

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6949 HOUSE JUDICIARY

12

cepts the order, generally at this point the debt of the originator to the beneficiary for which the order was issued is discharged (§ 4A-406).

Scope of article 4A

A payment order can be oral, in writing, or electronic. Like a check, a payment order is an unconditional (except as to timing) instruction to pay a fixed or determinable amount of money to a beneficiary (§ 4A-103(1)). However, a check is not a payment order because a payment order must be transmitted by the sender, not to the payee, but directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank

part of which is governed by the Electronic Funds Transfer Act and its implementing regulation E, which protect consumer rights, is excluded from article 4A to avoid conflicting rules (§ 4A-108). However, a consumer purpose transfer over FedWire, for example, outside of the scope of the federal law could be subject to article 4A.

Salient aspects of article 4A

Three matters in particular are presently a source of litigation concerning funds transfers. These are: responsibility for unauthorized and erroneous orders, liability for damages caused by orders that are improperly executed, and finality of payment. For discussions of the litiga-

it, and the bank complied with any instructions of the customer as to a proper account to debit and the like, even an unauthorized order will be effective (§ 4A-202). There is one exception. Even if the order passed an appropriate security procedure, the customer will not bear the loss if the customer proves the order is not attributable to any cause related to the customer's operation (the interloper situation) (§ 4A-203). However, the customer may lose interest owed on any refundable amounts if it does not use ordinary care to detect any unauthorized orders and notify the bank (§ 4A-204).

Payment orders erroneous as to beneficiary, bank, time, amount, or duplicate orders caused by the sender are the sender's responsibility (§ 4A-303). However, such orders only bind the sender as to the intended beneficiary and amount if a security procedure for the detection of error was in effect and the sender complied with it but the bank did not (§ 4A-201). However, again the sender has a duty of ordinary care to discover and report an error (§ 4A-205). A funds transfer or third party communications system to which an order is first transmitted is the agent of the sender; any error made by it is attributed to the sender (§ 4A-206).

Often in fraud schemes or because of mistake, a payment order will identify the beneficiary both by account number and by name, each referring to a different person. Under section 4A-207(2)(a) and (3), the beneficiary's bank is entitled to pay the account if it does not know of the discrepancy and the originator is a bank, or if a nonbank originator received notice that payment might be made by account number even if a name was given. If the bank pays the person identified by name or knows of the discrepancy (§ 4A-402(3)), no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to payment from the originator. If no person has rights as a beneficiary, acceptance of the order cannot occur (§ 4A-207(2)(b)). If the person paid is not a correct payee, the money back guaranty applies (§ 4A-402(3)). Article 4A also contains provisions resolving situations where the beneficiary's bank or an intermediary bank is misdescribed instead of the beneficiary (§ 4A-208), and governing cancellation (stop payment) and amendment of payment orders (§ 4A-211).

Continued on next page

V I D E O S E M I N A R

Our Section will co-sponsor with the ABA Division for Professional Education "Fundamentals of Asset-Based Financing," to be broadcast via satellite to more than 50 locations nationwide on February 15, 1990, from noon to 4:00 p.m. EST.

Focusing on the basics of asset-based lending, the program will examine the loan from preliminary investigation through closing, including: preparation of loan documents; various types of collateral; guaranties, letters of credit, and debt subordination agreements; relationships between lenders; and usury and regulatory acts.

The program chair is Maury B. Poscover, chair of the Committee on Commercial Financial Services. Other faculty members will include Howard Ruda, Donald Rapson, and E. Carolan Berkley. Registrants at all viewing locations will be able to question the panelists.

The registration fee, which includes study materials, is \$135 (\$85 for government employees, \$65 for law students). To register or to obtain further information, readers should contact Theresa Kittridge, ABA Satellite Seminars, at (800) 621-8986 (outside Illinois) or (312) 988-6200 (within Illinois).

(§ 4A-103(1)(c)). For the same reason, the concept of payment order excludes payment by credit card.

Because payment orders must involve banks (§ 4A-105(1)(b)), funds transfers made by Western Union and the like are excluded; they are sufficiently different from the large, commercial transfers that are the subject of article 4A as to make it inadvisable to employ the same rules. Credit transfers through Automated Clearing Houses ("ACH") are included under article 4A, but ACH debit transfers are excluded, again for the reason they involve sufficiently different considerations (§ 4A-103(1)(b)). Finally, a funds transfer any

tion, see the U.C.C. annual surveys at 35 Bus. Law 1129 (1980); 38 Bus. Law. 1130 (1983); 39 Bus. Law 1333 (1984); 41 Bus. Law. 1412 (1986); and 42 Bus. Law. 1291 (1987). Article 4A addresses each of these problem areas.

An authorized payment order may be properly executed by the receiving bank and binds the person identified as the sender. The order may be expressly or impliedly authorized, or the sender may be bound by apparent authority. If the order is not authorized, the bank will have acted improperly in executing the order. However, if a commercially reasonable security procedure (§ 4A-201) was in place, the payment order cleared

Sending Large Dollars

Continued from page 7

A funds transfer is used instead of a cashier's or similar check because it is fast and cheap. However, because of the large amounts involved, there is considerable risk if something goes awry; if the banks transmitting the orders had to bear the risk of improper or late execution, funds transfers would cease to be either fast or cheap. Accordingly, absent a contrary agreement, section 4A-305 generally relieves a bank from potential liability for consequential damages because of improper or late execution or the failure to execute a payment order, and provides that for delay, noncompletion, or failure to follow instructions (including the order itself), a bank is liable only for interest losses and expenses, as applicable. Reasonable attorney's fees also are recoverable if a justified demand for compensation is made and refused (§ 4A-305(5)).

Acceptance of a payment order by the beneficiary's bank generally obliges it to pay the amount of the order to the beneficiary (§ 4A-404(1)). However, in some cases the bank itself may not receive settlement for the order. In such event,

the obligation of payment and payment are still final as to the beneficiary and any attempt to make it conditional by agreement is ineffective, unless (1) a rule of a funds transfer system used in the funds transfer provides for provisional payment and this rule is accepted by the affected parties after notice before initiation of a transfer, or (2) the order was transmitted over a funds transfer system that has a loss-sharing agreement among participants and nonetheless the system fails to complete settlement under its rules with respect to any payment order in the funds transfer (the "doomsday scenario") (§ 4A-405(3)-(5)).

Conclusion

Article 4A contains a variety of other provisions governing creditor process served on a receiving bank and set-off by the beneficiary's bank (§ 4A-5032); injunctions prohibiting funds transfers (§ 4A-503); preclusion against a customer contesting a payment order made by its bank (§ 4A-505); and the amount of interest payable (§ 4A-506). In addition, section 4A-507 contains rules on choice of law that seek to maximize the certainty of the law governing funds trans-

1990

- Jan. 17-19 *Midwinter Committee Meetings:*
Corporate Counsel
Law & Accounting
Partnership & Uninc.
Business Orgs.
Small Business
Santa Fe
- Feb. 1-2 Futures Regulation
Comm.
Puerto Vallarta,
Mexico
- Mar. 2-3 National Institute:
Consumer Fin.
Services
in the 90's
Washington, DC

fers. Indeed, that is the goal of all of article 4A, and its rapid and uniform enactment is necessary to achieve that goal under state law.

Fred H. Miller
Norman, OK
William B. Davenport
Chicago

THE BUSINESS LAWYER UPDATE

American Bar Association
Section of Business Law
750 North Lake Shore Drive
Chicago, Illinois 60611

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HPB

295

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322

January 24, 1992

The Honorable Dave Donley
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

Re: HB 295, An Act Relating to
Commercial Motor Vehicles

HB 295, an Act relating to penalties for operation of a commercial motor vehicle, is now in the House Judiciary Committee. I am writing to ask you to schedule this bill for a hearing as soon as reasonably possible.

