ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6939 HOUSE JUDICIARY

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Columbia River pilots' feud threatening busin

Seattle Times 4/7/91 pp. E1-E2

by Terry McDermott
Times staff reporter

KALAMA, Cowlitz County — There's trouble on the river.

An angry, corrosive feud between two groups of riverboat pilots has broken the normal calm of Columbia River commerce, threatening businesses, safety and, according to some accounts, lives.

The dispute has made public many aspects of the often intensely private world of the river pilots, an exclusive fraternity whose members last year guided 2,000 ships and $12 billion worth of oceangoing goods up and down the river.

There is a rugged, cowboy sort of autonomy among the pilots, who pride themselves on their skill, exclusivity and independence. The cowboys, however, aren't completely wedded to independence. They have for more than a century operated as a cartel — the Columbia River Pilots Association.

Sixteen months ago, two pilots, Gordon Howe and Mark Nichols, broke away from the association, whose 40 members had held a monopoly on river traffic for 140 years. Howe and Nichols breached a longshore picket line honored by the other pilots and formed a competing organization, Lewis and Clark Pilotage. They signed an exclusive agreement with one of the biggest exporters on the river, Peavey Grain Co., a Kalama-based subsidiary of ConAgra, the international agribusiness giant.

With the exclusive agreement, Howe and Nichols at least potentially enriched themselves. They also broke the monopoly, the longshore strike and friendships generations in the making.

Since Lewis and Clark was formed, Howe and Nichols have been immersed in a war with both the longshoremen whose picket line they crossed and, especially, with the other river pilots.

In a federal anti-trust and racketeering lawsuit against the CRPA filed in Portland this spring, Howe and Nichols allege their business and lives have been threatened. Nichols says that after he and Howe formed their company, the immediate reaction of two old longshoring acquaintances was to ask him what sort of anchor he'd make. Other threats have followed, he says.

The threats, the suit alleges, take different forms. Sometimes, the trouble takes the innocent shape of a ship passing unannounced in the night, its pilot never acknowledging a ship piloted by Nichols or Howe. Some days trouble comes over the telephone in angry sibilant sounds, threatening economic reprisal to companies that do business with Nichols and Howe. Some days it is a more direct warning to life and limb.

On a recent morning, trouble wore benign, longshore boots, eight of which stood unmoving on the dock at Peavey Grain. The dockworkers inside the boots stood for 15 minutes alongside the Aegean Dolphin, shuffling their feet but little else.

Up on the Dolphin's bridge, Howe waited and seethed.

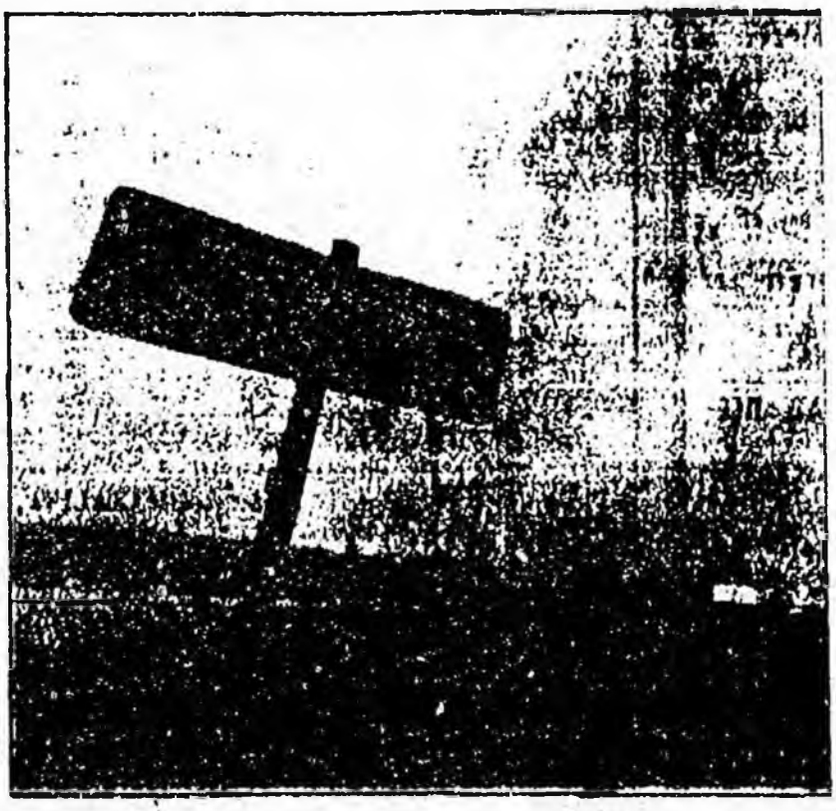
Howe was eager to move the big grain ship away from the dock and get down river. He couldn't begin until the contrary clump of longshoremen untied the ship.

The Dolphin's Greek captain was agitated and wanted to know why Howe didn't get under way. Howe was agitated and told the captain he was helpless. Helplessness is not a condition he relishes. Moving according to their own clocks, the dockworkers eventually untied the Dolphin and set it free. Finally under way, Howe said, "I suppose that was just my imagination."

Howe is regarded even by friends as a prickly sort of man. And his orneriness is, to a large degree, responsible for his current situation.

Peavey is the biggest single shipper on the river. Last year, more than 60,000 rail cars dumped 250 million bushels of Midwest grain, primarily corn, into Peavey's elevators. Almost all of it was loaded onto ships bound for Asia.

In October 1989, a dispute



A our carrier from Japan heads downriver, guided by a Columbia Riv

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had it?

"What did I need the money for? To hoard it? Probably the two biggest issues was: I didn't want federal pilots on the Columbia River and I didn't want people manhandling my fellow pilots."

Piloting is an old and honored maritime profession. Pilot groups exist virtually everywhere in the world where special knowledge of local idiosyncrasies is needed or desired for safe passage of ships. They exist on the theory that a ship's oceangoing captain is insufficiently acquainted with the peculiarities of local waters, normally harbors or inland seas, to safely pilot a ship through them.

Ships are usually required by custom or law to employ a local pilot.

In the United States, the control of piloting was one of the first duties bequeathed to the states by Congress, and local pilots, usually licensed by the states, have operated in "coastal" waters throughout the country ever since.

Five groups of pilots – each working its own pilot grounds – operate in the Northwest. One group guides ships through Puget Sound. Two others work in southern Oregon waters. A fourth group guides ships over the treacherous stretch of water known as the Columbia Bar, where the Columbia current collides with the Pacific Ocean.

The Columbia River Pilots Association takes over ships from the bar pilots at the mouth of the Columbia and brings them all the way up the navigable portion of the river. A typical trip from Astoria to Portland is 85 miles. It is one of the longest and its pilots say one of the most difficult stretches of water in the world for oceangoing ships.

A typical merchant vessel calling on a Columbia River port might have Panamanian registry, a Japanese owner, a Greek captain and a Filipino crew. They all have local pilots.

Even early explorers of the region employed local Chinook Indian pilots. And no ship within anyone's memory, including Navy ships of various nations, has come up river without a local pilot.

"This isn't Puget Sound. This isn't San Francisco or Chesapeake Bay," says Hurn, the pilot association president. "This is 85 miles with a 600-foot ditch with lots of rocks and shoals in it."

The difficulty results, in large part, from the size of the ships – which is large – and the size of the channel – which is small.

Capt. Donald Hughes is the longest-serving pilot in the Columbia River

In many waters, the passing of two 750-foot-long ships within a quarter mile of one another is regarded as a near-miss collision. The Columbia channel is only one-tenth of a mile wide. Every passing is a near-miss.

Because of the relatively close quarters in which they operate, coordination among pilots on the river is essential. One of the functions of the CRPA over the years has been to assure the pilots have the training and skills needed to negotiate the river. "I don't want to meet a lazy guy in a dense fog," Hurn says. "If one doesn't execute, you buy the farm."

"At this speed," said pilot Hughes, "if we hit the dock we'd go right through it."

Hughes spoke as he tried to wedge the Ocean Lily, a Japanese log ship, into a tight berth at Longview. To the uninitiated, the Lily was moving imperceptibly, if at all, yet Hughes and the ship's captain, Jo O Yong, were both tense.

The captain, in fact, kept trying to persuade Hughes not to park his ship as close to the one ahead of it as Hughes was being asked to do by Port of Longview harbor masters. But Yong did not otherwise interfere. He let the pilot run his ship.

The Lily, like most ships on the Columbia, had no incoming cargo. It was tying up at Longview to take on logs. It is axiomatic to the people on the river that the Columbia ports are involved mainly in export. By sheer amount of cargo, this is certainly true.

A great majority of the ships come in empty and go out loaded with grain and wood. Of those that do carry cargo in, the majority are loaded with Japanese cars.

In one of the telling mockeries of modern trade, the financial balance of trade on the river is actually tipped in favor of the imports. The value of those relatively few cars and other high-cost imports routinely outpaces the value of the far greater tonnage of raw-material exports.

The men – and they are all men and all white – entrusted with both export and import cargos have all been members of CRPA. Oregon state retains nominal control over the pilots, setting rates and granting licenses. The state, however, has not licensed a pilot who did not belong to the association since it came into existence just before the Civil War, and pilots only join the association through the approval of its members.

(Oregon licenses the pilots rather than Washington largely because Oregon was there first; also, a majority of the ships that come up the Columbia dock on the Willamette River, which is entirely within Oregon borders.)

The membership vote, which is secret, has huge consequences for

ess, safety, maybe even lives

over work rules arose between Peavey and Local 21 of the International Longshoremen's and Warehousemen's Union.

The union says its members were locked out. Peavey says it was struck. Neither the company nor the union will answer questions about the dispute, but it is clear from other sources that, for whatever reasons, the union began picketing the Peavey dock. The pilots for several days passed through the picket lines as they always had in the past and moved ships. That changed, however, on Oct. 25, when, according to other pilots, Paul Stevenson, the youngest of the CRPA pilots, was jostled and threatened by longshoremen after docking an incoming ship at the elevator.

The threat – never specified in public – was strong enough to convince other pilots to begin honoring the picket lines. Ships began stacking up at the mouth of the Columbia. Others were stranded at docks along the river. Howe, who had been out of town, returned to learn what had happened and was incensed.

River Pilot Association member,

"The longshoremen pushed a couple of our people around, tried to intimidate them," Howe says. "I guess I took that more seriously than some others. I couldn't take that. I couldn't. I wouldn't. And I won't. I hate terrorism and intimidation. Too many people have died to give me the right to freedom. I take that pretty goddarn strong."

Howe tried to convince the rest of the pilots that their responsibility was to move ships.

"We all felt the ship should be moved," says Don Hughes, the longest-serving pilot in CRPA. "We just didn't want to become scapegoats."

Capt. Glen Hurn, president of the CRPA, says the plain fact is the pilots were scared.

"If you're going to go down there and some guy's going to smash your head in, you think twice about doing it," he says.

Howe declared he was going to move the ship regardless. Nichols was the only one to join him.

"We had a definite opinion the ship should move," Nichols says. "Because we've always moved ships. It's our job. If we didn't move them, somebody else was going to. This was a monster step. We didn't make that decision lightly."

Two things were at stake in the making of that decision: money and principle. Howe and Nichols are, they swear, men of principle. They are, in Nichols' phrase, "the last of the dinosaurs."

In less friendly descriptions, they are the greediest men on the river.

