employer under any provision of law, including a law related to  
18 workers' compensation.

19 (g) In this section,

20 (1) "response action" means an action taken in connection  
21 with the mitigation or cleanup of a hazardous substance release or  
22 threatened release, including investigation, evaluation, plan develop-  
23 ment, mapping and surveying, engineering, design and construction,  
24 removal, and equipment provision;

25 (2) "response action contract" means a written contract or  
26 agreement to provide response action with respect to a release or  
27 threatened release of a hazardous substance, entered into by a person  
28 with

29 (A) the department; or

1 (B) another person who has entered into an agreement  
2 with the department that provides for response action subject to  
3 the department's oversight and control;

4 (3) "response action contractor" means

5 (A) a person who enters into a response action con-  
6 tract with respect to a release or threatened release of a haz-  
7 ardous substance and who is carrying out the contract; and

8 (B) a person who is retained or hired by and is under  
9 the control of a person described in (A) of this paragraph to  
10 provide services related to the response action contract.

11 \* Sec. 4. AS 46.03.826(3) is amended to read:

12 (3) "having control over a hazardous substance" means  
13 producing, handling, storing, transporting, or refining a hazardous  
14 substance for commercial purposes immediately before entry of the  
15 hazardous substance into the atmosphere or in or upon the water,  
16 surface, or subsurface land of the state, and specifically includes  
17 bailees and carriers of a hazardous substance;

18 \* Sec. 5. AS 46.03.826(4) is amended to read:

19 (4) "hazardous substance" means

20 (A) an element or compound which, when it enters into  
21 the atmosphere or in or upon the water or surface or subsurface  
22 land of the state, presents an imminent and substantial danger to  
23 the public health or welfare, including but not limited to fish,  
24 animals, vegetation, or any part of the natural habitat in which  
25 they are found; [OR]

26 (B) oil; or

27 (C) a substance defined as a hazardous substance under  
28 42 U.S.C. 9601(14);

29 \* Sec. 6. AS 46.03.826 is amended by adding new paragraphs to read:

1 (8) "facility" includes a

2 (A) building, structure, installation, equipment,  
3 well, pit, pond, lagoon, impoundment, ditch, landfill, storage  
4 container, motor vehicle, rolling stock, aircraft, or pipe or  
5 pipeline, including a pipe into a sewer or publicly-owned treat-  
6 ment works;

7 (B) site or area at which a hazardous substance has  
8 been deposited, stored, disposed of, placed, or otherwise locat-  
9 ed;

10 (9) "natural resources" means land, fish, wildlife, biota,  
11 air, water, ground water, drinking water supplies, and other such  
12 resources belonging to, managed by, held in trust by, appertaining to,  
13 or otherwise controlled by the state or a municipality;

14 (10) "vessel" means every description of watercraft or other  
15 artificial contrivance that is used, or is capable of being used, as a  
16 means of transportation on water, or that carries hazardous substances  
17 for the purpose of incineration of the hazardous substances.

18 \* Sec. 7. AS 46.08 is amended by adding a new section to read:

19 Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE  
20 EXPENDITURES. (a) The state has a lien for expenditures by the state  
21 from the oil and hazardous substance release response fund or from any  
22 other state fund, for the costs of response, containment, removal, or  
23 remedial action resulting from an oil or hazardous substance spill,  
24 or, with respect to response, costs, the substantial threat of a  
25 release of oil or a hazardous substance against all property owned by  
26 a person who is determined by the commissioner to be liable for the  
27 expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607,  
28 or other state or federal law. The lien includes interest, at the  
29 maximum rate allowable under AS 45.45.010(a), from the date of the

1 expenditures. The state may file an action in a court of competent  
2 jurisdiction in order to foreclose on the lien.

3 (b) A lien established under this section against real property  
4 is not effective until

5 (1) a certificate of lien is recorded in the district  
6 recorder's office for the district in which the property is located,  
7 describing the property and stating the amount of the lien, the name  
8 of the owner as grantor, and, if known, the name of the person causing  
9 the oil or hazardous substance release; and

10 (2) the commissioner sends a copy of the certificate of  
11 lien by certified mail return receipt requested, or actually delivers  
12 a copy of the certificate of lien, to the persons described in (1) of  
13 this subsection and to all other persons of record holding an interest  
14 in the property.

15 (c) When any amount with respect to which a lien has been re-  
16 corded under this section has been paid or reduced, the commissioner  
17 shall, upon request of the property owner, issue a certificate dis-  
18 charging or partially releasing the lien. That certificate may be  
19 recorded in the office in which the certificate of lien was recorded.

20 (d) A person with an ownership interest in property against  
21 which a lien is recorded may bring an action in a court of competent  
22 jurisdiction to require that the lien be released. The lien may be  
23 released to the extent of that person's ownership interest if the  
24 court finds that the person is not liable for the expenses incurred by  
25 the state in connection with the costs of response, containment,  
26 removal, or remedial action resulting from the oil or hazardous sub-  
27 stance release or threat of release of oil or a hazardous substance.

28 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

Page 9, line 18, before "in the office":

Insert "by the property owner"

*Rejected  
3/22*

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHR 68(Resources)

*amended  
3/22*

Page 1, after line 11:

Insert a new bill section to read:

"\* Section 1. AS 40.17.110(b) is amended by adding a new paragraph to read:

(60) a certificate relating to a lien under AS 46.08.075."

Page 1, line 12:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

Page 5, line 22, after "unless":

Insert

"(1)"

Page 5, line 25, after "misconduct":

Insert new material to read:

"; or

(2) before taking the response action, the person was strictly liable under state law with respect to the release or threatened release"

Page 5, line 25, after ".":

Insert "(b)"

Page 6, lines 1 - 6:

Delete all material.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Res)

Page 9, line 18, after ".", insert:

"A lien recorded under this section is considered paid or reduced if the property owner posts a bond with the commissioner in a form and amount acceptable to the commissioner. The commissioner may not require the amount of the bond to be greater than the value of the property against which the lien has been recorded or the amount of the lien, whichever is less."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

*Admitted  
3/22*

Page 7, line 27:

Delete "or"

Insert "[OR]"

Page 7, line 28, after "oil;":

Insert

"or

(C) a substance defined as a hazardous substance under  
42 U.S.C. 9601(14);"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

Page 2, line 11:

Delete "another"

Insert "any other"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

Page 6, line 16, after "plan":

Insert "if one has been"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

Page 5, line 22, after "unless":

Insert

"(1)"

Page 5, line 25, after "misconduct":

Insert new material to read:

"; or

(2) if the person had not taken the response action, the person would be strictly liable under state law with respect to the release or threatened release"

Page 5, line 25, after ".":

Insert "(b)"

Page 6, lines 1 - 6:

Delete all material.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 68(Resources)

Page 9, line 18, after ".", insert:

"A lien recorded under this section is considered paid if the property owner posts a bond with the commissioner in a form acceptable to the commissioner in the amount of the lien."





*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: HB 68

APPROVED: M. K. A. H. J.

TITLE: An Act relating to liability  
for the release or threatened  
release of a hazardous substance ...

DATE: February 28, 1989

The department supports this legislation for it clarifies that responsibility for the cost of cleanup and disposal of illegally released fuel and toxic substances should be borne by the party or parties responsible. To the extent that the party responsible for releases of toxic substances can be identified, this legislation is beneficial.

However, such legislation is likely to increase the unlawful practice of surreptitious dumping of toxic materials. In recent months, the department has experienced three incidents where unknown parties have illegally and intentionally deposited toxic materials on highway or airport properties. As such dumping is very difficult to trace, particularly if the substance in question is common, determination of responsibility is difficult. There is the prospect that we will experience an increase in the cost of disposal of illegally and intentionally deposited materials on state highway and airport properties. However, as these costs are speculative no fiscal impact is shown.

Internally, the department is faced with the need for additional training and employee awareness of the consequences of improper handling of what are fairly common materials at maintenance shops (e.g, fuel, solvents, waste oil, battery acid, anti-freeze, etc.). A specific budget request has already been made for this training effort and we therefore have not shown an additional fiscal impact relative to this legislation.