If HB 295 is not enacted into law, there will be two major consequences. The first will occur on the federal deadline of April 1, 1992, when Alaska's authority to issue commercial motor vehicle driver's licenses (CDLs) will be revoked. This means that Alaska residents operating commercial vehicles in Alaska will be in violation of federal law, since the licenses previously issued to them will no longer be valid. It also means that Alaska commercial vehicle drivers will no longer be allowed to operate in any other state. The only "legal" commercial vehicle operators in Alaska would be out-of-state drivers with a valid CDL from their home state. Alaskans could not go to another state to get a license, because a state may only issue CDLs to its own residents.

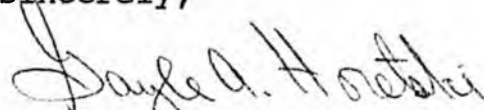
The second consequence of a failure to adopt this proposed legislation is the loss of a percentage of federal highway money, beginning on October 1, 1993. The first year's loss would be five percent of the total allotment, approximately \$12,000,000. The second and subsequent

The Honorable Dave Donley
January 24, 1992
Page 2

years' loss would be 10 percent. This penalty would continue until the state complies with the federal requirement.

In order to avoid making all present commercial vehicle operators in the state ineligible to continue their livelihood, this bill must be passed and effective by April 1, 1992. I am respectfully requesting that this bill be set for a hearing as soon as possible. I, or Ms. Juanita Hensley, Chief of Driver Services, would be glad to answer any questions you may have about this.

Sincerely,



Gayle A. Horetski
Deputy Commissioner

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 278-1149 • Fax (907) 274-1946

May 1, 1991

TO: HOUSE TRANSPORTATION COMMITTEE
ATTN: Representative Foster, Chairman

FROM: Frank J. Dillon, Executive Director

RE: ATA SUPPORT FOR S.B. 261 - " An Act Relating
To Operating Commercial Motor Vehicles"

ATA asks that you support S.B. 261. Enactment of this proposed legislation will help assure improved highway safety by requiring that commercial motor vehicle drivers are sober and drug-free. It mandates severe penalties for those drivers and companies who do not choose to operate in a reasonable, prudent and safety conscious manner. S.B. 261 will only impact a very small number of drivers and companies. The vast majority of commercial drivers do not drive while impaired nor do many companies allow such drivers to drive while impaired. ATA however feels that even a small number of impaired commercial vehicle drivers are too many and S.B. 261 should further help reduce the number of impaired truck drivers on the roads.

Please pass S.B. 261.

FISCAL NOTE

№ 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Version: HB 295

(H) Publish Date: 4/22/91

Revision Date: _____

Department Affected: Public Safety

Title: An Act relating to Commercial Driver's Licenses

BRU: Motor Vehicles

Component: Drivers Services

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO.

	5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Juanita Henslev

Phone: 465-4335

Division: Drivers Services

Date: 4/10/91

Approved by Commissioner: Richard L. Burton

Richard L. Burton

Agency: Department of Public Safety

Date: 4/10/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

This bill is the second phase of a two-phase process to revise state law to meet the requirements of the federal Commercial Motor Vehicles Safety Act. Phase one dealt with the licensing of commercial drivers, and passed the Legislature last year (Ch 53, SLA 1990). A fiscal note accompanied that legislation, and was approved. That fiscal note funded a position to handle the workload expected from the commercial driver's license program. At the present time, the position is assigned the duties of determining the eligibility of applicants for a commercial driver's license.

This bill requires the Division of Motor Vehicles to remove an operator's commercial motor vehicle license upon conviction for certain traffic violations. The additional workload resulting from this bill will be absorbed by present staff, hired as a result of Ch 53, SLA 1990.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Nr 1
Bill Version: HB 295
(H) Publish Date: 4/22/91

FISCAL NOTE

Revision Date: Draft 4/9/91 Department Affected: DOT&PF
Title: An Act relating to operating commercial motor vehicles, BRU:
motor vehicles, aircraft, and watercraft; and providing for an
effective date
Sponsor: Rules Committee Component:
Requestor: Governor Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	-12197.1*	-24394.3*	-27361.6*	-34323.9*	Unk*
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	-12197.1*	-24394.3*	-27361.6*	-34323.9*	Unk*
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year impact: None

* Estimates of future year impacts are based on the Federal Highway Administrations proposed highway program submitted to Congress as H.R. 1351. The proposed highway program is a 5 year program and, therefore, funding impact in FY 96 is unknown.

ANALYSIS: (Attach a separate page if necessary)

Failure to enact legislation to bring Alaska into compliance with the Commercial Motor Vehicle Safety Act of 1986 (CMVSA 86) will put our highway dollars in jeopardy. CMVSA provides for 5% sanctions against highway funding for states that do not comply in FY 93 and 10% for each fiscal year thereafter. We believe this draft legislation will bring Alaska into compliance with CMVSA 86. We recommend approval of the legislation.

Prepared by: M. Clyde Stoltzfus

Phone: 465-3900

Division: Commissioners Office

Date: April 10, 1991

Approved by Commissioner: Frank G. Terpstra

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: April 10, 1991

Distribution By Preparer: Legislative Finance, Legislative Sponsor, Requestor, OMB, Impacted Agency(ies).

REV 2/7/91

Page 1 of 1

COMMITTEE

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 3, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5-15-91

The LABOR AND COMMERCE Committee considered:

HB 295

HOUSE BILL NO. 295

OPERATION OF VEHICLES, PLANES, & BOATS

"An Act relating to operating commercial motor vehicles, motor vehicles, aircraft, and watercraft; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

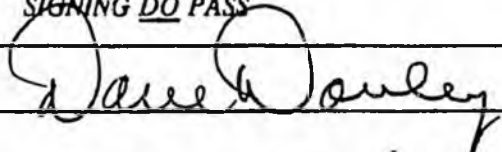
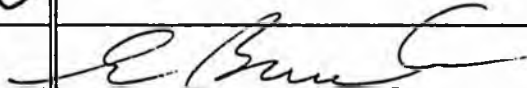
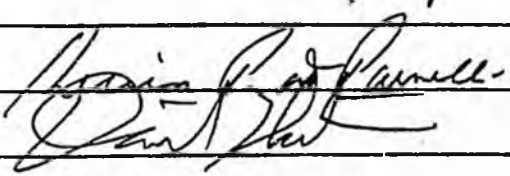
APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) DOT PE

zero fiscal note _____

zero fiscal note(s) DP S

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓				
					
	✓				


CHAIRMAN'S SIGNATURE

(7)

HOUSE COMMITTEE REPORT

Date Referred: April 22, 1991

FURTHER REFERRALS:

Labor & Commerce
Judiciary
Finance

Date of Committee Action: 5/2/91

The TRANSPORTATION Committee considered:

HB 295

HOUSE BILL NO. 295

OPERATION OF VEHICLES, PLANES, & BOATS

"An Act relating to operating commercial motor vehicles, motor vehicles, aircraft, and watercraft; and providing for an effective date."

RECOMMENDATIONS:

[] the same title

be replaced with _____

[] 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)

APPROVES PREVIOUS: (Dept/Date)

[X] ^{negative} fiscal impact DOT

[] fiscal note(s) _____

[X] zero fiscal note DPS

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Greg A. Lemaw</i>	<input checked="" type="checkbox"/>	<i>Gene Kubera</i>		X	
<i>Gail Phillips</i>	<input checked="" type="checkbox"/>				
<i>Richard [unclear]</i>	X				
<i>[unclear]</i>	X				

Richard [unclear]

HPB

296

RECEIVED

APR 9 1991

N.A.R.F.
WASHINGTON

SMITHSONIAN INSTITUTION

Washington, D.C. 20560
U.S.A.

April 8, 1991

Mr. Henry J. Sockbeson
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976

Dear Mr. Sockbeson:

As we have already discussed by telephone, I am pleased to tell you that the Smithsonian Institution has finally completed its consideration of the request of the Larsen Bay Tribal Council for the repatriation of certain materials. The materials in question are, as you know, human remains and associated funerary objects from a site at Uyak Bay, Alaska, that was excavated by Ales Hrdlicka between the years 1931 and 1938. Our decision has not been an easy or uncontested one, and as you also know it follows from an exhaustive review involving a number of outside specialists. Now with the full concurrence of the Director of the National Museum of Natural History, however, I have concluded that the balance of some fairly complex considerations supports a return of these materials to the Council.