As two out of 40 pilots, they represented 5 percent of the CRPA membership. They now control 12 percent of the CRPA's former revenue, something in excess of $600,000 last year. That means nothing, says Howe, who is 58 and nearing retirement. His financial motivation for crossing the picket line was, "Zero. Zero. Nobody'll believe that, but that's it. That's what everybody says: I'm greedy. Taking everything I can get. Why should I take everything I can get when I already

Please see **PILOTS** on E 2

Alan Berner / Seattle Times

...r Pilots Association.

those being voted upon. Once a member of the association, the pilot is entitled to a pro-rata share of the association's pooled income.

In normal years, the pilots each earn more than $140,000. If a pilot is denied membership in the CRPA, he has been effectively barred from piloting ships on the Columbia.

Howe and Nichols threatened the whole system into confusion.

They already held licenses when they left CRPA, but they are not. The two have never been accepted as members of the CRPA and the state has had a hard time determining what its standards of qualification, which had been primarily membership in the CRPA, ought to be.

Cliff Alterman, an attorney for CRPA, says the monopoly of the association is natural. He classifies it as a public utility, like the gas or electric company.

Virtually everyone involved in any discussion of Howe, Nichols and the CRPA gropes for language to describe the split. Almost all end up with the same metaphor – divorce.

The pilots were a family. Howe and Nichols have fractured it.

Says Hughes: "When you have a family, a tight-knit group, you can call any one of them at any time and they'll come. Like that."

There are oddities in all of this. No one is acting much like family these days. The CRPA pilots uniformly describe themselves as men of principle, yet they refuse to acknowledge that Howe and Nichols might have acted for principled reasons. The pilots profess not to be concerned with wealth, yet they see in Howe and Nichols nothing but the pursuit of it.

Howe and Nichols profess not to have cared about money, yet they took the precaution of negotiating a five-year contract with Peavey before they moved a single ship. They profess to have wanted to move the ship to keep pilots from coming in from outside and moving it for them. They acted, in other words, to preserve the monopoly they are now in court trying to dissolve.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE THE BOARD OF MARINE PILOTS

In the Matter of:	)	
Captain Terry K. Bennett.	)	Case No. MP 91-1

AFFIDAVIT OF CAPTAIN TERRY K. BENNETT

Captain Terry K. Bennett, being first duly sworn, states and affirms that:

1. I am the applicant in the above-captioned proceeding and have personal knowledge of the facts and circumstances stated in this affidavit.

2. As the Board is aware, I applied for a Step One Limited Pilot's License for the waters of Southeastern Alaska under 12 AAC 56.040(a). I have been a Coast Guard licensed master and pilot in those waters for six years. During those six years, I completed 19 dockings and 35 undockings in those waters under the supervision of state licensed pilots on vessels of over 2,000 gross tons, without incident.

3. Within the last year, I completed 16 dockings and 15 undockings on vessels of over 2,000 gross tons in the waters of Southeastern Alaska under supervision of a state licensed pilot, without incident.

DILLON & FINDLEY
ATTORNEYS AT LAW
ONE SEALASKA PLAZA, SUITE 202
JUNEAU, ALASKA 99801
(907) 586-4000

4. I am not a member of the Southeastern Alaska Pilots' Association ("SEAPA"). In fact, together with another pilot, Captain Joseph Warren Homer, I have been actively seeking work in Southeast Alaska in competition with SEAPA since 1988. Last year, after two years of trying without any success, Captain Homer and I were able to obtain pilot work in Southeast Alaska outside of SEAPA.

5. It is my estimate that through the last season, SEAPA had control of 95% to 100% of the pilot market in Southeast Alaska. To my knowledge, Captain Homer and I were the only independent state-licensed pilots who have worked in Southeast Alaska during the past six years. The only pilots other than Captain Homer who could have supervised my dockings and undockings during this period were members of SEAPA.

6. I have no personal animosity towards the pilots who are members of SEAPA. In my opinion, the members of SEAPA include some of the most experienced and capable pilots active in the State of Alaska. However, the SEAPA members have continuously refused to supervise the dockings and undockings necessary for me to increase my license.

7. The reason for this has become apparent by the comments and conduct of SEAPA members. Last spring, Captain Homer and I began negotiations with the owners of a cruise vessel operating in Southeast Alaska to provide pilot services for the 1990 season. Apparently, word of our negotiations reached SEAPA.

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8. On May 31, 1990, Captain Dale O. Collins, President of SEAPA, telephoned Captain Homer and myself to discuss the negotiations. Captain Collins stated that if we backed off from negotiations, he would make some efforts to have us hired by SEAPA. When we balked at this proposal, Captain Collins threatened to "play hardball" and "go out and capture the ship".

9. Later that day, Captain Collins called again, and stated that SEAPA could stop us from competing with a court action and "all kinds of roadblocks", and could cause the cruise line "embarrassment" if it hired us instead of SEAPA to provide pilot services. He also said that "if we brought you back, Terry, we'd be training you up. You'd become more -- you'd have more of a license."

10. On August 7 or 8, 1990, I was approached by Captain Collins on the street in Ketchikan. By that time, Captain Homer and I were independently employed as pilots for the cruise line. Captain Collins told me that SEAPA would prevent me from upgrading my license from a channel pilot license to a docking license. He said that the Board of Marine Pilots would "subpeona the captain" who signed my dockings and undockings, and "make him testify under oath" about the dockings and undockings. He said that I should consider "a deal" with SEAPA, and that it was in my "best interest" to return to work for SEAPA.

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11. At the November 8 - 9, 1990, Board of Marine Pilots meeting, Captain Collins spoke to the Board about my request for a waiver. It was my understanding from Collins' comments that SEAPA pilots were now willing to supervise my dockings, and would do so this winter. The Board's letter to Captain Collins of November 28, 1990, indicates the Board had the same understanding. (Copy attached to this affidavit as Exhibit A).

12. I spoke with Captain Collins in December, 1990, about traveling to Ketchikan as soon as possible to accomplish the five additional dockings and undockings. He said there would be a number of vessel movements between Christmas and New Year's, and that I could obtain dockings and undockings during that period. I confirmed this with a letter on December 21, 1990. (Copy attached as Exhibit B).

13. Relying on Captain Collins' advice, I travelled to Ketchikan at personal expense during the holidays. On December 27, 1990, on arrival at the Ketchikan airport, I spoke with two SEAPA members, Captains Baldry and Smith. I greeted Captain Smith and asked, "how are you?" Smith replied, "I don't know. I'm waiting to find out what kind of shit you guys are going to pull on us this time." When I asked, "What guys?", Smith answered, "You and Homer. We heard a rumor you guys are competing with us." I said, "Well, I'm just here to take you up on the offer of dockings." Captain Smith turned and walked away. Captain Baldry said, "We've heard that you are in direct

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competition with us." When I asked Baldry where they had heard that, he said, "I can't say."

14. I went to the SEAPA office to get information about ship movements. The board indicated that a log ship was going to be moved from Metlakatla to Ward's Cove, with Captain Ed Creasy as the pilot, on December 28, 1990. I called Captain Creasy and left a message on his answering machine.

15. Later that day, I stopped back at the SEAPA office and spoke again with Captain John Baldry. He said, "Things seem to have changed since the Anchorage [Board of Marine Pilots'] meeting." Captain Baldry indicated that SEAPA expected "reconciliation" with me after the Board meeting, but that it had not happened. I took this to mean that they expected me to give up competing. I told Baldry that I was still looking for work for the 1991 season, and that I was just there for the dockings they'd offered.

16. I left two calls for Captain Ed Creasy on his answering machine. About 8:45 p.m., the hotel desk clerk gave me a message from Captain Creasy stating, "I'm not taking any new riders." At 4:15 a.m., December 28, 1990, Captain Creasy called me and asked if I had received his message. Captain Creasy said, "I'm sorry but at this time I feel that I cannot train a competitor."

17. At 8:30 a.m. on December 28, 1990, I met with Captain Dale Collins to discuss the dockings. Collins said "now that you are a competitor there won't be a lot of guys in

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SEAPA who will cooperate on dockings." Collins said that he would keep his personal promise to supervise me in dockings and undockings. Collins then spoke at some length about the "fate of the industry" if there are competing pilot groups. Collins said that ship operators would use competition to "drive a wedge between us", and that "we'll all make less money."

18. As for the Board of Marine Pilots' request, Captain Collins said that the Board could not order SEAPA to cooperate with me. Collins said that whether or not to supervise my dockings and undockings was up to each individual pilot. Collins said that he would "supervise" me, since it was his policy to "give everyone dockings," but that he would not "train" me.

19. On December 31, 1990, I went with Captain Dale Collins on a trip from Guard Island to Wrangell. The ship was the Hyundai #16, 22,000 GRT, Korean registry. I was allowed to do the docking with some assistance and instruction from Captain Collins.

20. On January 2, 1991, I called the SEAPA office to check on the next job dispatch. The next job was assigned to Captain George Porter. I left a message with Barbara Jones, the office administrator, asking if I could go on the trip and do the docking or undocking. Captain Porter left word with Ms. Jones that: "No, I will not take Bennett."

21. Later on January 2, 1991, I went to the SEAPA office in a last attempt to arrange any more dockings or

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undockings. Captain Barney Elsensohn left a meeting in the conference room and came out to talk to me. Captain Elsensohn said that there was no conflict of interest when he sat on the Board of Marine Pilots and reviewed my application for a license upgrade. Captain Elsensohn said he represented the state when he sits on the Board, not SEAPA. He then told me that "competition in the pilot industry is bad." Captain Elsensohn said that competition will lead to "company pilots" and an erosion of industry standards.

22. It is my firm conviction that the members of SEAPA have no intention whatsoever of cooperating with the Board or myself in this matter. In every conversation I had with a SEAPA pilot in Ketchikan, the SEAPA pilot raised the subject of "competition." I was told directly and indirectly that I would not get any cooperation in getting my dockings until I stopped competing with SEAPA. Again and again, SEAPA pilots implied that if I "went along" with SEAPA, or "joined up", or "came back to the fold", there would be a very different attitude on the part of SEAPA pilots.

23. I do not believe that it is fair for a person to be required to join a particular private association in order to earn his livelihood in the State of Alaska. As I said above, it is my opinion that the members of SEAPA include some very fine and capable pilots. This does not mean that they

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should be allowed to monopolize the industry and keep other capable pilots out of Southeast Alaska.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 24 day of January, 1991, at Woodinville, Washington.

Terry K. Bennett
Captain Terry K. Bennett

Subscribed and sworn before me on the date and at the place above written.

Tana L. Alexander
Notary Public Washington
Commission expires: 7/19/94

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November 28, 1990

Captain Dale O. Collins
Southeastern Alaska Pilots'
Association
Box 6100
Ketchikan, AK 99901

Dear Captain Collins:

At its annual meeting on November 8-9, 1990, the Board of Marine Pilots reviewed the license upgrade application of Captain Terry Bennett. The board denied the application but resolved to request your association's cooperation in providing Captain Bennett the opportunity to meet the license upgrade requirements.

Captain Bennett presently holds a Channel Pilot License and has applied to upgrade to a Limited, Step 1, license as a pilot on vessels of not more than 20,000 gross tons. To qualify for this upgrade, he must submit ten dockings and undockings that conform to 12 AAC 56.027.

Because no more than five dockings and five undockings may be made under the supervision of the same pilot, Captain Bennett must perform five additional dockings and undockings before receiving a Limited, Step 1, license.

The Board of Marine Pilots requests that Southeastern Alaska Pilots' Association provide Captain Bennett the opportunity to perform these additional dockings and undockings by June 1, 1991. If completion is not possible by this date, please notify the board in writing of the date by which this may be accomplished.

If you have any questions or comments, please direct them to the board at the address above.