With regard to the application of liability on property acquired through eminent domain the department supports the provision for relief of strict liability subject to the requirement that the acquiring agency take special precautions to avoid buying properties with

For more information contact Catherine McHugh - 465-3900

obvious problems. The department has already implemented appropriate right-of-way acquisition procedures to address this issue. For example, we now require that staff examine the historic pattern of land use, observe for artifacts that may suggest past dumping, and if necessary conduct on-site testing for toxic substances prior to acquisition. If contaminated property cannot be avoided, the determination of fair market value is adjusted to take into account the associated clean-up costs.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 68  
PUBLISH DATE:

REQUEST: **FISCAL NOTE**

Revision Date: \_\_\_\_\_ Agency Affected: DOT&PF  
Title: An Act relating to liability for the release BRU: Engineering & Operations  
or threatened release of a hazardous substance... Standards  
Sponsor: Rules Committee by R. of Governor Components:  
Requestor: House Resources

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: This legislation clarifies that the responsibility for the cost of cleanup and disposal of illegally released fuel and toxic substances is borne by the party or parties responsible, and under certain circumstances relieves third parties from liability when they have no knowledge and took appropriate steps to avoid such problems

Prepared by: Jeffery C. Otesen  
Division: Engineering and Operations Standards  
Approved by Commissioner: M. K. A. H. J.  
Agency: Department of Transportation and Public Facilities

Phone: 465-2951  
Date: Feb. 28, 1989

Date: 2/28/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)



## **KENAI PENINSULA BOROUGH**

144 N. BINKLEY • SOLDOTNA, ALASKA 99669  
PHONE (907) 262-4441

**DON GILMAN**  
MAYOR

### **POSITION PAPER**

#### **HB 68 - Hazardous Substance Clean-up Liability**

The administration of the Kenai Peninsula Borough supports HB 68. We believe this bill will provide the necessary incentive for proper disposal of hazardous wastes, by attaching clear responsibility to generators and transporters of wastes as well as owners and operators of disposal sites.

The Fifteenth Legislature appropriated \$955,000 in 1988 for identification and clean-up of hazardous waste sites on the Kenai Peninsula. A comprehensive inventory was done to determine the extent of the hazardous waste problem. The first draft includes approximately 200 sites with others still being explored. A few of these are in varying stages of clean-up, others have just been identified.

In many cases the parties responsible for the release of hazardous substances are either bankrupt or no longer in business. Because current law does not allow for the attachment of liability to generators, other than those who own or operate the facility at the time of release, the original owner or producer may escape responsibility for clean-up. In many of these instances, the state or local governments have to bear that cost and responsibility. Of the new sites identified in the inventory, at least three large sites have no responsible party to pay the cost of clean-up, which will begin next summer. The state will pay between \$1,000,000 and \$2,000,000 for those three projects alone.

A specific example of the problem with liability can be found with the Sterling Special Waste Site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned by the Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. The site was not well managed and eventually the company filed bankruptcy

and abandoned it. The borough was then left responsible for clean-up and closure of the site because clear responsibility and liability could not be attached to those companies who generated the waste. That project has so far cost the state and borough taxpayers \$1,108,922 with anticipated future costs of at least \$134,000 for a water monitoring plan.

In order to deal with the increasing occurrences of hazardous waste problems in Alaska, and to ensure proper disposal of future wastes, it is critical that the Sixteenth Alaska State Legislature pass this bill.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1989

FURTHER REFERRALS:

Date of Committee Action: 3/30/89

The JUDICIARY Committee considered:

HB 68

HOUSE BILL NO. 68

[RELEASE OF HAZARDOUS SUBSTANCES]

"An Act relating to liability for the release or threatened release of a hazardous substance and to recovery of state costs for an oil or hazardous substance release; and providing for an effective date."

### RECOMMENDATIONS:

- [  ] be replaced with CS HB 68 (Jud) [ ] the same title  
[ ] have attached amendment(s) [ ] a new title  
[  ] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_  
[ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] zero fn/analysis \_\_\_\_\_

### SIGNING DO PASS:

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### SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
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[Signature]  
Chairman's signature

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4TH AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE (907) 465-3600

January 24, 1989

The Honorable Curt Menard  
Alaska State Legislature  
House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 68 and Ballot Measure No. 2  
Our File No. 661-89-0302

Dear Representative Menard:

You have asked for our opinion on whether HB 68, which concerns strict and joint and several liability for hazardous substances releases, would conflict with the intent of Ballot Measure No. 2 adopted by the voters during the most recent general election. You have also made a generic inquiry regarding legislative repeal or amendment of laws enacted by initiative.

The short answer to your first question is no. The summary response to your second inquiry is that an initiative may not be repealed by the legislature for a period of two years after its effective date, but it may be amended at any time. Our analysis follows.

First, Ballot Measure No. 2 effected two very specific and discrete changes in the manner in which liability and damages for traditional personal injury torts will be assessed: it limits a party's liability to its actual percentage of fault and it repeals a statutory right of contribution among two or more persons who were jointly and severally liable for the tort. <sup>1/</sup> Ballot Measure No. 2 did not expressly repeal any other statutory provision concerning strict and joint and several liability. Most pointedly, it is silent on the strict and joint and several liability provisions of AS 46.03.758(e) and other statutes set forth in AS. 46.03 and AS 46.04 concerning oil and hazardous substance releases. For this reason, we do not believe that HB 68 would infringe upon Ballot Measure No. 2.

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<sup>1/</sup> The precise language of Ballot Measure No. 2 amends a portion of AS 09.17.080(d) and repeals AS 09.16.

The Honorable Curt Menard

January 24, 1989

Page 2

Furthermore, the intent of the voters in approving Ballot Measure No. 2 can be ascertained from the arguments made in support of the initiative. In Re Lance W., 694 P. 2d 744, 753 (Cal. 1985). See also Carman v. Alford, 644 P. 2d 192 (Cal. 1982) (election materials helpful in discerning voters' intent); Los Angeles County Transp. Comm. v. Richmond, 643 P. 2d 941 (Cal. 1982) (ambiguities in initiative resolved by referring to arguments in support). In this case, that it a relatively easy task.

The attached advertisement paid for by the coalition supporting Ballot Measure No. 2 unequivocally states that:

Ballot Measure No. 2 will have no impact on Alaska's environmental protection laws.

(emphasis in original). See Attachment 1. In addition, the coalition supporting Ballot Measure No. 2 explicitly agreed with legislative counsel that it would have no affect on state environmental laws. Id. This advertisement is direct evidence of the voters' intent not to affect the liability provisions, including strict and joint and several liability, of state environmental laws. Enactment of HB 68, amending the provisions of AS. 46.03.822, will thus not violate the intent of the voters in approving Ballot Measure No. 2.

As to your second question, section 6 of article XI of the state constitution provides that the legislature may amend a law enacted by initiative, but may not repeal the initiative within two years of its effective date. "[T]he legislature has broad powers to amend an initiative." Warren v. Thomas, 568 P.2d 400, 402 (Alaska 1977)(fn. omitted). There could be a point at which amendment and repeal tend to converge where, for example, "the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to 'constitute its repeal'". Supra, 568 P.2d at 402 (citation omitted). 2/ The passage of HB 68, however, does not raise this spectre.

"[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and

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2/ The Alaska Supreme Court has reserved judgment on the precise question of when an amendment might constitute a repeal of an initiative. Warren v. Thomas, supra, 568 P. 2d at 404.