You have expressed the belief, with which I can sympathize, that this case has taken an excessive length of time to resolve. Frankly, an awareness of the negative effect this delay is having on our desire to maintain cordial relations with many Native American communities has played a part in the decision to conclude our deliberations on the Larsen Bay claim without convening the Review Panel that has been established for this purpose. A major problem for us has been the difficulty in recruiting the supplementary staff needed to expedite our own internal research on claims. That problem is slowly being overcome, but we must recognize that substantial recruitment delays will always be inherent in Federal hiring processes.

But there have been other, more substantive reasons as well for the length of time that has been devoted to this case. The scientific evidence, while voluminous, does not lend what any fair-minded person would regard as absolutely conclusive support to any position on the repatriation issue. Without going into details, the record of the original excavations at the site presents many ambiguities, making it very difficult to decide on

the likelihood of possible breaks in the occupation there, or on the possibility that older population elements may have been substantially or wholly replaced by new ones during the course of that occupation. Particularly for this reason, I have also felt it was necessary to weigh the evidence for general continuity of Native American occupation in the immediately surrounding region, from the aboriginal period until the present. Once again, no conclusion on this matter can be as clear-cut as one would like. But I think the sum of the evidence (if not all of its details) supports the judgment I am reporting to you herewith.

Issues like those mentioned above had not been anticipated in detail, I should point out, in the legislation mandating our review. Partly because they are so new, we have felt the need to think about them very deliberately. At the same time, now looking to the future, this experience leaves me with a growing sense of the particularity of each of the repatriation claims that are likely to be addressed to the Smithsonian. One would hope that each case would help us to develop broad principles, presently enabling us to handle subsequent cases with less uncertainty and delay. But I am no longer so confident that this hope will be easily realized.

Please be in touch with Dr. Frank Talbot, Director of the National Museum of Natural History, in order to discuss arrangements for the return of these remains. I do hope you understand that all of us at the Smithsonian, while obviously conscious of the scientific loss that we believe this repatriation represents, view the act of repatriation itself with the deepest sympathy and respect. It is our earnest hope that you, your colleagues and constituents will recognize in our action an expression of good will and good intentions that will lead to an improvement of our relations in the future.

Sincerely yours,



Robert McC. Adams
Secretary

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representative Dave Donley, Chairman
House Judiciary Committee

FROM: Representative Cliff Davidson

DATE: April 22, 1991

SUBJECT: Committee Scheduling of HB 296
Repatriation of Human Remains/Unmarked Burial Sites

This memo is to request a hearing for House Bill 296, "an Act relating to human remains and funerary objects" at your earliest convenience.

This legislation outlines the procedures to follow when unmarked burial sites are disturbed in the course of legitimate activity (i.e. road construction or licensed archaeological projects). The bill also addresses the concern that human remains may not be possessed by a person not related to the remains unless a decedent or tribe has granted the person study rights.

Additionally, if there is reasonable anticipation that historical Alaskan unmarked burials will be disturbed in the course of legitimate activity, this bill allows the next of kin or the local tribal group be notified in advance to decide how to dispose of the remains.

Please contact my staff member, Stephanie Love, if you have any questions about the bill.

Thank you.

Alaska Federation of Natives, Inc.

May 3, 1991

Mr. Cliff Davidson, Chairman
House Resources Committee
House of Representatives
Box V
Juneau, Alaska 99811

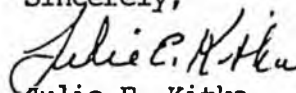
Dear Mr. Davidson:

The Alaska Federation of Natives has followed, with great interest, the repatriation/unmarked burial site hearings of the last one and one-half years. I am pleased to see that progress on the issue has resulted in House Bill 296 now being before the House Judiciary Committee. The Federation supports HB 296 as currently drafted.

As you are well aware, Native burial site disturbances and the removal of remains and funerary objects is an extremely sensitive issue. Time and time again events in Alaska have shown that respect for ancestral remains and Native culture has been readily sacrificed for science and/or personal gain.

The Federation supports HB 296 as presented to the House Judiciary Committee and thanks its sponsors for their efforts in this matter.

Sincerely,



Julie E. Kitka
President

Kodiak
Area
Native
Association



402 Center Avenue
Kodiak, Alaska 99615
Phone (907) 486-5725

Representative Cliff Davidson
State of Alaska House of Representatives
Box V, Juneau, AK 99811

May 6, 1990

Dear Cliff,

I would like to express my wholehearted support for House Bill 296, as professional archaeologist, and on behalf of the Kodiak Area Native Association. The bill offers long overdue protection for human remains in Alaska, and recognition of the rights and dignity of Native Alaskans. I am particularly pleased with Section 6, which will be one of the few protections available for archaeological sites on private land.

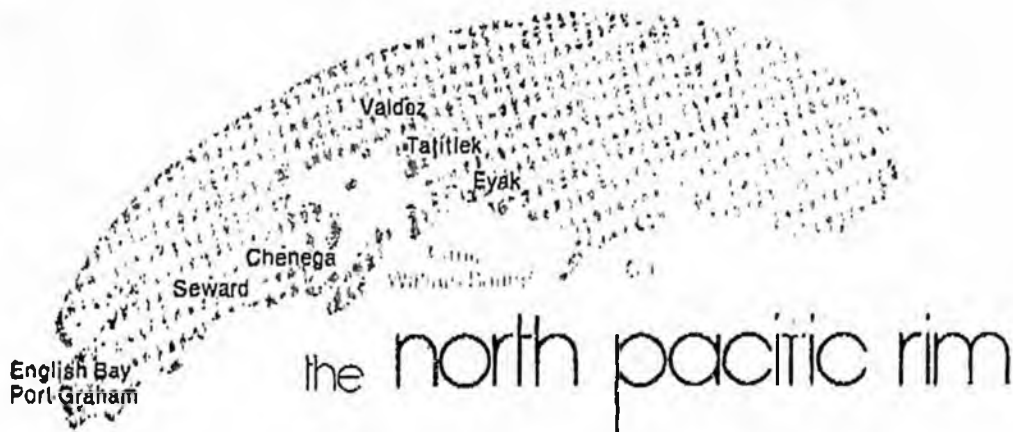
On page 2, line 5 and 6, you might consider legitimately obtained skeletons purchased by physicians and others, which are generally imported from India and other places. Perhaps it would be best to address the bill specifically to human remains from the state of Alaska.

Also, it may be wise to make the proposed dispute committee, described in page 5, lines 27-31, and on page 6, and odd number to avoid split decisions. I would urge you to retain the full representation of the Native community, and consider dropping the area resident.

On the whole the bill is clear, solidly written, and does what it is supposed to. Please accept my thanks, and that of the Native community for introducing this fine piece of legislation. It is fully consistent with your excellent record for supporting and protecting the cultural heritage of Native people.

Sincerely,
KODIAK AREA NATIVE ASSOCIATION
Kelly Simeonoff, President

Rick Knecht
Culture and Heritage
Program Administrator



May 6, 1991

Representative Cliff Davidson
Chairman
House Resources Committee
State of Alaska
House of Representatives
Box V
Juneau, Alaska 99811

Dear Representative Davidson:

The North Pacific Rim, the Alaska Native regional tribal organization serving the people of the Prince William Sound and lower Kenai Peninsula, is pleased to see the progress of House Bill 296, "An Act relating to human remains and funerary objects." This Act will close a loophole in current state law and provide some much needed protection for Alaska Native burial sites.

We would like to emphasize that we do not view this legislation as being "anti archaeology" or "anti science" in any way. We would like to point out that The North Pacific Rim is incorporating an archaeology component into a youth Spirit Camp project this summer. We view HB 296 as a vehicle for showing respect for the Native cultures of our state and recognizing the right of Native people to protect the graves of their ancestors.