Sincerely,

JoAnne Cummings
Licensing Examiner

JC/dg18434D
112890a

cc: Terry K. Bennett

December 21, 1990

Captain Dale O. Collins
Southeastern Alaska Pilots'
Association
P.O. Box 6100
Ketchikan, Ak. 99901

Dear Dale,

This is to confirm our phone conversation of Friday December 21, 1990. Thank you for your offer of assistance in acquiring the additional dockings and undockings required by the Board at their November meeting. I expect to be in Ketchikan December 26th and will call or stop by your office at that time.In the meantime best wishes for the holidays.

Sincerely,

Terry K. Bennett

Terry K. Bennett

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

Statutes and Regulations

Board of Marine Pilots

September 1990

ALASKA
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

HB

195

ALASKA PUBLIC OFFICES COMMISSION
POSITION PAPER

CSHB 195 (STA)

Bill Title: "an Act relating to election campaigns, regulation of lobbying, conflicts of interest, and the Alaska Public Offices Commission.

This bill includes several provisions which will create new prohibitions on campaign finance activity by State and municipal candidates and lobbyists. It also establishes new financial disclosure requirements for some public officials. The Alaska Public Offices Commission (APOC) will administer these provisions and investigate and adjudicate alleged violations. This bill also expands the scope of civil penalties for all three laws APOC enforces, makes year-end reports mandatory and closes a two-day reporting gap before elections.

The Commission supports this legislation. Comments are limited to those sections where the Commission has questions or concerns, as follows:

Section 4--AS 15.13.077 (page 3, line 24). It appears that a different standard has been set for municipalities and the State with regard to ballot propositions. Is this intentional? The Commission anticipates that significant energy will be spent in complaints and reviewing the content of campaign literature to determine if it is in support or opposition to a ballot proposition and is factual.

Section 11--AS 15.13.127 (page 7, line 10). This section establishes a procedure for returning illegal contributions. Currently, existing regulations (2 AAC 50.319) provide a workable procedure for this.

Section 21--AS 39.50.020(a) (page 11, lines 25-27). The last sentence of this section was intended to deal with the transition of boards and commissions at the time the Conflict of Interest Law was first adopted. It could be deleted rather than amended as it is no longer necessary.

Section 22--(page 12, line 6) AS 39.50.020(c) and AS 39.50.035 are redundant.

Section 31--(page 16, line 2) AS 39.50.160 Statements of Public Record and the last sentence of AS 39.50.020(b) are redundant.

Karen Boorman
Executive Director
Alaska Public Offices Commission

Nancy Bear Usera
Commissioner
Department of Administration

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To KAREN	From E. Usera
Co.	Co.
Dept.	Phone #
Fax #	Fax #

Rep. Finkelstein
March 16, 1992

Section-by-Section Description of CSHB 195 (STA)

Section 1 raises the level of campaign contribution which candidates must identify by donor from $100 to $250, and exempts candidates who do not raise or spend over $1,000 from filing APOC reports.

Section 2 mirrors section 1 for political groups.

Section 3 prohibits taking surplus campaign funds as personal income. Currently, candidates are permitted to use campaign funds as personal income.

Section 4 says a candidate may not knowingly allow a lobbyist to violate section 18 of the bill on the candidates behalf, and prohibits the use of government funds to support or oppose a candidate or ballot proposition.

Section 5 allows APOC to adopt more flexible regulations on the "paid for by" identifications.

Section 6 prohibits the use of campaign funds for non-campaign purposes and establishes time lines for campaign fundraising. (For legislative races, June 1 - December 31 of the year before the election and the year of the election.)

Section 7 changes the due date for APOC year-end reports from December 31 to February 15.

Section 8 closes the two-day loophole in the current campaign reporting requirements.

Section 9 and Section 10 give APOC the power to assess civil penalties for violations of the campaign finance law.

Section 11 requires candidates to return illegal contributions.

Section 12 says that APOC will publish lobbyist summaries semi-annually instead of quarterly.

Section 13 deletes obsolete language relating to the use of lobbyists' photographs in lobbying reports and the locations where the reports are available.

Section 14 requires lobbyists' employers to sign lobbyists' registration forms instead of submitting separate statements to APOC.

Section 15 requires lobbyists' employers to file reports with APOC annually instead of quarterly.

Section 16 clarifies that only lobbyists' reports, and not employers' reports, must be submitted on the stated dates.

Section 17 sets the date that lobbyists' employers' annual reports are due.

Section 18 prohibits a lobbyist from holding certain positions in campaigns, and from using state resources that are not available to the general public.

Section 19 and Section 20 give APOC the authority to assess civil penalties for violations of the lobbying statute.

Section 21 clarifies when and how legislative directors submit their Conflict of Interest forms.

Section 22 codifies the current APOC policy on disclosure of confidential client relationships.

Section 23 deletes unnecessary language in the conflict of interest statute.

Section 24 raises the threshold for disclosure of sources of income from $100 to $1,000 for all public officials. The section also requires legislators, legislative directors and legislative candidates to provide additional information about income and loans from sources with an interest in political decisions. The sources of gifts from family members must be reported if the gifts exceed $10,000 per year, and the sources of non-family gifts are reported if they exceed $100.

Section 25 defines "substantial interest in legislative, administrative, or political action".

Section 26 deletes a reference to a statute that is repealed in Section 29 of CSHB 195.

Section 27 gives APOC the responsibility to examine Conflict of Interest statements.

Section 28 and Section 29 give APOC the power to assess civil penalties for violations of the conflict of interest statute.

Section 30 exempts officers of municipalities with populations of under 1,000 from conflict of interest reporting requirements.

Section 31 clarifies that conflict of interest statements are public.

Section 32 defines "income", "legislative director" and "source of income".

Section 33 repeals three sections of statute.

Section 34 says the bill takes effect on January 1, 1993.

(Repeals)

1. AS 24.45.041(c), which says lobbyists may submit photographs to A.P.O.C. for publication in lobbyist reports;
2. AS 24.45.051(5), which requires a lobbyist to report the identity of any firm in which a public official has a financial interest, with which the lobbyist has done over $100 business in a calendar year;
3. AS 24.45.116, which is an outdated requirement that civic leagues report contributions they receive worth over $100; and

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1991 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3/9/92

The STATE AFFAIRS Committee considered: HB 195

HOUSE BILL NO. 195 CAMPAIGN FINANCE REFORM

"An Act relating to election campaigns, regulation of lobbying, conflicts of interest, and the Alaska Public Offices Commission; and providing for an effective date."

RECOMMENDATIONS: [X] the same title
be replaced with CS HB 195 (STA) [ ] a new title
[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact ADMIN - APOC
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eugene Kubina	—	Mike Miller		—	MILLER
Member	—	Dave Rieger		✓	CHOQUET
Parker	—				
Green	—				
Tom Moyer	X				

Eugene M. Kubina
CHAIRMAN'S SIGNATURE

(11) HOUSE COMMITTEE REPORT

Date Referred: March 16, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 4/29/92

The JUDICIARY Committee considered: HB 195

HOUSE BILL NO. 195 CAMPAIGN FINANCE REFORM

"An Act relating to election campaigns, regulation of lobbying, conflicts of interest, and the Alaska Public Offices Commission; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 195 (JUD).
[X] the same title
[ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[X] fiscal note(s) Admin-APOC 3/16/92
[ ] zero fiscal note(s) _____

SIGNING ~~DO PASS~~	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	✓				
Jim Ellis	X	Mark Hanley		X	
Mike Phillips	–	Terry Martin		X	
		Mike Miller		X	
Kevin Parnell	✓				

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 195 (SA)

Revision Date: _____
Title: An Act relating to election campaign, regulation of lobbying, conflict of interest, etc.
Sponsor: Finkelstein
Requestor: _____

Department Affected: Administration
BRU: Alaska Public Offices Commission
Component: Alaska Public Offices Commission

COMPONENT SERIAL NO. | | | 7 | 0 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	212.8	217.9	170.1	175.2	180.5	185.9
TRAVEL	7.0	7.0	2.0	2.0	2.0	2.0
CONTRACTUAL	6.7	26.7	22.5	22.5	22.5	22.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	1.7	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	228.2	251.6	194.6	199.7	205.0	210.4
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	228.2	251.6	194.6	199.7	205.0	210.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	228.2	251.6	194.6	199.7	205.0	210.4

POSITIONS:

FULL-TIME	5	5	4	4	4	4
PART-TIME	(1)	(1)	(1)	(1)	(1)	(1)
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See attached narrative.

Prepared by: Karen Boorman, Executive Director
Division: Alaska Public Offices Commission
Phone: (907) 276-4176
Date: March 25, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 3/31/92

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

This bill includes several provisions which will create new prohibitions on campaign finance activity by State and municipal candidates and lobbyists. It also establishes new financial disclosure requirements for some public officials. The Alaska Public Offices Commission (APOC) will administer these provisions and investigate and adjudicate alleged violations. This bill also expands the scope of civil penalties for all three laws APOC enforces, makes year-end reports mandatory and closes a two-day reporting gap before elections.

The campaign finance provisions restrict the ways surplus funds may be disbursed, restrict campaign activities by lobbyists on behalf of candidates, impose time limits on fund raising, restrict the use of public funds to influence the outcome of elections and require candidates to return illegal contributions. The lobbying provisions restrict lobbyists' use of State property or resources and prohibits them from becoming actively involved in campaign management or fund raising. The financial disclosure provisions require legislators, legislative candidates and legislative directors to disclose more detailed information on their loans and sources of income that have a substantial interest in legislative, administrative or political action, or are from a lobbyist or a person who has a contract with the State for more than $10,000 annually.

The commission anticipates it will incur start up costs as it prepares to assume its duties of administering and enforcing these new provisions. Staff must revise forms, manuals and training materials as well as prepare new regulations for commission review. Existing staff cannot undertake these start up activities, so new positions would be required.

The commission will receive many ongoing requests for advice about interpretation of the law, including questions such as whether a contribution is illegal and thus must be returned, whether a draft group may fund raise before the date allowed for legislators, whether a legislator must provide more detailed financial disclosure concerning a client, and whether a local government or school district is properly using public funds to influence the outcome of a ballot proposition. Staff will need extra funds to prepare for the first election in which candidates must comply with the provisions regarding disbursement of campaign surplus and prohibited uses of campaign funds and the stricter financial disclosure requirements. Training sessions to help candidates and contributors of over $250 are essential.

The bill makes all violations of the three laws APOC administers subject to civil penalties in addition to criminal penalties. This is a more cost effective penalty process for less egregious violations than the criminal penalty process which can require a lengthy complaint hearing process and substantial involvement from the Department of Law and potentially the courts.

It is expected that several complaints will be filed each year alleging that a candidate, lobbyist or public entity has violated one of these provisions. Potential complaints include allegations that a candidate filed incomplete financial disclosure information, or conducted fund raising too soon or too late, and that a municipality used public funds to support a ballot proposition. It is reasonable to expect that one complaint each year will proceed to public hearing. This expense cannot be absorbed from funds currently budgeted.

The commission will need to hold a hearing in FY 93 and probably FY 94 to adopt regulatory changes. The expenses of such a hearing are not funded within the FY 93 or FY 94 budget.

In order to meet the mandates of the new law, the commission will need to add a professional staff member (Associate Coordinator--Range 18) to investigate complaints, draft regulations and provide compliance advice. For the first two years, a paraprofessional staff member (Regulations Specialist II--Range 16) will be necessary to help draft regulations, develop manuals, revise forms and conduct training. An Administrative Assistant I (Range 12) will be needed to provide ongoing compliance advice, compare and examine reports and process civil penalties for candidates and groups. A Clerk IV (Range 9) will be needed to handle the additional paperwork and extra typing that cannot be absorbed by the one secretary in the Anchorage office.