The Honorable Curt Menard

January 24, 1989  
Page 3

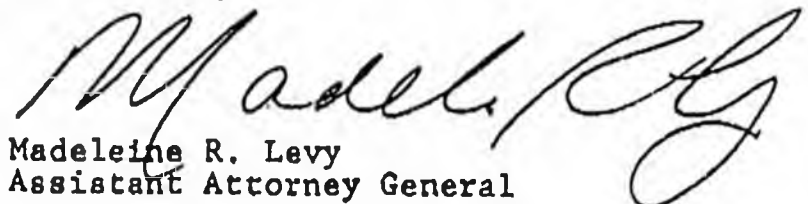
rendered repugnant to, the amendatory act." Id. (citation omitted). Nothing in HB 68 is repugnant to Ballot Measure No. 2. Nothing in Ballot Measure No. 2 is materially changed by HB 68. Ballot Measure No. 2 simply did not address the liability provisions of environmental laws, which is precisely what HB 68 does. Since the subject matter of HB 68 was not even contemplated in the adoption of Ballot Measure No. 2, it can hardly be said to materially change or be repugnant to the ballot measure.

We hope that this adequately responds to your questions. Please feel free to contact us for further information.

Very truly yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:

  
Madeleine R. Levy  
Assistant Attorney General

MRL:jem

Attachment

STATE OF ALASKA  
THE LEGISLATURE

ALASKA STATE CAPITAL  
600 EAST ALASKA STREET  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 18, 1989

SUBJECT: HB 68 and repeal or amendment of  
an initiative (HB 68)

TO: Representative Curt Menard, Co-chair  
House Resources Committee

FROM: Terri Lauterbach *TL*  
Legislative Counsel

You have asked whether HB 68's amendment of AS 46.03.822(a) to provide for joint and several liability for the release or threatened release of a hazardous substance violates constitutional restrictions on amendment and repeal of initiatives. You have also asked for a general discussion of the extent to which the legislature may amend or repeal a law that has been enacted by initiative.

With regard to HB 68, it is my opinion that its amendment of AS 46.03.822(a) to provide for joint and several liability for damages described by that section does not violate constitutional restrictions on amendment and repeal of initiatives. It has the effect of amending Initiative 87-02 in a permissibly narrow way.

The constitutional provision governing this question is sec. 6, art. XI, Constitution of the State of Alaska, which provides:

SECTION 6. ENACTMENT. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty

Representative Curt Menard  
Page 2  
January 18, 1989

days after certification. Additional procedures for the initiative and referendum may be prescribed by law. (Emphasis added.)

The Alaska Supreme Court has addressed the question whether a law may be amended and has shown a tendency to approve amendments quite broadly. Thus a reduction in penalties in an initiated law was approved in Warren v. Thomas, 568 P.2d 400 (Alaska 1977). And, in Warren v. Boucher, 543 P.2d 731 (Alaska 1975), the Alaska Supreme Court acknowledged that the power to amend an initiative was an explicit "check or balance" against the initiative process.

Furthermore, an Attorney General's opinion concluded that the legislature could alter or delete an initiative's requirement that the capital site contain no less than 100 square miles of state land as well as the requirement that the site selected be more than 30 miles from either Anchorage or Fairbanks. Op. Att'y Gen., August 19, 1975.

In my view, the Constitution asks the legislature to give deference to the wishes of the people as expressed in an initiative, at the same time recognizing that an initiative may present policy problems that the legislature may need to resolve. Because the people may not themselves address the difficulties in a particular initiative by amending it but rather must vote it up or down, the constitution permits the legislature to amend it at any time.

The Thomas court suggested that there could be situations in which an amendment so vitiates an act passed by initiative that it constitutes its repeal. In my opinion, that issue is not raised by the amendment in HB 68. The amendment in HB 68 changes the initiative's general rule of several liability with respect to only a limited type of tort action. In being so narrow, the amendment could not be said to vitiate the initiative.

In discussing HB 68, I hope the general parameters of legislative power to amend or repeal an initiative have been clear. The legislature may amend an initiative at any time as long as that amendment does not change the law passed by the initiative so much that it amounts to a repeal of that law. The legislature may repeal an initiative within two years of its effective date.

Representative Curt Menard  
Page 3  
January 18, 1989

I hope this discussion is helpful to you. If I may be of further assistance, please let me know.

TL:gc  
WKG5/105

# It's time to clear the air about the effect of tort reform on the environment.



Trial lawyers opposed to Ballot Measure No. 2 would have you believe that this measure poses a threat to our environment. They maintain that if this measure passes, polluters will escape paying for the environmental damage they cause. That's simply not true.

According to the legislature's own independent lawyer, Ballot Measure No. 2 will have *no impact* on Alaska's environmental protection laws. Similarly, it will have *no impact* on federal environmental protection laws.

The truth of the matter is that since 1986, 39 states have passed

some form of tort reform. And on November 8th, it will be your turn to set the record straight.

Ballot Measure No. 2 will make Alaska's liability law more equitable. At the same time it will protect the right of the victim to receive compensation from those who are responsible.

These are the facts. Don't allow a lot of legal double-talk to cloud the issue.



Support tort reform.  
Vote for Ballot Measure No. 2 on November 8th.

ATTACHMENT 1  
PAGE 1 OF 1 PAGES

**Sec. 46.03.826. Definitions.** In AS 46.03.822 -- 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(4) "hazardous substance" means

(A) an element or compound which, when it enters in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; or

(B) oil;

(5) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(6) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(7) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska. (§ 1 ch 122 SLA 1972; am § 22 ch 7 SLA 1986)

**Revisor's notes.** — Reorganized in "owning or" at the beginning of the paragraph and made minor punctuation changes.

**Effect of amendments.** — The 1986 amendment in paragraph (3) deleted

**Sec. 46.03.828. Other rights of action not affected.** The provisions of AS 46.03.822 — 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury. (§ 1 ch 122 SLA 1972)

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§ 46.03.820

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§ 46.03.822

WATER, AIR, ENERGY, ETC.

§ 46.03.824

ation. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section.

(d) After a hearing the department may affirm, modify or set aside the order. An order affirmed, modified or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders. (§ 3 ch 120 SLA 1971)

**Sec. 46.03.822. Strict liability for the discharge of hazardous substances.** To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. In an action to recover damages, the person is relieved from strict liability, without regard to fault, if the person can prove

(1) that the hazardous substance to which the damages relate entered in or upon the water, surface or subsurface land of the state solely as a result of

(A) an act of war,

(B) an intentional act or a negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person,

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that the person discovered the entry of the hazardous substance in or upon the waters, surface or subsurface land of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time. (§ 1 ch 122 SLA 1972; am § 13 ch 220 SLA 1976)

**Cross references.** — For provision or other persons providing evidence of financial responsibility, see AS 46.04.040(e).  
that actions brought under this section may be brought directly against insurers

**Sec. 46.03.824. Damages.** Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit. (§ 1 ch 122 SLA 1972)



Anchorage Daily News photo by Jim Larson

DEC investigator Rich Cormack takes photos of dumped construction debris at a pad leased by Child's Equipment Services, a company that has filed for protection under bankruptcy laws.

## **DEADHORSE:** Prudhoe Bay staging area gives the oil industry black eye

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

### POSITION PAPER

HB 68

CONTACT: AMY D. KYLE  
465-2600

JANUARY 23, 1989

#### Title

An Act relating to liability for the release or threatened release of a hazardous substance and to recovery of state costs for an oil or hazardous substance release; and providing for an effective date.

#### Effect of the Bill

In Sections 1 and 2, the bill would make the state's requirements for liability for releases of hazardous substances explicit. The current statute refers to a "person owning or having control over a hazardous substance . . ." as being strictly liable for a release of that substance. The bill would explicitly expand the coverage of this provision to include other parties that have responsibility for hazardous substances. This includes:

- Those who generate hazardous wastes;
- Those who have control over sites where hazardous substances are released;
- Those who transport hazardous wastes in cases where the transporter also selects the disposal method.

These parties are currently liable under common law, but the proposed statute would clarify this liability and reduce the need for litigation. This is necessary to ensure that the key parties who manage hazardous substances are liable if the substances are released.

In Section 3, the bill would enable the state to file a lien against assets of a responsible party to recover its costs for cleanup of oil and hazardous waste sites, in cases where the responsible party declares bankruptcy. At present, the Department must first secure a judgement through the court and then participate in a bankruptcy proceeding. The bill would not supercede the claims of secured creditors such as mortgage-holders.