Thank you and the other sponsors for the time and effort you have put into this important piece of legislation.

Sincerely,

Richard A. Rolland
Executive Director

HOUSE BILL NO. 296

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIDSON, Lincoln, Grussendorf, Gruenberg, MacLean, Koponen, Ivan, Gonzales, G.Phillips, Parnell, Kubina

Introduced: 4/22/91

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to human remains and funerary objects."

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

3 * Section 1. AS 12.65 is amended by adding new sections to read:

4 ARTICLE 2. HUMAN REMAINS.

5 Sec. 12.65.150. REPORTS OF HUMAN REMAINS. (a) Except as provided in (b) of
6 this section, a person who encounters human remains in or on land or water in the state shall

7 (1) immediately cease any activity that may cause further disturbance of the area;
8 and

9 (2) report the presence and location of the remains to the nearest law enforcement
10 agency as soon as possible considering the location of the discovery and the availability of
11 communication alternatives.

12 (b) The requirements of (a) of this section do not apply to a person who encounters
13 human remains while operating under a permit issued under AS 41.35.080.

14 (c) If the law enforcement agency determines that remains reported to it under (a) of this

1 section are unrelated to a prosecutable offense and may be human remains with historic or
2 prehistoric significance, the agency shall notify the Department of Natural Resources.

3 (d) A person who knowingly fails to comply with (a) of this section is guilty of a class A
4 misdemeanor.

5 Sec. 12.65.160. UNLAWFUL ACTS. A person may not sell, buy, or barter human
6 remains. A person who violates this section is guilty of a class A misdemeanor.

7 Sec. 12.65.170. DEFINITION. In AS 12.65.150 - 12.65.170, "human remains" means
8 a dead human body or part of a dead body in any stage of decomposition, excluding nonskeletal
9 body parts that are normally shed during life, such as hair, nails, and isolated teeth.

10 * Sec. 2. AS 41.35.040 is amended to read:

11 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS
12 AND HISTORIC SITES. State-owned monuments, sites, and other historic, prehistoric, or
13 archeological properties owned or purchased by the state are under the control of the department,
14 and their maintenance shall be covered in the appropriations made to the department. Privately
15 owned state monuments or historic sites are eligible to receive state support for their
16 maintenance, restoration, and rehabilitation if they are kept accessible to the general public, they
17 are in compliance with state laws pertaining to human remains and funerary objects, and
18 application for support is made in conformity with regulations adopted by the commissioner.

19 * Sec. 3. AS 41.35.060(a) is amended to read:

20 (a) The department, with the recommendation of the committee, may acquire real and
21 personal properties that have statewide historic, prehistoric, or archeological significance by gift,
22 purchase, devise, or bequest. If the department acquires disinterred human remains or
23 funerary objects under this subsection, it shall comply with AS 41.35.410. The department
24 shall preserve and administer property so acquired. The department may acquire property
25 adjacent to the property having historic, prehistoric, or archeological significance when it is
26 determined to be necessary for the proper use and administration of the significant property.

27 * Sec. 4. AS 41.35.070 is amended by adding a new subsection to read:

28 (h) If the department discovers human remains or funerary objects during a survey under
29 (d) of this section, the department shall comply with AS 12.65.150 and AS 41.35.410.

30 * Sec. 5. AS 41.35.080 is amended to read:

31 Sec. 41.35.080. PERMITS. The commissioner may issue a permit for the investigation,

1 excavation, gathering, or removal from the natural state [,] of any historic, prehistoric, or
2 archeological resources of the state or human remains or funerary objects reported under
3 AS 12.65.150 or AS 41.35.410. A permit may be issued only to persons or organizations
4 qualified to make the investigations, excavations, gatherings, or removals and, except as
5 otherwise provided in the permit issued under of this section, only if the results of these
6 authorized activities will be made available to the general public through institutions and
7 museums interested in disseminating knowledge on the subjects involved. If the historic,
8 prehistoric, or archeological resource involved is one that [WHICH] is, or is located on a site
9 that [WHICH] is, sacred, holy, or of religious significance to a cultural group, the consent of that
10 cultural group must be obtained before a permit may be issued under this section.

11 * Sec. 6. AS 41.35.090 is amended to read:

12 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
13 construction, alteration, or improvement of any nature is undertaken on a privately owned,
14 officially designated state monument or historic site by any person, the person shall give the
15 department three months' [MONTHS] notice of intention to construct on, alter, or improve it.
16 If the construction, alteration, or improvement involves known reasonably identifiable
17 human remains or funerary objects, the person shall also give three months' notice of
18 intention to construct, alter, or improve to the descendants or tribe of the decedent whose
19 remains are involved. Before the expiration of the three-month notification period, the
20 department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake
21 or permit the recording and salvaging of any historic, prehistoric, or archeological information
22 considered necessary.

23 * Sec. 7. AS 41.35.230 is amended to read:

24 Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 - 41.35.240], unless the
25 context otherwise requires,

26 (1) [REPEALED

27 (2)] "committee" means the Historic Sites Advisory Committee;

28 (2) "funerary objects" means items for which there is direct circumstantial
29 evidence, expert opinion, or documentation that the items were directly associated with
30 human remains or were intentionally placed with human remains either at the time of
31 burial or interment or at some subsequent time, as a part of the death rites or ceremonies

1 of a culture:

2 (3) [REPEALED

3 (4) "historic, prehistoric and archeological resources" includes deposits,
4 structures, ruins, sites, buildings, grave sites [GRAVES], artifacts, fossils, or other objects of
5 antiquity that [WHICH] provide information pertaining to the historical or prehistorical culture
6 of people in the state as well as to the natural history of the state, except that the term does not
7 include human remains or funerary objects;

8 (4) "human remains" means a dead human body or part of a dead body in
9 any stage of decomposition, excluding nonskeletal body parts shed during life, such as hair,
10 nails, and isolated teeth;

11 (5) "Native" means a person who is a descendant or ancestor of the
12 aboriginal races inhabiting the state when it was annexed to the United States or a
13 descendant or ancestor of an Indian or Eskimo who, after the year 1867, migrated into the
14 state from Canada;

15 (6) "reasonably identifiable" means identifiable, by a preponderance of the
16 evidence, as to individual, familial, or tribal origin based on available archeological,
17 historical, ethnological, or other direct circumstantial evidence or expert opinion;

18 (7) "tribe" means a group recognized as a tribe by the United States
19 Secretary of Interior, or a Native village or regional corporation or other Native group
20 defined in or established under 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement
21 Act).

22 * Sec. 8. AS 41.35 is amended by adding new sections to read:

23 ARTICLE 3. DISCOVERY OF HUMAN REMAINS AND FUNERARY OBJECTS.

24 Sec. 41.35.400. POLICY. It is the policy of the state that a person may not lawfully
25 assert title to human remains. The right of disposition of human remains lies with the state
26 except as provided in AS 41.35.410.

27 Sec. 41.35.410. HUMAN REMAINS AND FUNERARY OBJECTS. (a) When human
28 remains are discovered by or reported to the department, the department shall notify the nearest
29 law enforcement agency unless a report has already been made under AS 12.65.150. After law
30 enforcement activities related to the remains have ceased, the department shall comply with (c)
31 of this section.

1 (b) A person who discovers funerary objects shall promptly report the discovery to the
2 department. Unless the department determines upon further investigation that the objects are
3 probably not funerary objects, the department shall comply with (c) of this section.

4 (c) If human remains or funerary objects described in (a) and (b) of this section are not
5 disinterred, the department shall leave them in the place where they are interred, when possible.
6 If the human remains or funerary objects are disinterred and the decedent's living descendants
7 are reasonably identifiable, the department shall, by certified mail, notify the decedent's relative
8 with the closest kinship ties that the remains and funerary objects are available for disposition.
9 If the remains and funerary objects include Native human remains or funerary objects and the
10 department is unable to ascertain the existence and address of living descendants of the
11 descendant, the department shall determine with as much specificity as possible their tribe of
12 origin and notify the governing body of the tribe of their discovery and location. If a specific
13 tribe of origin is not reasonably identifiable, the department shall, by certified mail, give the
14 notice of the discovery and its location to the governing body of the tribe whose members
15 predominate in the vicinity of the discovery.