The commission's current office space in Anchorage is too small to house these new positions. Modest sized space is available in the building and could be made functional with minor remodeling. Two desks, chairs and telephones will be required as well.

The Juneau office will require additional staff to provide compliance advice, assist in investigations, and process civil penalties under the lobbying law. In order to meet this need and provide assistance to the lobbying administrator without creating the need for additional office space, furniture and equipment by adding additional positions, the commission requests upgrading of the current part-time Clerk III position to a full-time, year round administrative assistant position.

A detailed breakdown of the costs associated with administration and enforcement of this bill is attached.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 195 (SA)

HB 195
APOC Estimated Costs
FY 93

Personnel:		
Associate Coordinator--Range 18A	$ 59,705	
* Regulations Specialist II--Range 16A	52,422	
Administrative Assistant I--Range 12A (Anchorage)	41,279	
Clerk IV--Range 9A (Anchorage)	35,261	
Administrative Assistant I--Range 12A (Juneau) (Upgrade from Clerk III, six months)	24,111	
	$212,778	
Travel:		
* Regulations hearing	$3,000	
Training	4,000	
	$7,000	
Contractual Services:		
Instruction/education materials (design, print, postage for amended forms and manuals)	$2,500	
Office space: 350 square feet @ $1.00 sq. ft./month	4,200	
	$6,700	
** Legal Fees		$20,000
Hearings, Witness Fees, Subpoenas, Transcripts		
Equipment:		
*** Desk and Chairs (2)	$1,200	
*** Phone Installation/Equipment (2)	500	
	$1,700	

* Funding for Regulations Specialist, travel for regulations hearing required for FY 93 and FY 94 only.

** Complaint investigation funds (legal fees) will be necessary after FY 93.

*** Equipment necessary for FY 93 only.

Personal Services projected to increase at 3 percent per year for merit increases.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 195 (STA)

Revision Date: _____
Title: "...relating to election campaigns, regulation of lobbying..."
Sponsor: Representative Finkelstein
Requestor: House Judiciary Committee

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

COMPONENT SERIAL | | | 9 | 3 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services
Phone: 465-3672
Date: April 10, 1992

Richard L. Pegues/FOR

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: April 10, 1992

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

Rev 10/07/91

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 195 (STA)

This bill amends several state statutes concerning election campaigns, regulation of lobbying, conflicts of interest and the Alaska Public Offices Commission. The bill exempts candidates who raise and spend $1,000 or less in an election campaign from the state's usual campaign financing reporting requirements, and it increases the individual minimum reportable campaign contribution from $100 to $250. The bill also establishes rules for the distribution of campaign funds that remain unexpended and unobligated after a campaign has ended or at the time a candidate ceases to be a candidate. The bill amends AS 15.13 to make clear that campaign activities by lobbyists that are prohibited by AS 24.45.121(a)(9), and also prohibited under AS 15.13.

The bill prohibits the use of public funds to support or to oppose the election of a candidate, and the bill prohibits municipalities from using public funds to support or oppose a ballot proposition or the election of a candidate. However, the bill does not prohibit municipalities from using public funds to provide factual information to the public regarding a ballot proposition.

AS 15.11 is also amended to prohibit the use of campaign funds for the personal use of a candidate or another person, including interest earned on campaign funds. Use of campaign funds as a loan to another person or group, knowingly paying more than fair market value for goods or services, and paying fines or monetary penalties would also be prohibited. The bill would also place time limitations on campaign contributions, limiting the period in which contributions could be solicited or accepted to June 1 in the year preceding the election through the date of election, except candidates for the legislature would be prohibited from soliciting or accepting campaign contributions between January 1 and May 31.

The bill amends lobbying reporting provisions in AS 24.45, making certain quarterly reports semi-annual or annual, and it prohibits a lobbyist from using state property or resources unless the use is nominal and available to the general public. Lobbyists would also be prohibited from serving as an officer in a candidate's campaign or serving as a member of a finance or fund-raising committee. Lobbyists would be permitted to make personal contributions to or personally advocate on behalf of a candidate.

Last, the bill provides for civil penalties up to $20,000 for violations of any provisions where a penalty is not already prescribed.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 195 (STA)

The bill will probably not have a fiscal impact on the Department of Law, except that we may, from time to time, have to defend the commission in respect to upholding the new civil penalty provisions. We believe that this new activity can be handled using existing resources. However, if this activity became prolonged, or otherwise causes a substantial new cost, we would have to seek additional funding to handle this work.

1992 LEGISLATIVE SESSION

No. 1
Bill/ rsion CSHB 195(STA)
(H) Publish Date: 3-16-92

Revision Date: December 20. 1991
Title: An Act relating to election campaign, regulation of lobbying, conflict of interest, etc.
Sponsor: Representative Finkelstein
Requestor: Representative Finkelstein

Department Affected: Administration
BRU: Alaska Public Offices Commission
Component: Alaska Public Offices Commission

COMPONENT SERIAL NO. 7 0

Expenditures/Revenues: (Thousands of Dollars)

OPERATIN_	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	212.8	165.2	170.1	175.2	180.5	185.9
TRAVEL	5.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	6.2	22.5	22.5	22.5	22.5	22.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	1.7	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	225.7	189.7	194.6	199.7	205.0	210.4
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	225.7	189.7	194.6	199.7	205.0	210.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	225.7	189.7	194.6	199.7	205.0	210.4

POSITIONS:

FULL-TIME	5	4	4	4	4	4
PART-TIME	(1)	(1)	(1)	(1)	(1)	(1)
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See attached narrative.

Prepared by: Karen Boorman, Executive Director
Division: Alaska Public Offices Commission
Phone: (907) 276-4176
Date: December 20. 1991

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 2/3/92

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

This bill includes several provisions which will create new prohibitions on campaign finance activity by State and municipal candidates and lobbyists. The Alaska Public Offices Commission (APOC) will administer these provisions and investigate and adjudicate alleged violations. This bill also expands the scope of civil penalties for all three laws APOC enforces, makes year-end reports mandatory and closes a two-day reporting gap before elections.

The campaign finance provisions restrict the ways surplus funds may be disbursed, restrict campaign activities by lobbyists on behalf of candidates, impose time limits on fund raising, prohibit the use of public funds to influence the outcome of elections and forbid the use of campaign funds for personal benefit. The lobbying provisions prohibit lobbyists from using State property or resources and from becoming actively involved in campaign management or fund raising.

The commission anticipates it will incur start up costs as it prepares to assume its duties of administering and enforcing these new provisions. Staff must revise forms, manuals and training materials as well as prepare new regulations for commission review. Existing staff cannot undertake these start up activities, so new positions would be required.

The commission will receive many ongoing requests for advice about interpretation of the law, including questions such as whether a planned campaign expenditure is permissible because it may be a personal benefit, whether a draft group may fund raise before the date allowed for legislators and whether a local government or school district is properly using public funds to influence the outcome of a local election. Staff will need extra funds to prepare for the first election in which candidates must comply with the provisions regarding disbursement of campaign surplus and prohibited uses of campaign funds and to give training sessions to help candidates comply.

The bill makes all violations of the three laws APOC administers subject to civil penalties in addition to criminal penalties. This is a more cost effective penalty process for less egregious violations than the criminal penalty process which can require a lengthy complaint hearing process and substantial involvement from the Department of Law and potentially the courts.

It is expected that several complaints will be filed each year alleging that a candidate, lobbyist or public entity has violated one of these provisions. Potential complaints include allegations that a candidate used campaign funds for a personal benefit, closed down a campaign account improperly, or conducted fund raising too soon or too late. It is reasonable to expect that one complaint each year will proceed to public hearing. This expense cannot be absorbed from funds currently budgeted.

The commission will need to hold a hearing in FY 93 to adopt regulatory changes. The expenses of such a hearing are not funded within the FY 93 budget.

In order to meet the mandates of the new law, the commission will need to add a professional staff member (Associate Coordinator--Range 18) to investigate complaints, draft regulations and provide compliance advice. For the first year only, a paraprofessional staff member (Regulations Specialist II--Range 16) will be necessary to help draft regulations, develop manuals, revise forms and conduct training. An Administrative Assistant I (Range 12) will be needed to provide ongoing compliance advice, compare and examine reports and process civil penalties for candidates and groups. A Clerk IV (Range 9) will be needed to handle the additional paperwork and extra typing that cannot be absorbed by the one secretary in the Anchorage office.

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A detailed breakdown of the costs associated with administration and enforcement of this bill is attached.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. S HB 195(STA)

HB 195
APOC Estimated Costs
FY 93

Personnel:		
Associate Coordinator--Range 18A	$ 59,705	
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Administrative Assistant I--Range 12A (Anchorage)	41,279	
Clerk IV--Range 9A (Anchorage)	35,261	
Administrative Assistant I--Range 12A (Juneau)	24,111	
(Upgrade from Clerk III, six months)	$212,778	
Travel:		
* Regulations hearing	$3,000	
Training	2,000	
	$5,000	
Contractual Services:		
Instruction/education materials (design, print, postage for amended forms and manuals)	$2,000	
Office space: 350 square feet @ $1.00 sq. ft./month	4,200	
	$6,200	
** Legal Fees		$16,250
Hearings, Witness Fees, Subpoenas, Transcripts		
Equipment:		
* Desk and Chairs (2)	$1,200	
* Phone Installation/Equipment (2)	500	
	$1,700	

* Funding for Regulations Specialist, travel for regulations hearing, and office equipment required for FY 93 only.

** Complaint investigation funds (legal fees) will be necessary after FY 93.

Personal Services projected to increase at 3 percent per year for merit increases.

HB

196

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 FAX (907) 283-3306

UCIDA OPPOSES HB 196 & ITS OBJECTIVE OF LOWERING FURTHER LIABILITY STANDARDS FOR RAC'S

April 2, 1991

1. In both 1989 & 1990 the Alaska legislature lowered the standard of liability for RAC's from the normal standard of "strict liability", i.e. liable for whatever injuries the person caused, whether he was negligent or not.

Presently

1. RAC's are ONLY liable if they are negligent or engaged in intentional misconduct.

2. RAC's are ONLY liable when his or her own acts or omissions cause injuries.

3. In 1989 legislature stated that:

"To show negligence by a response action contractor, a claimant must show that the acts or ommissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time their response action services were performed.

4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

5. As proposed, the RAC would be immunized from liability for rogue actions taken that were contrary to applicable plans and orders of the agency directing the response.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities.

Theo Matthews

Theo Matthews

Administrative Assistant, UCIDA

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 3-26-91

To: ANDY — FOR REP. BILL HUDSON
FAX # = 907-465-2299

Company / Organization: _____

URGENT ✓ ***NORMAL*** _____

From: MR. STEVE DUCA **Office #:** 202-408-5703

Remarks:

Pages to follow 8 ***+ Cover*** = 9 pages

Please call (202) 408-5700 if there is a problem with the transmission

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 *FAX (907) 283-3306*

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4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

5. As proposed, the RAC would be immunized from liability for rogue actions taken that were contrary to applicable plans and orders of the agency directing the response.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities.