### Department Position

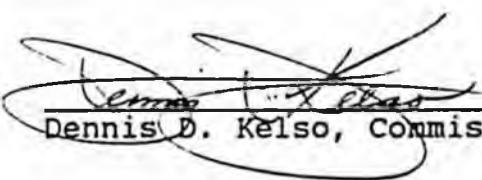
The bill was introduced at the request of the Governor. The Department strongly supports the bill and feels that it is necessary to provide appropriate tools to ensure that hazardous substance releases may be responded to properly. The first two sections of the law incorporate provisions similar to those in the federal "Superfund" law into state law. The third section would implement a recommendation made to the states by the U.S. Supreme Court.

The people of the state are discovering increasing numbers of problems from improper management of hazardous substances. It is imperative that parties who manage these materials take care to keep them out of the state's waters and lands. This will only happen if all the parties who manage hazardous materials are fully responsible for proper management.

This bill would allow the department to ensure that the party responsible for an action such as dumping barrels of hazardous materials on private property or for abandoning a contaminated site and then transferring title, can be held liable. This will provide a powerful incentive for proper management.

### Fiscal Effect

There will be no additional costs resulting from this bill. The legislation would reduce State expenditures for cleanup over the long-term, as responsible parties will be footing a greater share of the cleanup bill. The Department has prepared a zero fiscal note.

  
Dennis D. Kelso, Commissioner

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: DEC  
 Title: An Act relating to the liability for BRU: Environmental Quality  
the release or threatened release of hazardous substance  
 Sponsor: Rules Committee Components: \_\_\_\_\_  
 Requestor: House Resources

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:** None

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Passage of the bill would reduce the demand on the State for funds for cleanup of hazardous substance releases

Prepared by: Amy D. Kyle Phone: 465-2600  
 Division: Commissioner's Office Date: 23 Jan 1989

Approved by Commissioner: [Signature] Date: January 23, 1989  
 Agency: Environmental Conservation

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

SUMMARY OF PROVISIONS OF HB 68

AN ACT RELATING TO LIABILITY FOR THE RELEASE OR THREATENED  
RELEASE OF A HAZARDOUS SUBSTANCE

House Bill 68 has two major provisions:

- \* It makes persons who generate hazardous wastes liable for any improper release of these wastes.
- \* It allows the state to recover costs for cleanup of hazardous substance releases in cases when parties responsible for the releases declare bankruptcy by filing a lien.

HB 68 combines provisions of two bills that were passed by the House last year. One bill had been introduced by Rep. Davis; the other was introduced at the request of the Governor.

Under current law, a person who owns or has control over a hazardous substance is clearly liable for a release of that substance. The liability of parties who may attempt to escape liability by abandoning, selling or transferring a facility is not clearly stated. The bill would clearly establish the liability of the following entities:

- \* The owner or operator of the facility from which the release occurred;
- \* A person who abandons a facility at which a release occurred during the time the person owned or controlled the facility;
- \* A person who owns a hazardous substance at the time it is delivered to the facility from which a release occurs;
- \* A person who owns a hazardous waste and arranges for its disposal;
- \* A person who transports a hazardous waste to a disposal site, if that person arranged for the disposal method.

A person may be relieved from liability if the release is caused by a negligent third party or in the event of an act of God or war. There is also an "innocent landowner" provision which relieves liability in cases where a person took steps to ascertain the status of a property and did not identify a spill and in cases of involuntary acquisition of property such as through inheritance.

The second part of the bill (Section 3) gives the state the ability to file a lien against assets of a bankrupt party for the costs of cleanup of a hazardous substance spill. This provision is identical to the one passed by the House last year. The lien would not displace the claim of a secured creditor, but would fall after it.

HB

73

# Alaska State Legislature



SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:  
FINANCE  
VICE CHAIR -  
HEALTH EDUCATION  
& SOCIAL SERVICES  
BUDGET & AUDIT  
BANKING &  
ECONOMIC  
DEVELOPMENT

## MEMORANDUM

February 8, 1989

TO: Representative Peter Goll

FROM: Senator Jim Duncan

SUBJECT: Senate Bill 73, an act relating to retirement incentive programs for the public employees' retirement system and the teachers' retirement system

I would like to provide you with information on the Retirement Incentive Program since I know that many of you are receiving calls and letters from your constituents in support of the program. I provide the following background information for your use in answering their questions and yours.

The original Retirement Incentive Program was established in 1986 "to reduce the hardship of layoffs and was intended to result in a net reduction in personal services costs to the state or other employer during periods of declining revenue." The program, running from 1986 to late 1987, allowed an incentive credit of three years to employees in the Public Employees' Retirement System and the Teachers' Retirement System. During that window period, a total of 2,346 public employees including teachers, state employees, university, and municipal employees took advantage of the Retirement Incentive Program.

Senate Bill 73, which I introduced this year, re-establishes the Retirement Incentive Program and will allow three month application periods in 1990 for state employees, teachers, municipal employees, and University of Alaska employees. Those periods are summarized in the following table:

<u>Employee Type</u>	<u>Application Period</u>	<u>Employee must Retire on or before</u>
State	January-February, 1990	May 1, 1990
Teachers	March-May, 1990	July 1, 1990
University	May-July, 1990	September 1, 1990
Municipal	July-September, 1990	November 1, 1990

Retirement Incentive Program  
February 8, 1989  
Page 2

There has been a great deal of interest expressed by school districts and teachers in beginning the window period for teachers this year and extending it for a longer period of time. Also, many individuals have asked that the window periods be longer and span more than one fiscal year in order to spread the impact of retirements over a wider period. I would like to know your feelings on these suggestions. I expect that changes will be made in the window periods during the committee hearings.

Under the bill, the three year credit can be added to service years or age depending on the individual's requirements for retirement in the following order:

1. to meet the age or service required for eligibility for normal retirement; or
2. to meet the age required for early retirement; or
3. to reduce the actuarial adjustment required for early retirement; or
4. as years of credited service for calculating retirement benefits if the person is already eligible to retire.

Under the program, if the employer elects to participate, long term employees are provided an incentive to retire, but the decision on whether or not each employee chooses to participate in the program is entirely at that employee's option.

A report issued by the Department of Administration in January of 1988 projected the savings of the last Retirement Incentive Program for state employees to be \$19.7 million over a five year period. The Division of Legislative Audit is currently conducting an audit which traces each position vacated as the result of the RIP to determine the actual savings accruing to state government from the last incentive program. This report should be available soon after the next Legislative Budget and Audit Meeting.

The Division of Retirement and Benefits is currently in the process of gathering information from school districts and municipalities about the savings which they realized from the last incentive program. The preliminary report indicates the savings, especially to school districts, was substantial. For example:

Retirement Incentive Program  
February 8, 1989  
Page 3

Employer	Savings over a Five Year Period (in thousands)
Copper River School District	\$670.5
Yukon Koyukuk School District	414.6
Alaska Gateway School District	129.7
City of Wrangell	186.5
Kodiak Island School District	527.8
Lower Kuskokwim School District	2,220.8
North Slope School District	1,315.5
Dillingham City Schools	773.9
City of Ketchikan	1,214.9
Valdez City Schools	1,630.3
Fairbanks School District	2,579.1
Haines School District	1,013.5
Kenai Peninsula Borough	639.4
Juneau School District	1,290.0
Municipality of Juneau	1,140.0

Not all districts have reported in, Anchorage and the Northwest Artic Schools are working on their reports and should have them to the Division of Retirement and Benefits within a week. I have attached a copy of the latest version of the report from the Division of Retirement and Benefits and will be provide you with updates as additional school districts and municipalities report in.

I know that many of you are concerned, as I am, about possible abuses which might have occurred in the last Retirement Incentive Program. For this reason, Senate Bill 73 explicitly states in Section 4 (b), that "the plan may not permit an employee who is the commissioner or a deputy commissioner of a state department to participate."