16 (d) At the request of a descendant or the governing body of a tribe notified under (c) of
17 this section, the department shall provide for access to the remains or funerary objects so that the
18 descendant or the tribe may dispose of them. A tribe may not be allowed to have access until
19 the tribe's plan for disposition of the remains or objects has been submitted to the department.
20 If, within 120 days after notification by the department by certified mail, neither a descendant
21 nor a tribe seeks the right to dispose of the remains or funerary objects, the department shall treat
22 them in the same manner as it treats other unclaimed human remains or historic, prehistoric, and
23 archeological resources under this chapter, as applicable.

24 (e) A person may request a tribe or descendant to grant to the person an opportunity to
25 study human remains or funerary objects for which the tribe or descendant is granted disposition
26 rights under (c) of this section.

27 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. When needed, the governor
28 shall establish a committee to advise the department concerning conflicting claims of tribes and
29 descendants with respect to disposition rights for human remains and funerary objects. A
30 committee consists of the state liaison officer appointed under 16 U.S.C. 470 - 470n (National
31 Historic Preservation Act) and the following persons, who shall be appointed by the governor as

1 the need arises:

2 (1) a physical anthropologist;

3 (2) three descendants of the person whose remains or funerary objects are in
4 dispute or a person from each tribe that has a colorable claim to the human remains or funerary
5 objects that are the subject of the dispute, whichever is appropriate; and

6 (3) a resident of the area from which the remains and objects originated who does
7 not meet the requirement of (2) of this section.

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representative Dave Donley, Chairman
House Judiciary Committee

FROM: Representative Cliff Davidson

DATE: April 22, 1991

SUBJECT: Committee Scheduling of HB 296
Repatriation of Human Remains/Unmarked Burial Sites

This memo is to request a hearing for House Bill 296, "an Act relating to human remains and funerary objects" at your earliest convenience.

This legislation outlines the procedures to follow when unmarked burial sites are disturbed in the course of legitimate activity (i.e. road construction or licensed archaeological projects). The bill also addresses the concern that human remains may not be possessed by a person not related to the remains unless a decedent or tribe has granted the person study rights.

Additionally, if there is reasonable anticipation that historical Alaskan unmarked burials will be disturbed in the course of legitimate activity, this bill allows the next of kin or the local tribal group be notified in advance to decide how to dispose of the remains.

Please contact my staff member, Stephanie Love, if you have any questions about the bill.

Thank you.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 296

Revision Date: _____ Department Affected: Public Safety
 Title: "An Act relating to human remains and funerary objects" BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Davidson
 Requestor: House Judiciary

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact upon the Division of Alaska State Troopers is anticipated.

Prepared by: Gayle A. Horetski Phone: 465-4322
 Division: Office of the Commissioner Date: 5/6/91
 Approved by Commissioner: *Richard L. Burton* Richard L. Burton
 Agency: Department of Public Safety Date: 5/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 22, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 5-6-91

The JUDICIARY Committee considered:

HB 296

HOUSE BILL NO. 296

PROTECTION OF NATIVE HUMAN REMAINS

"An Act relating to human remains and funerary objects."

RECOMMENDATIONS:

be replaced with _____

CS HB 296 (500)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note Public Safety

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				
<i>Mark Stanley</i>	<input checked="" type="checkbox"/>				
<i>W. Stumbo</i>	<input type="checkbox"/>				
<i>Levin Rod Parnell</i>	<input checked="" type="checkbox"/>				
<i>Dave Wauley</i>	<input checked="" type="checkbox"/>				

Dave Wauley
CHAIRMAN'S SIGNATURE



A young Kurdish refugee stands soaked from the rain in a camp at Border Point 49 in Iraq. **DENIS PAQUIN / The Associated Press**

...known survivor from a ferry that burst into flames after colliding with an oil tanker in thick fog, port authorities said today. At least 139 people were missing and feared dead.

"There's little hope of finding survivors at this point," a Civil Defense spokesman told Italian radio after Wednesday night's collision some 2 1/2 miles off this northwestern port.

The tanker also caught fire after the 10:30 p.m. colli-

...er's crew jumped into lifeboats after fighting the flames without success.

Rescue workers said the sea was covered by huge sheet of flame after the collision. Initial reports said the impact had opened a hole in the side of the tanker, spreading oil into the sea.

Civil Defense and port authorities said 72 passengers and 67 crew members of the 6,187-ton ferry were missing.

Please see Back Page, **SHIPS**

Smithsonian to give back village's bones, artifacts

By **DAVID HULEN**
Daily News reporter

In its largest reparation of human remains and artifacts yet, the Smithsonian Institution has agreed to return its collection of Native bones and burial objects dug up and taken from a Kodiak Island village in the 1930s.

The decision, announced Wednesday, may finally put to rest years of haggling between the residents of Larsen Bay, a Native fishing village of 150 people on the island's southwest side, and the Smithsonian, the vast depository of American science and

history in Washington, D.C.

The remains and artifacts could be returned as early as this summer, villagers were told this week. Definite arrangements have not yet been made, although the local tribal council is planning a mass Russian Orthodox reburial near the grassy point where the digging occurred.

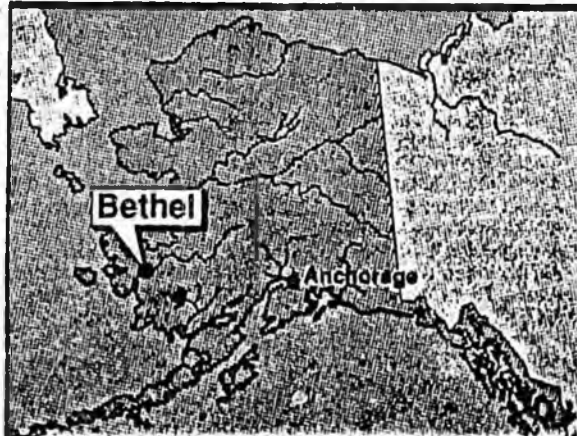
A Smithsonian-sponsored expedition spent six summers in Larsen Bay unearthing as many as 800 graves, according to Smithsonian records and the writings of Ales

Please see Back Page, **ARTIFACTS**



FRAN DURNER / Anchorage Daily News

Dora Aga remembers the anthropologist who took the bones: "He had no regard for the people here."



oses
wage
ethel

gallons of sewage
around the Bethel
collected over the
part of the town

One last season

After shaping spotter-pilot profession, Tom Parker was ready to move on

By **TOM KIZZIA**
Daily News reporter

Tom Parker, the pilot killed in a midair crash Tuesday, was an innovator at hunting schools of herring from the air and directing seine boats to the catch.

banned from the Sound for salmon season, while the skies over the herring fleet had grown crowded with pilots new to the game. Parker, 56, had told friends he was ready to look for new challenges — perhaps spot-

THURSDAY



PARTLY CLOUDY

High 45, low 30
Details, Page A-8
Weatherline, 278-7000

SECTIONS

NATION & WORLD	Section A
SPORTS	Section B
LIFESTYLES	Section C
AUTOMOTION	Section D

when somebody needed help.

"History crashed into that mountain yesterday," said another friend, Bonnie Morris. "This marriage between fishing and flying was something those guys just invented. But like every gold rush up here, one guy strikes it rich and every piker thinks he can do it too. Alaska draws people because they hear of these mythological characters who went out and did it. Like Parker."

Parker came to Alaska as a schoolteacher in Dutch

him to learn to fly. In 1964 he started an air service in Cordova. Everything required innovation. He started spotting in an era of wing signals and messages dropped in beer cans, and he adapted advanced electronic communications to the business.