Theo Matthews

Theo Matthews

Administrative Assistant, UCIDA

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9354
Fax - (907) 262-1881

TO: LIONUNEAU

ATTN: Margaret FAX: 465 2864 PHONE: 465 4648

FROM: Rio Soldotna PHONE:

INSTRUCTIONS: Here's testimony for 91-03-160

DATE: 4-2 TIME: 5:30
DISCARD ORIGINALS ___ HOLD FOR PICKUP ___

NUMBER OF PAGES (not counting the cover sheet): 1

TRANSMITTED BY: Anne

APR 02 '91 19:31 LEG. AFFAIRS - SOLDOTNA

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 3-26-91

To: ANDY — FOR REP. BILL HUDSON
FAX # = 907-465-2299

Company / Organization: _____

URGENT ✓ *NORMAL* _____

From MR. STEVE DUCA **Office #:** 202-408-5703

Remarks:

Pages to follow 8 + Cover = 9 pages

Please call (202) 408-5700 if there is a problem with the transmission

Enclosure (1)

A Model State Act Regarding Limited Immunity for Persons Responding to Oil Spills

proposed by the
Marine Spill Response Corporation

This model State Act makes State law consistent with new federal oil spill legislation that provides limited immunity from liability for removal costs and damages for those persons responding to an oil spill or the threat of an oil spill. The immunity applies if those activities are performed in a manner consistent with the Federal National Contingency Plan (NCP), or under the direction of the Federal On-Scene Coordinator (OSC) or the appropriate State official. Because the plans and orders may not cover every detail or eventuality of a spill response, actions that are in keeping with the overall objectives of the plans or Coordinator's orders are deemed to be within the scope of this Act.

Just as with response to fire, response to an oil spill must be immediate and decisive. Like firemen, oil spill responders cannot control the timing or location of their work. Both types of responders must take immediate action based on very limited information, attacking the problem quickly if there is to be any realistic chance of mitigating the worst harm. Limited immunity for firefighters has been long recognized because of these circumstances, and this bill extends similar protection to oil spill responders.

Without similar immunity, the enormous financial risks and liability exposures associated with spill response will deter those persons who are not responsible for the initial spill, such as cleanup contractors, fishermen, and barge owners, from prompt, aggressive cleanup, or even from any response at all. The United States Congress recognized the need to provide limited immunity to oil spill responders in the Oil Pollution Act of 1990. However, Congress did not preempt State oil spill liability laws, so a similar provision is needed in State law. Federal and State responder liability laws should be uniform. To respond decisively, responders must be able to act without being forced to consider the boundaries or interaction of varying liability regimes.

The liability for damages resulting from the oil spill cleanup efforts falls on the party responsible for the initial discharge, not on persons trying to help clean up or mitigate the damage. Under this bill, victims of oil spill damage will have a means of compensation. They may recover from the person responsible for the initial discharge or, where the responsible party is unidentified or unable to pay, from the federal Oil Pollution Fund (and, perhaps a State fund, if provided by State law). In addition, immunity for responders is limited. It does not extend to actions for personal injury or wrongful death, or for actions that rise to the level of gross negligence or willful misconduct.

Some States provide immunity only to those persons who do not charge for their services. Refusing immunity to persons who charge for their services in the context of catastrophic oil spills works to deny the public the benefit of cooperatives and subcontractors who have the expensive oil spill response equipment and trained personnel that are the key to mitigating damage from the spill, but who must be able to charge for their services in order to maintain their readiness. Volunteer responders have a role, too, but professional responders equipped with their equipment and training have the greatest likelihood of making a significant difference in the spill response. Thus, this act covers all responders, whether they volunteer or work for pay.

This draft State legislation was developed by the Marine Spill Response Corporation (MSRC), a nonprofit mutual benefit corporation organized exclusively to promote the welfare of the public by mitigating environmental damage to the coastal and certain upstream waters of the United States. This newly created organization seeks to establish a program to render its best efforts to contain and cleanup certain large oil spills beyond local response capabilities. It will use funds provided by the oil and shipping industries to build, staff and equip five regional response centers and numerous prepositioned equipment sites. Together with a host of other responders, MSRC hopes to dramatically improve this nation's ability to respond to large oil spills in coastal and tidal areas, in part through bold and decisive response to a spill event. Responder immunity is a critical requirement for that type of rapid response.

Section 1. [*Short Title.*] This act may be cited as the [State] Act Regarding Liability for Persons Responding to Oil Spills.

Section 2. [*Definitions.*] For the purposes of this Act the term:

(1) "damages" means damages of any kind for which liability may exist under the laws of this State resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) "discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(3) "Federal On-Scene Coordinator" means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan;

(4) "National Contingency Plan" means the National Contingency Plan prepared and published under section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990);

(5) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(6) "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(7) "removal costs" means the costs of removal that are incurred after a discharge or oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(8) "responsible party" means a responsible party as defined under § 1001 of the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

Section 3. [*Exemption From Liability.*]

(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed

by the Federal On-Scene Coordinator [or by the State official with responsibility for oil spill oil response].

(b) Subparagraph (a) does not apply--

(1) to a responsible party;

(2) with respect to personal injury or wrongful death; or

(3) if the person is grossly negligent or engages in willful misconduct.

(c) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (a).

(d) Nothing in this section affects the liability of a responsible party for oil spill response under State law.

MSRC
Marine Spill Response Corporation
G. Stephen Duca
Vice President
Readiness and External Affairs

March 25, 1991

Representative Bill Hudson
Chairman
House Special Committee on Oil and Gas
Alaska House of Representatives
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Mr. Chairman:

In your letter of March 6, 1991 addressed to our General Counsel Mr. Joseph E. Lees, you asked for comments on HB 196. We have carefully reviewed the bill. Sections 1, 2, 3 and Sec. 5, (46.03.825) are of particular interest to MSRC. In general, MSRC supports state legislation that enacts a limited immunity for all oil spill responders as protective as the provision found in PL 101-380. It appears that the intention of HB No. 196 is to accomplish this and therefore our comments are intended to help bring about this end. For your convenience I am enclosing model legislation on responder immunity that MSRC has prepared to assists states as they consider this legislative issue.

The language of H.B 196 concerns itself with "response action contractors", a defined term in the proposed legislation. MSRC feels that limiting immunity to this category of responders is not in consonance with the intent of the legislation. As noted in the bill/s preamble, limited immunity is needed because it is in the public interest to promote a bold, vigorous response during emergencies. Yet a "response action contractor" is a person who must act pursuant to a written contract or agreement to provide "response Actions". (See 46.03.826(15).) To assure themselves that they qualify for responder immunity however, they first have to assure that written contracts are in place. This could delay the response and thus by limiting immunity on the basis of a responders status as a "response action contractor", the state will limit the quality of the response needed during spills.

1350 I Street, NW Suite 300 Washington, DC 20005 Telephone 202 408 5700 Fax 202 371 0401

The language of Section 2 of the bill could be interpreted to make oil spill responders liable if a spill occurs from one of their vessels during response andcleanup operations. (See Sec. 46.03.822)). This is inconsistent with the stated purpose of the bill to provide responders with a limited immunity because they are required to act under emergency conditions. Oil spill containment vessels (barges, draconcs, etc.) are a critical, integral part of a responder's offshore operations. To limit a responder's immunity with respect to such an important part of spill response operations renders all response operations hostage to the dangers of a simple negligence standard, rather than gross negligence or willful misconduct standard of the bill.

Specific comments, keyed to the draft bill, are provided in an additional enclosure. In general these are clarifications of bill language to insure that:

(1) all responders are provided with immunity irrespective of their status as operating under a contract, volunteer, etc.,
(2) spills from response vessels will not convert the status of a responder to a responsible party.

Thank you for your opportunity to provide you with our insights into this important piece of legislation. Please don't hesitate to contact me if there is anything further you may need.

Sincerely,

G. S. Duca
Vice President
Readiness and External Affairs

Enclosures

Enclosure (2)

PAGE/LINE	REMARKS
1/1	Delete "civil". Statutes generally provide specific penalties for acts that are deemed to be criminal offenses. Removing the word "civil" clarifies the intent of the statute.
1/1-2	Delete "response action contractors" and replace it with "responders". ("Responder(s)" should be used wherever "oil spill contractor(s)" appears in the bill.) All responders to an oil spill need to have a limited immunity as they go about the work of responding to and mitigating the effects of a release, whether or not they have a response action contract. The basis for this limitation rests upon the need for bold, vigorous action in the face of the emergency conditions, lack of information/conflicting information, the responder's inability to control essential elements that directly affect his operations, such as the weather during a spill and the limitations of technology on the efficacy of the operations that he is able to undertake. For example bird/animal rescue and community volunteers face the same category of problems as those responding to the spill with mechanical cleanup capabilities.
2/21	"limiting the liability of innocent" should be changed to, "providing a limited immunity to".
2/22-23	Delete, "are...spill." and replace with, "do not constitute gross negligence or willful misconduct and are consistent with the National Contingency Plan (NCP) or as otherwise direct by the President or by a State official with responsibility for oil spill response. This immunity does not apply to cases of personal injury or wrongful death."
3/8-11	This subparagraph appears to make the responder liable for releases of hazardous materials from one of his vessels (barges, dracones, etc.) engaged in receiving recovered oil/oily wastes that would be categorized as hazardous substances. The collection of recovered oil/oily debris is a critical, integral task in the response and cleanup operational scenario. To limit his immunity with respect to such an important part of spill response operations renders all response operations hostage to

the dangers of a simple negligence standard, rather than gross negligence or willful misconduct standard of performance of the bill.

3/12-17 This sub-section also appears not to provide a limited immunity for a critical portion of response and cleanup operations. (See previous remarks for supporting rationale.)

4/8 Given the complexity of Alaska's liability laws, it is important that the immunity provision be begin with the phrase, "Notwithstanding any other provision of law,".

4/9-11 "act...coordinator". Recommend replacement of this portion of the bill with, "who renders care, assistance or advice for a release or threatened release of oil that is consistent with the National Contingency Plan (NCP) or as otherwise directed by the President or by the state official with responsibility for oil spill response." See previous remarks for supporting rationale.

4/15-17 This sub-section also appears not to provide a limited immunity for a critical portion of response and cleanup operations. Section 46.03.825(a)(1) provides an exception to responder immunity if the response action contractor would have been liable for the release or threatened release under state of federal law even "if that contractor had not carried out a response action" with respect to the release or threatened release. This section may simply be trying to prevent the spiller from taking advantage of the immunity. However this provision could apply to non-spiller responders too. For example, there may be liability under the Alaska law for a person who fails to comply with the terms and conditions of a response action contract of a remedial action plan, or a contingency plan. Thus, if a responder has a contract with a potential spiller to respond in a certain way, then under the state law the contractor must respond in accordance with the contract. This could make the responder liable for the release "if that contractor had not carried out a response action". As a result, the responder may be denied immunity.

4/after 21 Recommend add a provision that makes the responsible party liable for removal costs and damages that another person is relieved of under this section of the bill. (See MSRC model bill.)

Kenai
BICENTENNIAL
1791 * 1991
Village with a Past - City with a Future!

CITY OF KENAI
"Oil Capital of Alaska"

210 Fidalgo Avenue
Kenai, Alaska 99611
TELEPHONE 283-7535
FAX 907-283-3014

April 10, 1991

Representative Bill Hudson, Chairman
House Oil and Gas Committee
State of Alaska
P.O. Box V
Juneau, AK 99811

RE: *HOUSE BILL 196 - LIABILITY LIMITS FOR OIL CLEAN-UP CONTRACTORS*

The City Council of the City of Kenai, at their meeting of April 3, 1991 unanimously stated their support of House Bill 196. The bill, as you are aware, is designed to afford limited immunity from lawsuits to citizenry groups responding to oil spills caused by another, unless the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

These groups consist of spill response contractors, countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared, on an emergency basis, to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information.