Another indirect benefit of the Retirement Incentive Program is that compensation dollars are retained in our economy which would otherwise have been lost if employees were laid off. Many employees who are laid off move out of state to find work, whereas around 70 percent of retirees in both the Public Employees and Teachers' Retirement systems choose to remain in Alaska after retirement. Thus, we retain the salaries of the lower level employees who are not laid off and we retain 70 percent of the retirement compensation which is paid out as the result of the Retirement Incentive Program. We estimate that for state employees alone the net cash gain to our economy of the original incentive program was almost \$30 million.

Retirement Incentive Program  
February 8, 1989  
Page 4

I have asked that SB 73 be scheduled in the Senate State Affairs Committee as soon as possible after the audit becomes available. I have been awaiting completion of the two studies underway on the financial impact of the last incentive program, because I believe that you should have that information before you as the bill is considered.

If you or your staff have questions on Senate Bill 73, please contact Roxanne Stewart of my staff at 465-4766.

Attachment

DIVISION OF RETIREMENT AND BENEFITS  
 RETIREMENT INCENTIVE PROGRAM (RIP)  
 SUMMARY RESULTS OF POLITICAL SUBDIVISION SURVEY  
 January 30, 1989

EMPLOYER	NUMBER RETIRED	POS. REFILLED	COST OF POSITIONS FOR 5 YRS (\$1000's)	COST TO RE- FILL POS. (over 5 yrs (\$1000's)	RIP COST (\$1000's)	SAVINGS or (COST) FOR 5 YRS (\$1000's)
S.E. Resource center	3	0	800.0	0.0	83.0	717.0
Unalaska City School District	1	1	322.5	165.8	34.1	122.6
Copper River School District	11	1	2,854.7	1,904.9	279.3	670.5
City of Skagway	1	1	18.8	Not Provided	Not Provided	0.0
Galena City School District	1	1	264.6	198.0	60.0	6.6
Petersburg Public Schools	2	2	437.5	338.6	55.1	43.8
Yukon Koyukuk School District	5	4	2,006.5	1,414.4	177.0	414.6
Alaska Gateway School District	4	4	1,055.5	745.0	180.8	129.7
Bristol Bay School District	1	1	273.8	186.7	50.3	36.8
City of Wrangell	1	0	220.0	0.0	33.5	186.5
Kodiak Island School District	17	16	4,487.7	3,380.0	579.9	527.8
Delta/Greely School District	2	2	700.9	644.0	96.4	(- 39.6)
City of Palmer	4	3	1,024.1	715.3	101.0	207.8
Yukon Flats School District	5	4	Not Provided	Not Provided	128.5	Not Provided

RETIREMENT INCENTIVE PROGRAM (RIP)  
SUMMARY RESULTS OF POLITICAL SUBDIVISION SURVEY  
PAGE 2

EMPLOYER	NUMBER RETIRED	POS. REFILLED	COST OF POSITIONS FOR 5 YRS (\$100's)	COST TO RE- FILL POS. (over 5 yrs (\$100's)	RIP COST (\$100's)	SAVINGS or (COST) FOR 5 YRS (\$100's)
L. Kuskokwim School District	31	26	7,535.6	4,637.6	677.2	2,220.8
North Slope School District	28	23	7,643.0	5,600.5	727.0	1,315.5
City of Soldotna	2	1	482.8	212.7	47.8	222.3
Dillingham City Schools	6	2	1,231.7	180.0	277.8	773.9
City of Ketchikan	11	8	4,093.0	2,358.6	519.5	1,214.9
Wrangell Public School	2	2	455.5	330.6	43.7	81.2
Valdez City Schools	10	3	2,519.1	604.4	284.4	1,630.3
Adak Region School District	3	3	817.1	611.6	111.4	94.1
Fairbanks School District	71	71	17,998.0	13,592.1	1,826.8	2,579.1
Haines School District	5	1	1,529.6	384.8	131.3	1,013.5
Cordova Public Schools	1	1	185.3	112.4	19.3	53.6
Kenai Peninsula Borough	14	7	3,234.0	2,270.4	324.2	639.4
Juneau School District	42	40	3,750.0	1,449.0	1,010.6	1,290.4
Lake and Penin. School District	2	2	675.0	600.0	53.6	21.4
City/Borough Juneau	13	9	3,574.1	2,134.8	298.9	1,140.4

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
HB 73

*Tech. Amendments ; Public Employee Benefits*

Received January 9, 1989  
by the Rules Committee  
by Request of the Governor

Heard January 26, 1989

Passed Out of Committee January 26, 1989  
6 Do Pass

## TABLE OF CONTENTS

### HB 73: Tech. Amendments - Public Employee Benefits

- Item 1: HB 73 by Rules Committee  
by Request of the Governor
- Item 2: Governor's Transmittal Letter
- Item 3: Fiscal Note



STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 9, 1989

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to public employee benefits. The bill amends provisions of the teachers' retirement, judicial retirement, and supplemental benefits systems.

Section 1 of the bill amends the definition of "retirement fund" in the teachers' retirement system statutes to correct the inadvertent deletion last session of two provisions that provided specific statutory authority for dedication, to the fund, of income and interest earned on assets of the fund. Section 4, ch. 141, SLA 1988 deleted a provision allowing the commissioner of revenue to collect the interest and deposit it in the fund. Section 19, ch. 106, SLA 1988 deleted from the definition of "retirement fund" a pre-statehood provision that the fund includes "income and interest derived from the investment" of money. The bill's amendment reinstating that language is retroactive to June 5, 1988, the effective date of ch. 106, SLA 1988. Section 4 of the bill.

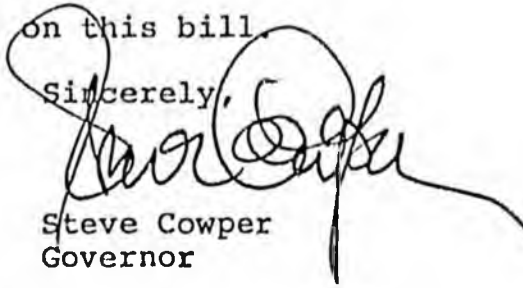
Section 2 of the bill amends a provision enacted last session by sec. 3, ch. 89, SLA 1988, which allows a former judge or justice whose judicial retirement system contribution account has been involuntarily refunded due to a levy, to repay his or her contribution account, whether or not the judge or justice returns to active service. Under AS 22.25.041(b), a former judge or justice may repay an involuntarily refunded contribution account under AS 22.25.041(a), which requires repayment to be made within one year after return to active service. The amendment made by sec. 2 of the bill clarifies that judges and justices who do not return to active service are not subject to the requirement that repayment of an involuntarily withdrawn contribution account be made within one year.

Section 3 of the bill amends AS 39.30.150(a) to clarify that, because municipal as well as state employees can be members of the system, the employer of a supplemental benefits system member, not the Department of Administration, is required to make payments to the member's individual annuity account.

Section 5 provides for an immediate effective date.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper  
Governor

27

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

Bill Version: HB 73  
Publish Date: HOUSE 1/9/89

Item 3  
No. 1

FISCAL NOTE

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
Title: An Act Relating To BRU: Retirement and Benefits  
Public Employee Benefits . . .  
Sponsor: Rules Components: Retirement and Benefits  
Requestor: Governor Comper

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:	0	0	0	0	0	0
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill provides for technical corrections to the Teachers' Retirement System, Judicial Retirement System and the Supplemental Benefits System. There is no fiscal impact anticipated resulting from these changes.