Parker was killed in a specially outfitted Cessna L-19 Bird Dog that he had called "the ultimate fish-spotting tool." The pilot of the second plane, James P. Blue of Homer, survived after crash-landing his Super

This marriage between fishing and flying was something those guys just invented.

— Bonnie Morris, a friend of Parker's

Cub on the Tattilek village runway.

Given the dangers of herring spotting — where dozens of airplanes circle over a bay, their pilots' eyes cast downward looking for boats and fish — it's perhaps surprising more people haven't been killed. Crashes in Cook Inlet and Togiak Bay claimed five lives in 1978,

and in 1984 two more pilots were killed in Togiak. A spokeswoman for the Federal Aviation Administration said two other pilots may have been killed in the past five years but was unable to provide specifics.

State troopers said 30 to 35 planes were working Boulder Bay near Tattilek this week. But Terry Holliday, a spotter pilot and long-

the number was closer to 40. While the number of herring seine boats has remained constant, the increasing investment in the fleet and the need for a big payoff from half-hour openings has meant planes now work for only one or two boats, Holliday said.

The increasing air jams, combined with the state ban on salmon spotting — imposed out of concern over competition rather than safety — have changed the profession, Holliday said.

"I think the heyday's gone," he said.

ARTIFACTS: Museum to return bones to village

Continued from Page A-1

Hrdlicka, the anthropologist who led the digs.

Village elders, such as 74-year-old Dora Aga, say they have vivid memories of Hrdlicka and his helpers digging up the place villagers called "the boneyard," Aga, a teen-ager then, is still angry at him for digging up her family's garden in search of more bones and artifacts.

"He had no regard for the people here," she said Wednesday from the village. "And we had no laws, of course. None that we knew about. We just stood by."

The graves were unmarked, and many apparently were hundreds of years old. But residents also reported that at least some of the people in the graves had been dead only a few generations, and even included members of a family who died in the influenza epidemic of 1918.

In recent years, some village residents grew increasingly resentful of the Smithsonian holding the bones of their ancestors, and the tribal council began writing letters to get them back.

"It's got to do with people's uncles and aunts," said Roy Jones, the tribal council president. "It's our people and our heritage. It's like, how would people feel if I went down to Georgia and dug up their back yards looking for bones?"

They weren't alone. Other tribes and Native communities around America made similar requests, and by the late 1980s the Smithsonian's anthropological holdings, most stored out of sight at the Museum of Natural History, had become a hot political issue.

Smithsonian officials argued the items were of scientific value, and refused most requests for their return. They required that Natives show direct genetic links between the remains and modern-day residents. In the case of Larsen Bay, they argued there was no provable connection between villagers and the remains, arguing the village was not continuously inhabited.

But two years ago, Congress passed legislation to make it easier for Natives to get remains returned, and since then, the Smithsonian has been more cooperative, negotiating with several groups around the country. Larsen Bay's case was taken up by the Native American Rights Fund, a legal-aid group. Lawyers argued that Larsen Bay shouldn't have to show a direct link with the bones — the people in the village are of Kodiak descent and so were the people whose bodies were dug up.

On Monday, Larsen Bay's lawyer received a letter from Smithsonian Secretary Robert McCormick Adams, saying research on the Larsen Bay bones "supports a return of these materials." He wrote of "the scientific loss that we believe this repatria-



Frank Carlson, Larsen Bay's former tribal council president, stands at the village "boneyard." The tribal council is planning a mass Russian Orthodox reburial near the point.



RON ENOSTROM / Anchorage Daily News

tion represented, (but) view the act of repatriation itself with the deepest sympathy and respect."

Henry Sockbeson, the lawyer who represented Larsen Bay, said the return is significant nationally because it was by far the largest repatriation so far. "It's important because no other remains have been returned where they have been tested it," he said. "And Larsen Bay was one of the most significant collections they have."

For the past two years, the Smithsonian has been cataloging its inventory of some 18,500 North American remains, ranging from prehistoric to turn of the century, according to Smithsonian spokeswoman Ma-

delyn Jacobs. Some 4,200 "specimens" are from Alaska.

There hasn't been a groundswell across Alaska to have the bones returned. But aside from Larsen Bay, several Interior villages have been in a quiet tug of war with the Smithsonian over remains dug up along the Yukon River — also by Hrdlicka.

Hrdlicka was the European-born founder of the Smithsonian's Division of Physical Anthropology and worked extensively on digs in Alaska. His death in 1943 warranted a long obituary in The New York Times.

But modern-day scientists have attacked his methods, and Native groups here who have studied his work argue he was a borderline racist who showed little concern for the descendants of the people he was studying.

In his published journals, Hrdlicka described digging a grave under a Russian Orthodox marker in the Interior. "As the parts were being gathered," he saw an old woman nearby who was upset. The grave turned out to be 100 years old and she was the shaken widow. He wrote of reburying the skeleton "to the complete satisfaction of the old dame." He wrote of excavating remains elsewhere but finding the remains "too fresh yet."

Aside from Hrdlicka's methods, Native groups question the scientific value of some of the Smithsonian's collections.

"If young Native individuals are led to believe that it is acceptable and proper for the government of the United States to 'own' the bodies of their grandfathers, grandmothers and other ancestors," wrote Gordon Pullar, former president of the Kodiak Area Native Association, "then how can they possibly believe that they are equal to all others in this country?"

SEWA Flood in the Kus

Continued

spilled almost 100,000 gallons of sewage into the Exxon Valdez in William Sound.

"Of course, once you have a hole in the ice, it's not hard to dump up pretty much anything," he said.

Dave Martin, a former Alaska state trooper, said he first noticed the problem might be dumping into the tundra pool. "A small leak started to seep out of the evening Martin reported the problem when the ice was a little less than a foot thick. The river is another 100 feet wide. It was only then that we found an ice-covered dike.

(Martin said) most of the three ponds near the village are only a few feet deep. Officially, the slough is a pond for pollution results. They could fear killing the fish.

In the meantime, the village is trying to keep their children from playing in the slough. They have set up machines on the slough to keep the water from flowing downstream to the villages below. But the water is not safe to drink.

People in Bethel are also affected by the mess.

Liberty C. Brown, a water conservationist, said she had heard that the slough had a bad smell. "I haven't been there," she said.

She said it smells like a woman nearby who was upset. The grave turned out to be 100 years old and she was the shaken widow. He wrote of reburying the skeleton "to the complete satisfaction of the old dame." He wrote of excavating remains elsewhere but finding the remains "too fresh yet."

A number of people could smell it when they were on the main road, where it goes through a culvert, depends on how strong the wind is.

Saupe and Martin said it was as bad as the water and was particularly bad in the lagoon. They quickly in the river.

But Hoffman, at the point where the river meets the lagoon, said he didn't dilute anything, at least not in the lagoon.

"It's a heading on the river. The river is frozen on it. I imagine it's a river and freeze."

HPB

298

PHIL KEISLING
SECRETARY OF STATE
MICHAEL GREENFIELD
DEPUTY SECRETARY OF STATE



STATE OF OREGON
SECRETARY OF STATE
136 STATE CAPITOL
SALEM, OREGON 97310-0722
(503) 378-4139

March 27, 1991

The Honorable Fran Ulmer
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811-3100

Dear Rep. Ulmer:

Fran

It was great to talk with you again last week and get caught up. There's certainly a lot happening with both of us.

I appreciate your willingness to help with the regional primary issue. I'd like to expand on our earlier conversation and give you an idea of where Washington and Oregon are right now.

I met with Washington Secretary of State Ralph Munro earlier this month to discuss the issue, and here's what each of us brought to the table. By current statute, Oregon's presidential primary falls on the third Tuesday in May. But in 1987, we passed a law which states that Oregon will hold a presidential primary election on the fourth Tuesday in March if three of five states -- Alaska, Washington, Idaho, Montana and Wyoming -- do so as well.

Washington's statutory primary date is the fourth Tuesday in May. But, under existing law, the Secretary of State has statutory authority to unilaterally move the primary date to advance the concept of a regional primary.