Exposure to unlimited liability in the course of response activities may deter responders from performing clean-up activities on behalf of the person or persons actually responsible for the spill.

The City Council of the City of Kenai supports House Bill 196 and encourages the Alaska State Legislature to pass this legislation. Where limitations on immunity are granted to responders, it is

important that victims be fully protected and compensated for damages. The party responsible for the spill in the first instance should be liable for any damages caused by the responders' simple negligence.

Again, the City Council of the City of Kenai supports this legislation.

Sincerely,

CITY OF KENAI

John J. Williams
Mayor

JJW/clf

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 *FAX (907) 283-3306*

April 10, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

UCIDA OPPOSES CS for HB 196 & ITS OBJECTIVE OF FURTHER LOWERING LIABILITY STANDARDS FOR RAC'S.

In both 1989 & 1990, the Alaska legislature lowered the standard of liability for RAC's from the normal standard of "strict liability", i.e. liable for whatever injuries the person caused, whether he was negligent or not.

Presently

1. RAC's are ONLY liable if they are negligent or engaged in intentional misconduct.

2. RAC's are ONLY liable when his or her own acts or omissions cause injuries.

3. In 1989, legislature stated that:
"To show negligence by a response action contractor, a claimant must show that the acts or ommissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practives at the time their response action services were performed.

4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities. Ucida feels that no change is needed.

UCIDA would, however, like to comment on the actual issue that appears to us to be driving this legislation. Alyeska has imposed on Tesoro financial requirements in a format that is directly actionable. To the best of our knowledge such coverage that exceeds the $20 million ball park is impossible to get. Alyeska then requires $1 billion of such coverage of Tesoro. Tesoro then feels obliged out of self preservation to promote legislation that will reduce Alyeska's liability exposure to incidents of gross negligence in the hope that, if successful, Alyeska will impose requirements that Tesoro can meet.

UCIDA regards the above scenario as little less than blackmail on the part of Alyeska. What will prevent them from requiring $5 billion in directly actionable insurance next year? UCIDA does recognize however that Tesoro has a legitimate problem with this bonding requirement - it literally has been placed by Alyeska between the proverbial rock and a hard spot. UCIDA has expressed both of these sentiments to our local Borough Assembly and to Tesoro representatives.

UCIDA respectfully requests that the legislature consider replacing this legislation - which is not needed- with language that addresses the real issue - bonding requirements that are reasonable but that can be capped in some manner to prevent industry from using them as a lever to undermine good public policy.

We would like to suggest two possible options:

1) Legislation that would limit a RAC's ability to require proof of financial responsibility to a level no greater than that required by the state in AS 46.04.040. UCIDA understands that the level set in AS 46.04.040 should not be static - it clearly will be adjusted from time to time by the legislature to conform to good public policy.

2) If an RAC requires bonding requirements above those set in AS 46.04.040, then the RAC should be required to accept oil pollution insurance syndicate coverage.

In conclusion, UCIDA does not support changing current state liability statues. Even the concept of a sunset provision and a 30 day window is poor public policy. Alyeska and other similarilly situated RACs will turn over spill resonse to any spiller well within the 30 day window. Legislation is needed to address Tesoro's immediate dilemma and the general issue of bonding requirements in the future.

Sincerely,

Theo Matthews

Theo Matthews, Administrative Assistant
UCIDA

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

BOX 4649 - KENAI, ALASKA 99611

(907) 283-3600

FAX COVER LETTER
FAX NUMBER (907) 283-3306

DATE: 4/23/91 TIME: 11 AM

NUMBER OF PAGES (INCLUDING COVER LETTER): 7

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (907) 283-3600 AS SOON AS POSSIBLE.

TO: House Judiciary members c/o
Rep Donley - chair
Rep Gruenberg - vice-chair
Rep Ellis
Rep Parnell
Rep Hanley
Rep Martin
Rep. Miller

FROM: UCIDA

SUBJECT: Mr. Chairman, UCIDA would appreciate it if copies of our previous testimony on C S For HB No 196 could be given to members of your committee.

Further testimony is in preparation and hopefully will be ready for todays committee meeting.

Sincerely, M. Matthews

12 April 1991

PO Box 2397
Homer, Alaska 99603

Legislators
Alaska State Legislature
PO Box V
Juneau, Alaska 99811

Dear Representative Davidson:

I strongly oppose HB 196 and its CS. Liability standards do not need to be lowered in this way.

I should like to respectfully submit that you consider UCIDA's suggested options which address the bonding issue and appear on page 2 of Mr. Theo Matthews letter to you dated 10 April.

Before you move on the above though please carefully examine the existing law which provides ample protection for RACS. The increased number of RACS since the Exxon Valdez spill should be ample proof of that.

HB 29 is another priority bill in my opinion. We certainly cannot expect DEC to be everywhere. Citizens suits provide some badly needed protection in a state as vast as ours. The bill is well written, gives a sixty day compliance period and would be an effective way to protect our air, land, water, wildlife and health from the dangers of pollution.

Thank you for your hard work.

Sincerely,

Gail Parsons

Gail Parsons

cc: Senator Paul Fischer
Rep. Mike Navarre
Rep. Gail Phillips

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 *FAX (907) 283-3306*

April 16, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

UCIDA would like to follow-up on our comments of April 10, 1991 on CS for HB No. 196. UCIDA continues to oppose this legislation since we feel it represents bad public policy and does not address or resolve the very issue that appears to be driving it - bonding requirements imposed by one sector of private industry (Alyeska) on another sector of private industry (Tesoro).

UCIDA doubts that public legislation will ever be able to resolve disputes between members of the private sector. To attempt to help one - in this case Tesoro - merely leaves the state vulnerable to open ended demands by the other - in this case Alyeska.

As we remarked on April 10, 1991, even if this legislation were to pass, what would prevent Alyeska from requiring $5 billion in directly actionable insurance next year?

Even though UCIDA does not support this legislation, we feel compelled to comment on a few points:

1) Sec 46.03.825 (a)

Speaks to an act or omission "not contrary to an order of the federal or state on-scene coordinator". The obvious defense in court of a RAC will be that if "we weren't told not to do it, we are not liable".

The point should be that when a RAC is acting under the direction of the federal or state coordinator, then some changes in liability rules might be expected.

2) Sec. 46.03.825 (a)(2)

Gross negligence is not defined by AS 46.03.823(a). However, "negligence" is defined by AS 46.09.823(a), therefore, whatever the definition of "gross negligence" may come to be, we know that the result of this seciton will be that a RAC whose acts or omissions under the response action contract was not in accordance with generally accepted professional standards and practices at the time their response action services were performed, will not be liable in many instances.

3) Sec. 46.03.825(a)(3)

Two points should be made:

a) "Substantially deviated" is not defined and we believe the standard should in any event be "deviated". We understand that industry would like a definition agreed to for the phrase "substantially deviated" and would propose that if industry would give us their defintion of "gross negligence" then perhaps an agreed definition of "substantially deviated" would be appropriate.

b) The and portion of 46.03.825(a)(3) seems clearly designed as another loophole designed for the use of 2nd and 3rd party RAC's who have not "previously agreed to comply with the terms of that plan". Further, it is often the case that a RAC will not be working for the parties responsible for the release. In this event, it appears you revert back to the "gross negligence" standards as a claimants' only grounds for action.

If a RAC does not agree to comply with the oil contingency plan, they clearly should be afforded no relaxation in liability standards. The and portion of AS 46.03.825(a)(3) should be deleted.

In conclusion, UCIDA will continue to oppose the relaxation of liablility standards for RACs as a means of trying to resolve a dispute between members of private industry. If, however, the committee passes out this bill, a 1 year "sunset provision" would be appropriate. With such a provision, the committee could at least determine if the goal of affording

Tesoro some relief was met and perhaps by then the legislature will be prepared to address the issue of bonding requirements.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

cjd
cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 *FAX (907) 283-3306*

April 10, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

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In both 1989 & 1990, the Alaska legislature lowered the standard of liability for RAC's from the normal standard of "strict liability", i.e. liable for whatever injuries the person caused, whether he was negligent or not.

Presently

1. RAC's are ONLY liable if they are negligent or engaged in intentional misconduct.

2. RAC's are ONLY liable when his or her own acts or omissions cause injuries.

3. In 1989, legislature stated that:
"To show negligence by a response action contractor, a claimant must show that the acts or ommissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practives at the time their response action services were performed.

4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities. Ucida feels that no change is needed.

UCIDA would, however, like to comment on the actual issue that appears to us to be driving this legislation. Alyeska has imposed on Tesoro financial requirements in a format that is directly actionalble. To the best of our knowledge such coverage that exceeds the $20 million ball park is impossible to get. Alyeska then requires $1 billion of such coverage of Tesoro. Tesoro then feels obliged out of self preservation to promote legislation that will reduce Alyeska's liability exposure to incidents of gross negligence in the hope that, if successful, Alyeska will impose requirements that Tesoro can meet.

UCIDA regards the above scenario as little less than blackmail on the part of Alyeska. What will prevent them from requiring $5 billion in directly actionable insurance next year? UCIDA does recognize, however, that Tesoro has a legitimate problem with this bonding requirement - it literally has been placed by Alyeska between the proverbial rock and a hard spot. UCIDA has expressed both of these sentiments to our local Borough Assembly and to Tesoro representatives.

UCIDA respectfully requests that the legislature consider replacing this legislation - which is not needed- with language that addresses the real issue - bonding requirements that are reasonable but that can be capped in some manner to prevent industry from using them as a lever to undermine good public policy.

We would like to suggest two possible options:

1) Legislation that would limit a RAC's ability to require proof of financial responsibility to a level no greater than that required by the state in AS 46.04.040. UCIDA understands that the level set in AS 46.04.040 should not be static - it clearly will be adjusted from time to time by the legislature to conform to good public policy.

2) If an RAC requires bonding requirements above those set in AS 46.04.040, then the RAC should be required to accept oil pollution insurance syndicate coverage.

In conclusion, UCIDA does not support changing current state liablility statues. Even the concept of a sunset provision and a 30 day window is poor public policy. Alyeska and other similarilly situated RACs will turn over spill resonse to any spiller well within the 30 day window. Legislation is needed to address Tesoro's immediate dilemma and the general issue of bonding requirements in the future.

Sincerely,

Theo Matthews

Theo Matthews, Administrative Assistant
UCIDA

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Special Committee on Oil and Gas
Bill Hudson - Chairman

P.O. Box V
State Capitol
Juneau, Alaska 99811

HB 196

April 12, 1991

The Honorable Dave Donley
Chairman
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Dave:

I would like to take this opportunity to bring to your attention a bill which will soon be referred to your committee. HB 196 was introduced by the House Special Committee on Oil and Gas last month and is currently being heard in the Resources Committee.

Both committees have done a great deal of work on this legislation and I expect that a committee substitute, acceptable to all parties involved, will be reported out of the Resources Committee early next week. I would like to request the Judiciary Committee's immediate consideration of this legislation.

It is imperative that HB 196 pass the Legislature this session. HB 196 would limit civil liability for acts or omissions of an oil spill response action contractor and establish strict liability on responsible parties for certain acts or omissions of a response action contractor.

Dave, I would really appreciate your assistance on this one. I believe that the bill which will be reported to your committee will be acceptable to all parties and hope you will consider it quickly.

Thanks for your assistance. I look forward to talking to you further on this matter.