Prepared By: Sally Smith *Sally Smith* Phone: 465-4470  
Division: Retirement and Benefits Date: \_\_\_\_\_

Approved by Commissioner: John M. Andrews *J.M.A.* Date: 12/21/88  
Agency: Department of Administration

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

Bill Version: HB 73  
Publish Date: HOUSE 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to Public Employee  
Benefits  
Sponsor: Rules  
Requestor: Governor

Agency Affected: Department of Revenue  
BRU: Treasury Division  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS:

Prepared By: Milt Barker *MB*  
Division: Treasury

Phone: 465-2350  
Date: 12-19-88

Approved by Commissioner: *[Signature]*  
Agency: Department of Revenue

Date: 12/19/88

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-6611

February 8, 1989

Sally Smith  
Director  
Division of Retirement and Benefits  
Department of Administration  
P.O. Box CR  
Juneau, Alaska 99811

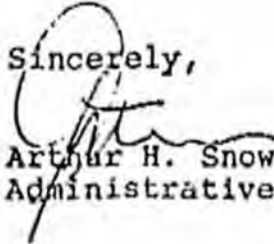
Re: HB 73

Dear Sally:

Assistant Attorney General Virginia Ragle drafted HB 73 and suggested that I ask you if the court system could include two employee benefit provisions in HB 73 which is now before House Judiciary Committee. The first bill would give the same exemption from execution for judicial retirement as PERS and the teacher's retirement system now has. The second bill would remove district court judges from the classified leave system and place them in the leave system for superior and appellate court judges under Administrative Rule 28. The Department of Administration has indicated that this change would have no fiscal impact. I am enclosing copies of the proposed draft legislation as well as (1) a comparison of the present district court leave with the leave provisions of Administrative Rule 28 and (2) a letter from Michael McMullen explaining the Department of Administration's fiscal analysis.

We discussed the inclusion of these provisions with Representative Gruenberg's aide, Mark Handley, and would appreciate your prompt agreement to them. If you have any questions or concerns, please call me.

Sincerely,

  
Arthur H. Snowden, II  
Administrative Director

cc: Representative Goll  
Representative Gruenberg

# STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

POUCH C (MS 0200)  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2200

January 27, 1987

RECEIVED

FEB 03 1987

Ms. Carla Forsythe  
Staff Counsel  
Office of Administrative Director  
Alaska Court System  
303 K Street  
Anchorage, AK 99501

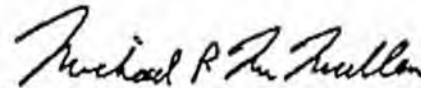
Office of Administrative Director  
Alaska Court System

Dear Ms. Forsythe:

This will confirm our telephone conversation regarding your potential legislation to move district court judges from the statutory leave system to the judicial leave system. All the potential costs discussed in my January 12, 1987 letter would fall to the Court System. If required to prepare a fiscal note, our note would be \$0.0, except for a possible very minor amount if we are required to modify the Leave Accounting System or an interface with the Payroll System. Under the version we discussed by phone, there would not be a cost at all.

Please let me know if you need any further information.

Sincerely,



Michael P. Mc Mullen  
Special Assistant

ALASKA COURT SYSTEM  
Comparison of Judicial Leave Systems

Classified	Exempt										
<p>1. Authority -</p> <p style="padding-left: 40px;">AS 39.20.200</p>											
<p>2. Eligibility -</p> <p style="padding-left: 40px;">District Court Judges</p>											
<p>3. Accrual Rates -</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Service in Years</th> <th style="text-align: left;">Maximum Accrual in Days</th> </tr> </thead> <tbody> <tr> <td>0 - 2</td> <td>24.00</td> </tr> <tr> <td>2+ - 5</td> <td>27.00</td> </tr> <tr> <td>5+ - 10</td> <td>30.00</td> </tr> <tr> <td>10+ -</td> <td>36.00</td> </tr> </tbody> </table>		Service in Years	Maximum Accrual in Days	0 - 2	24.00	2+ - 5	27.00	5+ - 10	30.00	10+ -	36.00
Service in Years	Maximum Accrual in Days										
0 - 2	24.00										
2+ - 5	27.00										
5+ - 10	30.00										
10+ -	36.00										
<p>4. Maximum Leave Carryover -</p> <p style="padding-left: 40px;">Unlimited carryover</p>											
<p>5. Terminal Leave Payoff -</p> <p style="padding-left: 40px;">Accumulated leave balance paid off at termination at current rate of pay</p>											
<p>6. Usage -</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">Annual leave charged to leave balance</td> <td>Annual leave charged to leave balance</td> </tr> <tr> <td>Sick leave charged to leave balance</td> <td>Sick leave not charged to leave balance</td> </tr> </table>		Annual leave charged to leave balance	Annual leave charged to leave balance	Sick leave charged to leave balance	Sick leave not charged to leave balance						
Annual leave charged to leave balance	Annual leave charged to leave balance										
Sick leave charged to leave balance	Sick leave not charged to leave balance										
<p>7. Cost to State -</p> <p style="padding-left: 40px;">Charged to Court as a percentage of gross payroll</p>											

IN THE HOUSE

BY HOUSE JUDICIARY  
BY REQUEST

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "Exemption of judicial retirement from execution."

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

\* Section 1. AS 22.25 is amended by adding a new section to read:

AS 22.25.\_\_\_\_. EXEMPTION OF JUDICIAL RETIREMENT FUNDS AND BENEFITS. Contributions by judges and other amounts held in the system and retirement benefits payable under this chapter are exempt from levy to enforce the collection of a debt as provided in AS 09.38 (exemptions).

For an Act entitled: "An Act relating to leave for district court judges."

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

\* Section 1. AS 39.20.245(b) is amended to read:

(b) An officer or employee, with the approval of the person authorizing the employment, may donate accrued personal or annual leave to another officer or employee only for use as leave for medical reasons. The official responsible for employee accounts shall debit the donor's personal or annual leave account and credit the donee's personal leave account, or sick leave account, as appropriate, for medical reasons only, by converting the donated leave into cash value at the donor's rate of pay and reconvertng the cash value to hours of leave at the donee's rate of pay. Leave donated under this subsection is not leave taken by the donor for purposes of AS 39.20.225(c). An employee who is covered by a collective bargaining agreement may donate leave to or receive donation of leave from an employee or officer who is not covered by a collective bargaining agreement, notwithstanding AS 39.20.310(7) and (8) [AS 39.20.310(8) and (9)].

\* Section 2. AS 39.20.270 is amended to read:

Sec. 39.20.270. COURT LEAVE. Notwithstanding AS 39.20.310(6) [AS 39.20.310(7)], court leave shall be granted to an employee who is classified as full time, whether permanent, nonpermanent, or temporary. An officer or

employee called to serve as a juror or subpoenaed as a witness is entitled to administrative leave with pay, but compensation received by the employee or to which the employee is entitled, whichever is greater, for service as a juror or witness shall be deducted from pay to which the employee is entitled as a state officer or employee.

\* Sec. 3. AS 39.20.310 is amended to read:

Sec. 39.20.310. EXCEPTIONS. AS 39.20.200 - 39.20.330 do not apply to

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme, [AND] superior, and district courts and of the court of appeals, but nothing in AS 39.20.200 - 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

(2) magistrates serving the state on less than a full-time basis;

(3) officers, members of the teaching staff, and employees of the University of Alaska;

(4) [REPEALED

(5)] Persons employed in a professional capacity to make a temporary and special inquiry, study, or examination as authorized by the governor, the legislature, or a legislative committee;

(5) [(6)] members of boards, commissions, and authorities who are not otherwise employed by the state;

(6) [(7)] temporary employees hired for periods of less than 12 consecutive months;

(7) [(8)] persons employed by the division of marine transportation as masters and members of the crews operating the state ferry system who are covered by collective bargaining agreements as provided in AS 23.40.040, except as expressly provided by law;

(8) [(9)] persons employed by the state who are covered by collective bargaining agreements as provided in AS 23.40.210, except as expressly provided by law.



Official Business

COMMITTEE:

HOUSE JUDICIARY

DATE: 2/8/89

SIGN-IN

Subject of meeting:

HBZ - IGNITION INTERLOCK DEVICES

HB 58 - FIRE PROTECTION

HB 73 TECH. AMENDMENT - PUBLIC EMPLOYEES BENEFITS

NAME

ADDRESS FULL ADDRESS PLEASE !

PHONE .

REPRESENTING

DO YOU WANT TO TESTIFY? WHICH BILL?