Secretary Munro came to Salem to encourage Oregon to move to a March date, but faced with budgetary restraints and legislative resistance to changing current Oregon law, I told him that a move to March is unlikely. Instead, we discussed Washington joining Oregon on the third Tuesday in May. Secretary Munro likes this idea and apparently has received a lot of editorial support for this.

— State of Oregon —

Page 2

But Secretary Munro faces a challenge. House Bill 2089, which has recently passed the Washington House, moves Washington's primary to the fourth Tuesday in March and removes the secretary of state's statutory authority to move the primary date to advance the concept of a regional primary. (An amendment to HB 2089 which would have preserved the secretary's authority to move the date was defeated.)

House Bill 2089 has moved to the Washington Senate but has not yet been scheduled for a hearing. Secretary Munro's Office tells me that if a hearing is not scheduled by April 5, then the bill is likely dead this session. I have offered to help Secretary Munro however I can over the next week to defeat HB 2089 so that we can continue on the road to a May 19, 1992 primary.

As for Alaska's possible role, it seems that having a presidential primary or caucus on whatever date Oregon and Washington can agree to would maximize the possibility of attracting candidates to your state. Obviously, nothing is certain -- they may avoid us anyway, even if all three of us converge on a single date -- but it seems like it's worth a shot.

I hope this helps. I'll be in touch soon to discuss how we can move closer to a truly regional presidential primary.

Best,

A handwritten signature in cursive script that reads "Phil Keisling". The signature is written in dark ink and is positioned above the typed name.

Phil Keisling

PK/tj

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 29, 1991

SUBJECT: Presidential primary bill (W.O. 7LS1138)

TO: Representative Fran Ulmer

FROM: John B. Gaguine *JBG*
Legislative Counsel

Enclosed is a draft bill establishing a presidential primary election in Alaska. It is based on the repealed presidential primary bill, ch. 20, SLA 1980 (a copy of which I previously sent to you), with some major changes.

The first major change is that the lieutenant governor will no longer choose who is a recognized candidate. Instead the lieutenant governor will list all candidates who have filed for matching funds under the federal Presidential Primary Matching Payment Account, 26 U.S.C. 9031 - 9042 (copy attached), have been certified by the Federal Election Commission, and have not withdrawn. This should leave on the ballot candidates who, because of fading support, are no longer eligible for federal funding under 26 U.S.C. 9033(c); they have not been decertified. As I read it, the federal law also applies to minor party candidates and independents, so that they will also be automatically on the ballot, assuming that they have the minimum level of support necessary to qualify for federal funding.

I deleted the provision in the old law that a candidate placed on the ballot by the lieutenant governor could have his or her name withdrawn. This may have been appropriate when the lieutenant governor could place on the ballot the name of a person only mentioned as a candidate, and not necessarily planning to run (e.g., Mario Cuomo in 1988). It does not seem appropriate for a declared candidate. Since a point of this primary, I think, is to force national candidates to pay more attention to Alaska, a withdrawal provision would be inconsistent with that goal; the major candidates, if given the option, might all withdraw, rather than either having to spend time in the state or risk a poor showing.

I retained the provisions that allow a would-be candidate's supporters to get the candidate's name on the ballot by petition, and that allow a candidate so nominated

— Legal Opinion —

Representative Fran Ulmer
March 29, 1991
Page 2

to withdraw (since that person may be a genuine non-candidate). I reduced the number of signatures necessary to one percent of the number of votes cast in the last gubernatorial election; that number is consistent with the number necessary to get on the ballot as a statewide candidate, and the five percent figure in the old law is clearly unconstitutional under decisions of the United States and the Alaska Supreme Courts.

I also deleted the part of the old law that made the primary results binding on delegates to the national party conventions. As I explained in my earlier memorandum to you, the United States Supreme Court has ruled that a state's presidential primary election laws cannot supersede a national party's rules because of the party's First Amendment rights to freedom of association. The procedure prescribed by this bill (where all candidates appear on one ballot, and a voter registered in party A may vote for a candidate in party B) is, I believe, inconsistent with the charter of the national Democratic Party. (I do not know what the provisions of the Republican party are on this question.) Therefore the Democratic Party could not be bound. Of course, there is nothing to prevent the parties themselves from adopting a party rule making the primary results binding on party delegates.

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

JBG:pl
91-222.plm

Enclosure

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 30, 1991

TO: Rep. Gene Kubina, Chair
House State Affairs Committee

FROM: Rep. Fran Ulmer *Fran Ulmer*

RE: HB 298 "An act establishing a presidential primary election; and providing for an effective date."

Thank you for scheduling a hearing for HB 298. This bill would create a presidential primary election in Alaska.

The Secretaries of State for Oregon and Washington are both working on a plan to hold an "early" Northwest Presidential Primary. They have requested that Alaska consider joining these two states in this endeavor to bring attention to Northwest issues and attract presidential candidates to our region. Hence, the purpose of this bill.

In the past, Alaska has declined to create a primary, partly because our sparse population and distance from the lower 48, keeps candidates from making Alaska a campaign stop. As a result, many Alaskan issues with tremendous national importance are not addressed. But a regional primary will help solve this problem by creating an early test for a crowded presidential field that focuses debate on issues concerning the Northwest and Alaska.

This focus will almost certainly attract more candidates to our state. It will also give Alaskans a greater opportunity to be heard on the many national issues that directly affect our lives.

Thank you for your prompt consideration of this bill.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

— Sponsor Statement —

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

May 2, 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 298 " An act establishing a presidential primary election; and providing for an effective date."

I am requesting a hearing for HB 298 at your earliest convenience. This bill would create a presidential primary election in Alaska. In order for this to apply to the 1992 presidential primary, this bill must be passed this year.

The Secretaries of State for Oregon and Washington are both working on a plan to hold an "early" Northwest Presidential Primary. They have requested that Alaska consider joining these two states in this endeavor to bring attention to Northwest issues and attract presidential candidates to our region. Hence, the purpose of this bill.

In the past, Alaska has declined to create a primary, partly because our sparse population and distance from the lower 48, keeps candidates from making Alaska a campaign stop. As a result, many Alaskan issues with tremendous national importance are not addressed. But a regional primary will help solve this problem by creating an early test for a crowded presidential field that focuses debate on issues concerning the Northwest and Alaska.

This focus will almost certainly attract more candidates to our state. It will also give Alaskans a greater opportunity to be heard on the many national issues that directly affect our lives.

Thank you for your prompt consideration of this bill.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947



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HOUSE BILL NO. 298

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES ULMER, Brown, Parnell, G.Phillips

Introduced: 4/24/91

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a presidential primary election; and providing for an effective date."

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

3 * Section 1. AS 15.13 is amended by adding a new section to read:

4 Sec. 15.13.012. INAPPLICABILITY TO PRESIDENTIAL PRIMARY. The provisions
5 of this chapter do not apply to a presidential primary election under AS 15.25.221 - 15.25.261.

6 * Sec. 2. AS 15.25.010 is amended to read:

7 Sec. 15.25.010. PROVISION FOR PRIMARY ELECTION. Candidates for the elective
8 state executive and state and national legislative offices shall be nominated in a primary election
9 by direct vote of the people in the manner prescribed by AS 15.25.010 - 15.25.200 [THIS
10 CHAPTER].

11 * Sec. 3. AS 15.25 is amended by adding new sections to read:

12 ARTICLE 2. PRESIDENTIAL PRIMARY ELECTION.

13 Sec. 15.25.221. PRESIDENTIAL PRIMARY ELECTION. (a) The lieutenant governor
14 shall call a presidential primary election on the third Tuesday in April of a year in which theMAY

1 President of the United States is elected.

2 (b) The lieutenant governor may conduct the presidential primary election on a date other
3 than the date set in (a) of this section if the lieutenant governor sets the different date in a
4 proclamation issued by September 1 of the year preceding the presidential election.

5 (c) The lieutenant governor shall prepare and distribute the ballot for the presidential
6 primary election in the manner prescribed by AS 15.25.060.