Respectfully,

Bill

Bill Hudson
Chairman, House Special Committee on Oil and Gas

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To Al Hastings	From John T
Co.	Co.
Dept. 401546.3	Phone #
Fax #	Fax #

Alyeska pipeline SERVICE COMPANY

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 278-1511, TELEX 090-25-127

March 15, 1991

Representative Bill Hudson
Capitol Room 111, MS 3100
Box V
Juneau, Alaska 99811

278-5026

Re: H.B. 196

Dear Representative Hudson:

You recently asked Paul Richards to comment on H.B. 196 on behalf of Alyeska Pipeline Service Company. We have reviewed the issue of potential legislative changes to response action contractor liability in the context of the financial responsibility requirements in our Oil Spill Response Service Agreements. As a result of this review, we have developed the following statement of our position:

"Alyeska Pipeline Service Company, which operates the trans Alaska pipeline system, is an initial oil spill response action contractor for tank vessels in Prince William Sound. The vessels have incorporated Alyeska's initial response plan into their contingency plans. Under the terms of contracts between Alyeska and the owners, operators or charterers of these vessels, Alyeska is indemnified for costs and certain liabilities that might arise out of Alyeska's response on behalf of a vessel. The contracts also require that the party contracting on behalf of a vessel demonstrate financial responsibility to perform its indemnity obligations. Tesoro has been unable to demonstrate compliance with the financial responsibility provisions of the standard contract and is presently operating under a temporary agreement that expires on June 30, 1991. Alyeska has advised Tesoro that the temporary agreement will not be extended.

"Alyeska supports enactment of Alaska legislation that a response action contractor can be liable for simple negligence in its oil spill response activities ONLY when its acts are inconsistent with the National Contingency Plan or directives of the President or when its actions cause personal injury or death. Congress enacted this standard in section 4201(a) of the Oil Pollution Act of 1990. If such legislation becomes law in Alaska, Alyeska will reduce the financial responsibility requirements for all tank vessels contracting for its initial oil spill response

services. The amounts of such reduced requirements have not been determined. However, on the basis of Tesoro's current financial condition and available insurance coverage, and existing insurance coverage of owners of the vessel that Tesoro is using to transport its oil, Alyeska is confident that Tesoro will have no difficulty in arranging to meet such revised financial responsibility requirements.

"If the Alaska law ultimately adopted has a narrower exemption from liability for simple negligence than that provided by federal law, Alyeska will review the financial responsibility requirements of its contracts for initial oil spill response in light of the exposure to liability that remains under the new law. If substantial exposure to liability for simple negligence remains, Alyeska may not be able to reduce the financial responsibility requirements to a level that Tesoro can meet."

Please contact me or Mr. Richards if we may be of further assistance.

Sincerely yours,

J. B. Hermiller
President

smk

cc: Gene Burden
Paul Richards

ALASKA STATE LEGISLATURE
REPRESENTATIVE MIKE NAVARRE

Co-Chair
House Finance Committee
P.O. Box V
Juneau, Alaska 99811
(907) 465-3779

April 16, 1991

M E M O R A N D U M

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Representative Mike Navarre

SUBJECT: House Bill 196

This measure, dealing with liability of Response Action Contractors, is currently under review by the House Resources Committee. It is anticipated to pass out soon. Passage of HB 196 may determine whether or not Tesoro Alaska Petroleum Company will continue to have the ability to ship crude oil from the Valdez Terminal to its Nikiski Refinery. As you can see, the bill may have significant impact on my district.

Since time is of the essence, I'd appreciate it if you could schedule HB 196 at your earliest convenience, perhaps "pending referral" from Resources.

Thanks for your help.

DISTRICT 5
34824 K-Beach Road • Soldotna, Alaska 99669 • (907) 262-7842

U.S. OIL & REFINING CO.
5150 Wilshire Boulevard • Los Angeles, CA 90036
PO Box 36913 • (213)938-7156 • TWX 9103213973

WILLIAM C. KITTO
Vice President
Crude Oil Supply

18 March 1991

Representative Cliff Davidson
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

U.S. Oil & Refining Co. and its wholly owned subsidiary, U.S. Oil Supply Co., have been involved in the business of transporting ANS crude oil from Valdez to the State of Washington and to other Alaskan ports by tankers for several years. This activity was necessary to supply U.S. Oil & Refining Co.'s refinery in Tacoma, Washington with crude oil as well as to supply other refineries such as Tesoro, Texaco, and Shell.

Alyeska had agreed to provide clean-up services to shippers of crude oil from Valdez in case such shippers spilled crude in Prince William Sound. When Alyeska decided, however, that its legal liability resulting from these services was unlimited even though it had not caused the spill, Alyeska demanded indemnity from such shippers in the amount of $1 billion. Such a requirement could not be satisfied through insurance by the shippers or tanker owners and thus prevented U.S. Oil & Refining Co. and others from continuing to transport ANS crude. Of course, for the owners of Alyeska and other very large oil companies, the requirement was not impossible to meet. They just indemnify Alyeska by contract. This is not an option open to smaller companies such as ourselves.

We believe in taking responsibility for our own actions and insuring these activities to the extent possible. Ships which we used were members of TOVALOP and always provided $700 million of P&I insurance; and we as shippers always met the financial responsibility requirements of the State of Alaska and are members of CRISTAL. However, to be required to indemnify others such as Alyeska for their negligence and in such a substantial sum as $1 billion not only seems unreasonable but is in fact impossible. The result was our being prevented from continuing to transport ANS to our refinery in Tacoma. The economic impact of not buying barrels delivered on U.S. Oil vessels is estimated to be over $5 million per year.

The proposed House Bill No. 196 would limit the liability of the spill responders such as Alyeska. Since it would apparently satisfy Alyeska that its potential liability would be covered by insurance available to shippers, we are hopeful that companies such as ours would be able to transport ANS as they have done in the past. It does not avoid or limit the liability of anyone who spills oil nor do we believe it should. However, the oil spill responder who did not create the spill is then permitted to quickly respond to the clean-up need without taking on unreasonable responsibility for the spill created by others.

Your help in advancing the proposed legislation will be greatly appreciated.

Very truly yours,

U.S. OIL & REFINING CO.

W.C. Kitto

W.C. Kitto
Vice President

paw/0169

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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M E M O R A N D U M April 18, 1991

SUBJECT: Response Action Contractors
(CSHB 196 (Res))

TO: Representative Bill Hudson

FROM: Michael M. Ford MM-F.
Legislative Counsel

Enclosed is an amendment requested by Andy Spear. It limits the extent to which an oil spill response action contractor can shift to an oil spiller the contractor's liability for damages caused by the contractor during cleanup of a spill.

As I understand it, the public policies behind this limitation are at least twofold: (1) to help keep oil industry companies in business (by prohibiting contractors from setting terms that are too onerous); and (2) to keep some incentive in place for the contractor to act with care when performing its response action duties.

However, I have one caveat to mention: inherent in any approach that limits agreements between parties where one party provides services to another is that the limit can simply cause the services to become unavailable. If enough response action contractors do not "like" the limitation of the enclosed amendment, the contractors can simply refuse to contract.

Please let me know if I can be of further assistance.

MFF:pl:gc
91-274.plm

Enclosure

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Special Committee on Oil and Gas
Bill Hudson - Chairman

P.O. Box V
State Capitol
Juneau, Alaska 99811

April 24, 1991

To: House Judiciary Members

From: Representative Bill Hudson
Chairman, House Special Committee on Oil and Gas

Re: CSHB 196(Jud)

ISSUE DEFINITION

At the beginning of this session Tesoro and Conoco came to me with a problem they were experiencing which threatens the very existence of their respective companies which in turns threatens the royalty share of the state of Alaska for Milne Point oil and most importantly the jobs of over 500 Alaskans in the Kenai Peninsula. As the Chairman of the House Special Committee on Oil and Gas, I felt this was an appropriate area of concern for the committee and legislation was later introduced in an attempt to find a resolution to the problem. Several hearings have been held and as is often the case in the formulation of public policy, this legislation has been substantially modified.

Simply put, under current law oil spill response action contractors (RAC) in Alaska are experiencing a severe legal problem: specifically a RAC could be sued for its actions taken to clean up an oil spill, despite the fact that the RAC did not have any involvement in spilling the oil. Furthermore, a RAC could be held strictly liable for cleanup damages for a spill which they did not cause -- a dangerous standard to hold someone responding in a crisis atmosphere to.

In response to this situation, some RACs have sought to protect themselves from possible lawsuits by requiring that those companies contracting with them for clean up services be able to meet standards of financial responsibility. In the case of Tesoro and Conoco, they must provide $ 1 billion dollars in direct action insurance before Alyeska, the RAC for PWS, will guarantee cleanup services for tankers under contract to these companies.

Tesoro and Conoco are unable to obtain the $ 1 billion dollars in financial responsibility and unless the legislature acts this session are in danger of going under.

Although this matter will in all likelihood eventually be solved in court, the legislature, through passage of CSHB 196 (JUD) can remove any legitimate reason for a RAC's excessive insurance requirements.

Two companies have already withdrawn from the TAPs tanker trade as a result of Alyeska's provisions. This is a critical situation requiring immediate attention.

The United States Congress, California, Washington, Hawaii, Florida, Texas, Virginia, Delaware, Mississippi and Georgia have limited oil spill clean up contractors to a gross negligence standard. This is a nationally recognized problem. What CSHB 196 (JUD) proposes to do is to shift, not reduce, for 15 days, the liability for acts of simple negligence during an oil spill cleanup from the RAC to the party responsible for the spill so long as the RAC's act or omission is not contrary to the orders of the state or federal on scene coordinator or substantially deviates from the oil spill contingency plan. This change will keep Alaska's liability law as strong as any in the nation.

Passage of this legislation helps Tesoro and Conoco by removing any legitimate justification for the $ 1 billion financial responsibility that Alyeska is requiring. Alyeska is not supporting this legislation; despite that fact that this bill gives Alyeska the federal standard it seeks with the one exception being that a RAC loses the federal standard of gross negligence if it substantially deviates from the contingency plan. Alyeska has no direct economic interest in seeing this problem solved this year -- it is Tesoro, Conoco and others that will pay the price of our inaction. Alyeska has stated that it will not continue a response services agreement beyond June 30, 1991 absent some change in the current situation.

CSHB 196 (JUD) will directly help both Tesoro and Conoco and both companies have strongly urged its immediate passage. This legislation will also help other RACs throughout the state, for example CISPRI in Cook Inlet. During the last legislature, legislation was passed requiring substantial improvements in contingency planning, which often includes the use of cooperatives or contracts for cleanup services. Shippers in Cook Inlet have demonstrated a reluctance to join CISPRI because of their possible exposure to liabilities in responding to spills that are not their own. Passage of CSHB 196 (JUD) will specifically address that concern.

I urge you to carefully consider this legislation and hope you will join with me in endorsing its swift passage.

SPONSOR STATEMENT IN SUPPORT OF CSHB 196 (JUDICIARY)

Bill Hudson Chairman, House Special Committee on Oil and Gas

April 28, 1991

The events of past years have resulted in a heightened awareness of the need for strong oil spill cleanup capability and the protection of the public from damages caused by such accidents. Spills from the *Torrey Canyon,* the Santa Barbara oil well incident, the IXTOC #1 blowout, the grounding of the *Arco Merchant* , the *Amoco Cadiz* and finally the *Exxon Valdez* incidents all gravely punctuated the need for new laws.

With the advent of Alaska's legislation requiring strict liability for spill damages (Ch. 112, SLA 1972) , oil spill response action cleanup contractors (RAC's) became exposed to unlimited strict liability. This created a difficult situation for RACs and legislative efforts were then made to reduce the threat of such law suits (Ch. 39, SLA 1989 & Ch. 191, SLA 1990). Nevertheless, today a cleanup contractor can still be held strictly liable for damages in cleaning up a spill that was not caused by the RAC.