NAME	ADDRESS FULL ADDRESS PLEASE !	PHONE .	REPRESENTING	DO YOU WANT TO TESTIFY? WHICH BILL?
Jilly Amish	PO Box CR Juneau 99801 0203	4470	Ret. & Ben.	Y 73
Gordon Bruntm	PO Box N Juneau 99811	465-4331	Public Safety	HB 58 if question
Em Parker	Box T	3376	CORRECTIONS	HB 2 NO. QUESTIONS

all  
OK



Official Business

COMMITTEE:

HOUSE JUDICIARY

DATE: 2/8/89

SIGN-IN

Subject of meeting:

HBZ - IGNITION INTERLOCK DEVICES

HB 58 - FIRE PROTECTION

HB 73 TECH. AMENDMENT - PUBLIC EMPLOYEES BENEFITS

NAME

ADDRESS

FULL ADDRESS PLEASE !

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY? WHICH BILL?

NAME	ADDRESS	FULL ADDRESS PLEASE !	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY? WHICH BILL?
Sally Smith	TPC Box CR	Juneau 99801 0203	4470	Ret. & Ben.	Y 73
Gordon Branton	PO Box N	Juneau 99811	465-4331	Public Safety	HB 58 if questions
Eric Patten	Box T		3376	CORRECTIONS	HB 2 NO. QUESTIONS

OK OK



HB

75

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500

February 13, 1989

The Honorable Peter Goll  
Co-chairman, House Judiciary  
Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811


Dear Representative Goll:

Re: HB 75, Construction Contractors

During the recent House Labor & Commerce Committee hearing on HB 75 relating to construction contractor licensing requirements and exemptions, questions were asked regarding the effect of the bill on small businesses who do not now purchase workers' compensation insurance. I am enclosing a response from the Attorney General's office which clarifies this issue.

HB 75 will benefit Alaska employers and employees alike, and I would appreciate having it scheduled for a hearing in the House Judiciary Committee at an early date. Please feel free to contact me if you have questions or wish more information.

Sincerely,

  
Larry Mercurieff  
Commissioner

LM/djd0580p  
021089a  
Enclosure

# MEMORANDUM

State of Alaska  
Department of Law

TO Randall Burns, Director  
Division of Occupational Licensing  
Department of Commerce and Economic  
Development

DATE February 15, 1989

TEL NO 465-3600

SUBJECT HB 75 ("An Act relating  
to construction  
contractor licensing  
requirements and  
exemptions; and providing  
for an effective date.")

*Beth*  
FROM Elizabeth J. Kerttula  
Assistant Attorney General  
Commercial Section-Juneau

During the House Labor and Commerce meeting last week, there were three questions concerning this bill. I have researched the issues and my analysis follows.

## 1. SECTION ONE OF HB-75 IS CONSTITUTIONAL.

The first question that was asked was whether section 1 of the bill was constitutional. AS 08.18.101 (1) (B) as written in the bill presents no problem, but since AS 08.18.101 (1) (A) distinguishes between contractors who have insurance from companies who are admitted to do business in Alaska, and contractors who do not, this raises a question whether there might be an equal protection issue under the 14th Amendment of the U.S. Constitution, or under Art. I, §1 of the Alaska Constitution.

I do not find an unconstitutional discriminatory effect in HB-75.

Since there is no discrimination between residents and non-residents, I do not think that equal protection is violated as far as contractors are concerned. The requirement applies to both resident and non-resident contractors alike.

Neither is there discrimination against insurance companies, since any company, resident or non-resident, can become "admitted" to do business in Alaska. Therefore, HB-75 is not requiring the purchase of insurance from resident insurance companies only. Although the bill requires that the insurance company be admitted to do business in Alaska, this is a fairly minimal, and legitimate, requirement.

If HB-75 required that contractors purchase insurance from only resident companies, or if it required residency as a prerequisite to obtain a contractor's license, then there might be a violation of equal protection. Since HB-75 does not, there is no problem.

*HAYDEN*  
*see page 3 &*  
*page 6*

Even if a court were to analyze this section under equal protection, the section would meet constitutional muster. For purposes of clarification, I have included the following three-step analysis. See, Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984) (helpful explanation of equal protection analysis in Alaska).

A. What is the weight of the constitutional interest impaired? Depending on the primacy of the interest involved the state will have a lesser or greater burden in justifying its legislation.

The interests involved here are economic. Contractors may have to pay more to get proper coverage, and insurance companies will have to be registered in Alaska to be "valid" under the proposed licensing requirement in HB-75. These economic concerns are not very weighty. See, Lynden Transport, Inc. v. State, 532 P.2d 700, 707 (Alaska 1975). Thus, there is a lesser burden on the state in justifying the legislation.

B. What purpose does the statute serve? Depending upon the level of review, the state may be required to show purposes which at the low end of the scale are simply "legitimate objectives" all the way to a "compelling state interest" at the upper end.

Since this is an economic regulation, we have a lower level of review, and probably all the state will have to meet is a "legitimate objective". Id. There can be a number of reasons for the legislation, and since we are at a low level of review the fact that we have one valid reason should suffice. Aiding injured workers through requiring proper workers compensation coverage is a proper purpose.

C. What is the state's interest in the particular means employed to further its goals? The state's burden differs in accordance with the determination of the level of scrutiny under "A", and goes from a "substantial relationship between the means and ends" to a much closer fit.

Here we have the lowest scrutiny, so the state would only have to show that there is a "substantial relationship between the means and the ends" of this statutory requirement. The fit does not have to be absolutely perfect.

The main goal of HB-75 is to provide proper compensation to injured workers. By requiring a contractor to

buy insurance from a company registered to do business in Alaska we assure that we have a method to monitor the type of coverage a contractor has. Without this type of requirement the Department of Labor has not been able to effectively enforce the state's workers compensation laws because there is no way to monitor who has proper coverage and who does not.

Under my initial analysis, section one of the bill passes constitutional muster. Key to this is the fact that any company can be "admitted to do business" in Alaska, and that does not necessarily mean that they have to be resident corporations.

2. WE CAN EXEMPT SOLE PROPRIETORS TO CLARIFY THAT THE LEGISLATION DOES NOT APPLY TO THEM.

The second question was whether this legislation applied to sole proprietors.

I do not think it does, but to be safe we can easily include a provision exempting sole proprietors (and partners). Since sole proprietors and partners can currently opt into the workers compensation program if an insurer will accept them, under AS 23.30.239, people who chose this option should remain within the ambit of the bill. Section 2 of HB-75, dealing with liability, would still apply to sole proprietors.

I suggest re-drafting the bill to include a section "a" after the words "INSURANCE REQUIRED" at line 11, and then adding a section "b" after line 27, to state:

(b) Section a (1) does not apply to sole proprietors or partners who do not elect under AS 23.30.239 to utilize workers compensation coverage as an employee.

This will clarify that sole proprietors (and partners) who are not in the workers compensation program are not required to prove that they have workers compensation coverage before being granted a contractor's license.

3. WE CANNOT REQUIRE FEDERAL CONTRACTORS TO HAVE STATE CONTRACTOR'S LICENSES.

The final question was whether we can repeal AS 08.18.161(7).

This section currently exempts contractors on federal projects from being required to obtain an Alaskan contractor's license.

Randall Burns, Director  
Division of Occupational Licensing

February 15, 1989  
Page 4

After research I conclude that we cannot require that federal contractors obtain a state license.

As a sovereign, the U.S. government controls federal territory. It also controls its own employees and has jurisdiction over them both. States have no jurisdiction over the government itself, or the governments' employees, unless there is a specific grant of authority from the U.S. government to the states.

Although private contractors are not government employees in the same sense as employees such as postal workers, under 10 U.S.C.A. § 2305, the federal government has preempted any state contracting license requirements that conflict with its own requirements concerning private federal contractors.

In Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956); the U.S. Supreme Court faced the exact question of whether state licensing requirements applied to federal contractors. The Court held that "Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder." Miller at 190.

The court analyzed the federal determination of "responsibility" as including contractors who were economically sound, had experience and were generally qualified. Arkansas's licensing requirement was similar (as is Alaska's).

The court relied on Johnson v. Maryland, 254 U.S. 51, 57 (1920), in reaching their conclusion, and noted that the following rationale was applicable:

It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the

duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed.

If the state requires federal contractors to prove that they have workers compensation and liability insurance (and other requirements) we will be in conflict with the federal law regulating procurement. We too would be "laying hold" of them by "requiring qualifications in addition to those that the Government has pronounced sufficient." Because of this, we cannot require that federal contractors have state licenses.

I have attached Miller v. Arkansas for your information.

Thus, the exemption currently in statute should not be repealed and section 2 of HB-75 should be removed. There would be no applicability to federal contractors even if we repealed the exemption, but the exemption provides clarity.

It is interesting to note that under 40 U.S.C.A. § 290, federal law grants states the right to impose their (the state's) workers compensation laws to federal projects within a state's boundaries. Begay v. Kerr McGee Corp., 682 F.2d 1311, 1319 (1982). States do not have to formally acknowledge this through law to have this power. Capetola v. Barclay White Co., 139 F.2d 556 (1943), cert. den., 321 U.S. 799 (1944). However, because of sovereign immunity and federal jurisdiction, states do not have the power to enforce their workers compensation laws against the federal government itself. Roelofs v. U.S., 501 F.2d 556 (1974), rehearing den., 511 F.2d 1402, cert. den., 423 U.S. 830 (1975).

#### 4. CONCLUSION

I see no constitutional problem with requiring contractors to get their insurance from companies admitted to do business in Alaska. We are not discriminating against nonresidents, and even under an equal protection analysis this section of the bill is valid.

I think that sole proprietors would be excluded from the workers compensation requirements in the bill as drafted, but to be positive I have made suggestions to clarify that they are excluded from this, but not the liability, requirement. They are excluded unless they opt to take part in the workers compensation

Randall Burns, Director  
Division of Occupational Licensing

February 15, 1989  
Page 6

program (if they can get an insurance company to accept them) as is their present option.

Finally, since we cannot require federal contractors to have a state license, I have suggested deleting section 2 of the bill.

I hope you find this helpful. If I can be of further assistance please do not hesitate to ask.

EJK:jf

cc: Representative Peter Goll  
Representative Max Gruenberg  
Representative Ann Spohnholz  
Representative Dave Donley

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 75

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to construction contractor licensing requirements and exemptions; and providing for an effective date."

7

8

9

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

10

\* Section 1. AS 08.18.101 is amended to read:

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Sec. 08.18.101. INSURANCE REQUIRED. <sup>(a)</sup> Each applicant, at the time

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of applying for registration or renewal of registration, shall file

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with the commissioner satisfactory evidence that the applicant has in

14

effect

15

(1) either

16

(A) workers' compensation insurance that is purchased

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from a private insurer who is admitted to do business in Alaska

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and that shows Alaska coverage, appropriate employee classifica-

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tions, and Alaska rates, or

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(B) has a valid workers' compensation self-insurance

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certificate issued by the Alaska Workers' Compensation Board to

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cover Alaska workers; and

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(2) public liability and property damage insurance covering

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the applicant's contracting operations in Alaska in the sum of not

25

less than \$20,000 for damage to property, \$50,000 for injury, includ-

26

ing death, to any one person and \$100,000 for injury, including death,

27

to more than one person.

28

~~\* Sec. 2. AS 08.18.101(7) is repealed.~~

29

\* Sec. <sup>2</sup> X. This Act takes effect immediately under AS 01.10.070(c).

HB0075A

- 1 -

HB 75

(b)

section 2 (1) does not apply to ~~persons~~ sole proprietors or partners who do not elect under AS 2.3.30.239 to utilize workers compensation coverage as an employee.

M, 1956.

Court 352 U. S.

reflect the intention of the Senate Report, after giving "judicial review only" had been stricken from the bill. It was not intended to give judicial review in immigration law." (Emphasis supported that after careful study of "judicial review" they concluded that the procedures provided in the bill are in the new work and the pattern of the Immigration and Nationality Act. The safeguard of the exclusion of an alien in both exclusion and deportation. We believe that our interpretation is in accord with these legislative purposes in sponsoring and managing the bill in the other house of the Congress. The bill is a far more expeditious procedure than the present judgment, as the experience has shown. But that fact may be outweighed by the necessity of arrest and detention and the right to make his choice of the procedure. In challenging his exclusion, the bill provides that the review is that of the court.

*Affirmed.*

In the problem of judicial review, the bill provides procedures provided in the bill, for the security and the protection of the interests of this country, remain the same. The Administrative Procedure Act provides that the alien is afforded the same procedure as in the proceedings." (Emphasis supported.) 2d Sess., at 127. The action was filed January 19,

LESLIE MILLER, INC., v. ARKANSAS. 187

Opinion of the Court.

LESLIE MILLER, INC., v. ARKANSAS.

APPEAL FROM THE SUPREME COURT OF ARKANSAS.

No. 51. Argued December 5-6, 1956.—Decided December 17, 1956.

Section 3 of the Armed Services Procurement Act of 1947 provides that awards on advertised bids "shall be made to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered." Appellant was awarded a contract under this section and commenced construction of facilities at an Air Force Base in Arkansas over which the United States had not acquired jurisdiction pursuant to 54 Stat. 19, 40 U. S. C. § 255. Appellant was convicted under Ark. Stat., 1947, §§ 71-701 through 71-721, for submitting a bid, executing a contract, and commencing work as a contractor in the State of Arkansas without having obtained a license for such activities from the State Contractors Licensing Board. *Held*: The state statute is in conflict with the federal statute and the regulations thereunder, and the state statute cannot constitutionally be applied to appellant. *Johnson v. Maryland*, 254 U. S. 51. Pp. 187-190.

225 Ark. 285, 281 S. W. 2d 946, reversed and remanded.

*Leffel Gentry* argued the cause and filed a brief for appellant.

By special leave of Court *John F. Davis* argued the cause for the United States as *amicus curiae*, urging reversal. On the brief were *Solicitor General Rankin*, *Assistant Attorney General Doub* and *Melvin Richter*.

*William J. Smith* argued the cause for appellee. With him on the brief were *Tom Gentry*, Attorney General of Arkansas, and *Thorp Thomas*, Assistant Attorney General.

PER CURIAM.

Appellant submitted a bid in May 1954 for construction of facilities at an Air Force Base in Arkansas over

which the United States had not acquired jurisdiction pursuant to 54 Stat. 19, 40 U. S. C. § 255. The United States accepted appellant's bid, and in June appellant began work on the project. In September, the State of Arkansas filed an information accusing appellant of violation of Ark. Stat., 1947, §§ 71-701 through 71-721, for submitting a bid, executing a contract, and commencing work as a contractor in the State of Arkansas without having obtained a license under Arkansas law for such activity from its Contractors Licensing Board. The case was tried on stipulated facts. Appellant was found guilty and fined. The trial court's judgment was affirmed by the Arkansas Supreme Court, 225 Ark. 285, 281 S. W. 2d 946, and the case came here on appeal. 351 U. S. 948. Appellant and the United States as *amicus curiae* contend that the application of the Arkansas statute to this contractor interferes with the Federal Government's power to select contractors and schedule construction and is in conflict with the federal law regulating procurement.

Congress provided in § 3 of the Armed Services Procurement Act of 1947, 62 Stat. 21, 23, 41 U. S. C. § 152, that awards on advertised bids "shall be made . . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered . . ." The report from the Committee on Armed Services of the House of Representatives indicated some of the factors to be considered: "The question whether a particular bidder is a 'responsible bidder' requires sound business judgment, and involves an evaluation of the bidder's experience, facilities, technical organization, reputation, financial resources, and other factors." H. R. Rep. No. 109, 80th Cong., 1st Sess. 18; see S. Rep. No. 371, 80th Cong., 1st Sess. 16. The Armed Services Procurement Regulations,



indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense have taken to insure the reliability of persons and companies contracting with the Federal Government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder. In view of the federal statute and regulations, the rationale of *Johnson v. Maryland*, 254 U. S. 51, 57, is applicable:

"It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed. . . ."

The judgment of the Supreme Court of Arkansas is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

*Reversed and remanded.*