CSHB 196 proposes to shift the liability for acts of simple negligence during an emergency oil spill cleanup from the RAC to the party responsible for the spill, so long as the RAC's act or omission is not contrary to the order of the state or federal On Scene Coordinator (OSC), or substantially deviates from the applicable oil spill contingency plan. This will be accomplished by amending AS 46.03.822 and 823 and by adding section AS 46.03.825. As amended, the bill now limits the exemption to 15 days, and calls for a complete study to be done by the next legislative session on this complex issue. To ensure that this will be done, the bill also contains a sunset provision of one year.

I first became interested in this matter when Tesoro and Conoco came to me with the problems created in meeting the financial responsibility requirements of $1 Billion placed on them by Alyeska as a condition of Alyeska providing necessary oil spill cleanup service in Prince William Sound. Because of the direct action aspect of the insurance, Tesoro and other companies without the ability to self insure, are not able to meet the requirements and are now

operating under a temporary wavier in Prince William Sound. This wavier will be revoked June 30th of this year. If the legislature does not act now, it may be impossible for these companies to transport A-N-S crude to refineries in Cook Inlet. I believe that even if Alyeska does not lift it's financial responsibility requirements, passage of this bill will remove the legal justification for those requirements.

I would like to make it clear that although the sunset amendment narrows the bill to solving the Alyeska/Tesoro difficulties, it is not the only reason the bill was introduced. On June 30 of this year, HB 567 will take effect requiring significant oil spill cleanup capabilities be demonstrated by the industry. Statewide, oil facilities and operations without the financial resources to have their own cleanup capability, will have to turn to spill cleanup cooperatives and cleanup RACs for the cleanup services by law. At this time those operators have been reluctant to join cleanup co-ops partly because of their exposure to unlimited liability. In addition, cleanup contractors have become sensitized to the liability issue and are now reconsidering offering their services.

This bill will also make it possible for innocent parties to respond to oil spills without fear of law suits for acts of simple negligence. So, if a fisherman discovers a mystery spill, he can immediately respond - without calling his or her lawyer first. In addition, by being more consistent with other states and the federal law, large RACs such as the Marine Response Corporation (MSRC) will be more inclined to respond to spills in Alaska and perhaps even locate here. This bill has no effect on the responsibilities for cleanup or on the planning standards enacted by the legislature in 1990.

There has been considerable support for CSHB 196 and there has been some concern and I believe that we have addressed the majority of those concerns. Working with the Citizens Advisory Council, the oil industry, environmental groups, and fishing organizations, we have prepared this final version of the bill. Other states looking at similar measures have enjoyed support from many environmental groups, fishing groups, the Coast Guard as well as the oil industry.

In summary, CSHB 196

1. Shifts the liability for damages caused a RAC's simple negligence during the first 15 days of oil spill cleanup to the spiller so long as the RAC.

   a. Does not cause personal injury.

   b. Does not violate an order of the On Scene Coordinator.

   c. Does not substantially deviate from the applicable oil spill contingency plan.

2. Calls for a study of the state's liability laws to be done by next legislative session.

3. Sunsets these provisions in one year so this legislature will be able to reconsider the issue.

Alaska Environmental Lobby, Inc.

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HB 196: RESPONSE ACTION CONTRACTOR LIABILITY

The Alaska Environmental Lobby opposes HB 196. HB196 attempts to lessen the liability of response action contractors (RAC), the businesses with whom oil shippers contract to cover spill response and clean-up. By giving professional spill responders variance from normal liability rules, Alaska takes the risk of exposing our natural resources to yet, another insufficient response to and clean-up of a major oil spill.

This bill has been presented as a means to assist a small Alaskan oil shipper who is currently unable to meet the bonding requirements of the only response action contractor available in its area of operation. Alyeska, the only RAC in the Prince William Sound, has required a one billion dollar bond of Tesoro, in order to act as its RAC in the event of a spill. This bond is not a legal requirement, but rather a "cost of doing business." It will however, put Tesoro out of business, as they can not post the bond.

Although the passage of HB 196 may persuade Alyeska to lower its bonding requirement and thus allow Tesoro to stay in business, there is no guarantee that this will occur. Alyeska will still be able, at any time, to raise the figure and once again, threaten to put Tesoro out of business. After the bill passed House Resources last week, Marnie Issacs of Alyeska stated that the bill "does not allow us to relax our liability standards." (Penninsula Clarion, 4/18/91.)

Aside from not provided a guaranteed means of lowering Alyeska's bonding requirement of Tesoro, the bill could have the following adverse effects:

** **RAC's may not be as careful if liability is limited.** This bill would give RAC's incentives to use less than efficient methods and cheaper materials, and to expend less than their best efforts to contain and clean up a spill. While the days immediately after an oil

spill will always be a crisis situation, RAC's should be trained to respond under exactly these circumstances;

** **Not requiring the responders to substantially comply with an articulated, existing, contracted-for, State-approved contingency plan is ludicrous.** Why have a planning process if the industry is not expected to follow the plan?;

** The question remains whether someone will always ultimately be liable. **By "shifting" liability back to the spiller, claimants may not always be able to recover on damages caused by an RAC.** If the spiller is unknown, abandons the spill, is insolvent or otherwise removes its assets, or receives special "immune" status by way of a spill settlement, parties injured by the RAC may be left without recourse other than the state.

Tesoro's bonding problem must be resolved in a way other than by potentially degrading the environment with HB 196. Don't we value our sensitive coastal areas and our pristine land and water as much as the state of New York, with its paved-over lands and comparatively tiny oil shipping areas, which has resisted passage of a bill similar to HB-196 for several years? If the intent of the bill is to make certain that Tesoro can continue to operate in Prince William Sound, then address the issue directly. Why does HB 196 fail to address this issue and instead promotes new and unparalleled levels of irresponsibility among professional response action contractors who are trained to and indeed make their livings by answering the call to clean up oil?

Issue Paper prepared by Mary Irvine and Marna Schwartz for AEL 4-21-91

Introduced by: Brown

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

A RESOLUTION OF THE KENAI PENINSULA CAUCUS CONCERNING "OIL SPILL RESPONDER'S LIMITED IMMUNITY."

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and,

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and,

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities.

NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and,

BE IT FURTHER RESOLVED, that the Kenai Peninsula Caucus supports and encourages Alaska State legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and,

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

PASSED BY THE KENAI PENINSULA CAUCUS this 22nd day of March, 1991.

Jack E Brown

Jack Brown, President

ATTEST:

John J. Williams

John J. Williams, Secretary

(3/8/91)

Alyeska blasted for billion-dollar bond

Borough Mayor Don Gilman Wednesday blasted Alyeska Pipeline Service Co. for what he calls an "unreasonable" demand that threatens to shut down Tesoro-Alaska Petroleum Corp.'s Nikiski refinery.

Alyeska is requiring Tesoro to come up with a $1 billion bond to continue shipping oil from the Alyeska pipeline terminal in Valdez to Cook Inlet.

Tesoro officials say they can't possibly meet the requirement. And since they get 90 percent of the crude oil for their Nikiski refinery from Valdez, the refinery would be in serious trouble if it was no longer able to ship from there, said Tesoro vice president Gene Burden.

Gilman said the major member companies of Alyeska — Exxon, British Petroleum and ARCO — are using Tesoro as a pawn in order to pressure the Legislature to pass a bill restricting Alyeska's liability in the event of a spill.

"They're using Tesoro," Gilman said. "They're being unreasonable."

But Alyeska spokesperson Marnie Isaacs said the $1 billion requirement is necessary because of the liability Alyeska could be subject to if it responds to a spill from Tesoro or another shipper in Prince William Sound.

"Alyeska serves as the initial response action contractor for those vessels calling at the terminal in Valdez," she said. "Because of the state's liability requirements, Alyeska ... asked the owner-operator or charter of the vessels to pledge a billion dollar bond, which, simply put, indicates they would have access to funds to manage the claims arising from a spill."

The other five companies operating vessels in Prince William Sound — Exxon, BP, ARCO, Shell and Chevron— have been able to comply with the $1 billion requirement, mainly by pledging $1 billion in corporate assets.

But Tesoro can't do that, Burden said.

"All five of those other companies are very, very large companies," he said. "Our whole company's only worth $200 million. To come up with a bond of a billion dollars is just not possible."

He thinks Tesoro should not be required to put up as large an amount as the other companies because Tesoro transports only a small percentage of the oil coming from the terminal, its tanker loads are much smaller, and it has taken many preventive measures, including the recent introduction of a double-bottomed tanker.

Alyeska and Tesoro have worked out a temporary agreement that allows Tesoro to continue operating in the Sound until June 1 with $1 billion in insurance, rather than a bond.

Alyeska says it may lower its requirements if the Legislature passes a bill limiting Alyeska's liability in case problems occur when it responds to a spill.

"The core of the problem rests with the state's current liability laws," Isaacs said.

The way the law stands now, the standard of liability is "simple negligence," which Isaacs said could mean if Alyeska responds according to its plan with the state, but inadvertently loses some oil from a boom, it could be held liable.

Alyeska wants the standard of liability for a spill responder to be "gross negligence," which is harder to prove in court than simple negligence.

Tesoro also favors such a bill because it would limit the liability for the Cook Inlet spill response cooperative of which Tesoro is a member.

But fishing and environmental groups are opposed to the idea because they believe it would lessen the incentive for spill responders to be prepared.

A compromise bill, which sought to limits liability but only for the first 15 days after a spill and only if a company does not "substantially deviate" from its contingency plan, was passed out of the House Resources Committee Tuesday.

But Alyeska is not satisfied with the language in the bill, Isaacs said. "The bill is helpful, but it doesn't go quite far enough," she said. "We feel [illegible] language does not allow us to relax our liability standards."

Mayor Gilman also favors legislation limiting spill responders' liability because the Kenai Peninsula Borough is a member of the Cook Inlet response cooperative and taxpayers could also be held liable for problems resulting from the cooperative's response to a spill.

But Gilman, a former state senator, does not believe the legislation will pass. He says the bill has to get through two more House committees and the full House and the Senate, and he doesn't believe that will happen in the remaining 34 days of the legislative session.

He believes Alyeska is being inflexible about the bill.

"They don't want anything less than gross negligence," he said. "What I think is happening is Alyeska is trying to get the gross negligence standard, and they're doing it on the backs of Tesoro."

"The big three (Exxon, BP and ARCO) are using this thing unmercifully and unnecessarily," Gilman said.

Isaacs says that Alyeska is "very sympathetic to Tesoro's situation."

"We would like to find a way to accommodate Tesoro's needs and still protect the company's (Alyeska's) liability," she said.

Some of Tesoro's supporters in borough and state government have suggested the Alyeska owner companies are trying to put Tesoro out of business, but Isaacs denies that and Gilman says he does not believe that's the case, either.

"But if that's the fallout, they could care less," he said. "The big guys just don't care. They could care less if this refinery closed down."

The Kenai Peninsula Borough Assembly cares a great deal, however.

Tesoro employs about 150 people on the borough, according to Burden. The company provides a good chunk of borough tax revenues.

The Borough Assembly unanimously passed a resolution Tuesday night, which was supported even by fishing groups, urging the Legislature to intervene on Tesoro's behalf.

Burden says if Tesoro and Alyeska can't come to an agreement, Tesoro will file suit against the pipeline company, which would include seeking an injunction to allow the company to continue shipping out of Prince William Sound after June 1.