7 Sec. 15.25.231. PLACEMENT OF NAMES ON THE PRESIDENTIAL PRIMARY
8 ELECTION BALLOT. The lieutenant governor shall place on the presidential primary election
9 ballot the name of each candidate for President of the United States who, as of the date five
10 weeks before the election, has been certified by the Federal Election Commission under 26
11 U.S.C. 9036(a), and has not withdrawn the candidate's candidacy.

12 Sec. 15.25.241. ACCESS TO THE PRESIDENTIAL PRIMARY ELECTION BALLOT
13 BY PETITION. (a) The name of a person who does not qualify for placement on the ballot
14 under AS 15.25.231 may be placed on the ballot if a petition is filed on the person's behalf that
15 contains the signatures of a number of registered voters equal to one percent of the votes cast for
16 governor in the most recent gubernatorial election. A petition under this subsection shall be filed
17 with the lieutenant governor no later than seven weeks before the date of the election and must

18 (1) contain the person's full name, the name of the political party, if any, to which
19 the person belongs, a statement that the subscribers to the petition are qualified voters, and a
20 statement that the subscribers request that the person's name be placed on the presidential
21 primary election ballot; and

22 (2) contain the printed name and the residence address of each subscriber to the
23 petition next to the subscriber's signature.

24 (b) The lieutenant governor shall immediately notify a person on whose behalf a valid
25 petition under this section has been filed of the filing, and shall advise the person that the person
26 may withdraw the person's name from the presidential primary ballot no later than five weeks
27 before the date of the election. A request to withdraw under this subsection must be in writing,
28 and may be transmitted to the lieutenant governor by facsimile transmission.

29 Sec. 15.25.251. PRESIDENTIAL PRIMARY ELECTION NONBINDING. The results
30 of the presidential primary election are not binding on the delegates selected by a political party
31 to the national convention of that party.

1 Sec. 15.25.261. PROCEDURES FOR CONDUCT OF ELECTION. The provisions of
2 this title regarding the conduct of a general election govern the conduct of the presidential
3 primary election, except to the extent that the provisions of AS 15.25.221 - 15.25.261 are
4 inconsistent with those provisions.

5 * Sec. 4. This Act takes effect July 1, 1991.

() USE COMMITTEE REPORT

(7)

Date Referred: April 24, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5-1-91

The STATE AFFAIRS Committee considered:

HB 298

HOUSE BILL NO. 298

PRESIDENTIAL PRIMARY ELECTION

"An Act establishing a presidential primary election; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact Elections

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Gene Kubera</i>	-	<i>E. Bruch</i>		-	
<i>T. Morgan</i>	-	<i>T. Morgan</i>		✓	
		<i>Tom [unclear]</i>		✓	
		<i>Phil [unclear]</i>		✓	

Gene Kubera
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 2, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 5-14-91

The JUDICIARY Committee considered:

HB 298

HOUSE BILL NO. 298

PRESIDENTIAL PRIMARY ELECTION

"An Act establishing a presidential primary election; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 298 (Jud) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Elections

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Daniel Donley</i>	<input checked="" type="checkbox"/>	<i>Terry Mastor</i>		<input checked="" type="checkbox"/>	
<i>Kevin Pad Parnell</i>	<input checked="" type="checkbox"/>				
		<i>J. Ellis</i>		<input checked="" type="checkbox"/>	
		<i>Mark Gurensky</i>		<input checked="" type="checkbox"/>	
		<i>Mark Gurensky</i>		<input checked="" type="checkbox"/>	

Daniel Donley
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 298

Revision Date: 5-14-91 Department Affected: Elections
 Title: Establishing a presidential BRU: Elections
primary
 Component: General & Primary
 Sponsor: Rep. Ulmer
 Requestor: House Judiciary Comm. COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	69.5					
TRAVEL	60.8					
CONTRACTUAL	854.8					
SUPPLIES	8.3					
EQUIPMENT	0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	993.4					

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	993.4					
FEDERAL FUNDS						
OTHER						
TOTAL	993.4					

POSITIONS:

FULL-TIME	1					
PART-TIME						
TEMPORARY	14					

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 See attached

Prepared By: Elizabeth A. Zierler, Dep. Dir. Phone: 465-4611
 Division: Division of Elections Date: 5-14-91
 Approved by Commissioner: D. Max Hodel, Chief of Staff
 Agency: Office of the Governor Date: 5-14-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Max

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

FISCAL NOTE ANALYSIS

The Division of Elections has analyzed the various operating expenditures for the 1990 primary election to determine what costs would be needed to run a presidential primary in 1992.

The division found that with the exception of equipment purchases, the costs for running the presidential primary should be the same. The division is mandated by statute to conduct training sessions for all election workers in all 438 precincts statewide. Additionally, this note also includes \$60,000 for ballot printing costs associated with the closed Republican primary. According to Republican Party of Alaska rules, its primary elections are to be limited to registered Republicans and nonpartisan. This would require an additional ballot for Republican presidential candidates.

The division has estimated that it would need at least 14 temporary employees to assist the regional offices with the primary. This is consistent with past primary elections.

The divisions greatest costs are associated with election worker payments, advertising, ballots, and the DataVote contract. There is no reason that these costs would be any less.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 298

Revision Date: _____ Department Affected: Elections

Title: Establishing a presidential BRU: Elections

primary Component: General & Primary

Sponsor: Rep. Ulmer

Requestor: House State Affairs Comm. COMPONENT SERIAL NO.

0	0	2	2
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES		350.8	147.6	385.8	149.1	
TRAVEL		38.4	35.9	42.2	39.5	
CONTRACTUAL		866.2	79.4	953.2	87.3	
SUPPLIES		2.5	9.2	2.8	10.1	
EQUIPMENT		2.7	37.3	3.0	41.0	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1260.6	309.4	1387.	327.	

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		1260.6	309.4	1387.	327.	
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	
PART-TIME						
TEMPORARY		14	14	14	14	

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Elizabeth Ziegler, Dep. Dir. Phone: 465-4611

Division: Division of Elections Date: 5-1-91

Approved by Commissioner: D. Max Hodel, Chief of Staff

Agency: Office of the Governor Date: 5-1-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CHAPTER 96—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

- Sec.
 9031. Short title.
 9032. Definitions.
 9033. Eligibility for payments.
 9034. Entitlement of eligible candidates to payments.
 9035. Qualified campaign expense limitations.
 9036. Certification by Commission.
 9037. Payments to eligible candidates.
 9038. Examinations and audits; repayments.
 9039. Reports to Congress; regulations.
 9040. Participation by Commission in judicial proceedings.
 9041. Judicial review.
 9042. Criminal penalties.

In '74, P.L. 94-281, Sec. 305(b), substituted "limitations" for "limitation" in the title of Sec. 9031, effective 5/11/76.
 In '74, P.L. 93-443, Sec. 408(c), substituted a new chapter 96. Prior to amendment, chapter 96 read as follows:

"CHAPTER 96. PRESIDENTIAL ELECTION CAMPAIGN FUND ADVISORY BOARD

"Sec. 9021. ESTABLISHMENT OF ADVISORY BOARD.

"(a) Establishment of board.

"There is hereby established an advisory board to be known as the Presidential Election Campaign Fund Advisory Board (hereinafter in this section referred to as the "Board"). It shall be the duty and function of the Board to counsel and assist the Comptroller General of the United States in the performance of the duties and functions imposed on him under the Presidential Election Campaign Fund Act.

"(b) Composition of board.

"The Board shall be composed of the following members:

"(1) the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives, who shall serve ex officio;

"(2) two members representing each political party which is a major party (as defined in section 9002(4)), which members shall be appointed by the Comptroller General from recommendations submitted by such political party; and

"(3) three members representing the general public, which members shall be selected by the members described in paragraphs (1) and (2).

"The terms of the first members of the Board described in paragraphs (2) and (3) shall expire on the sixtieth day after the date of the first presidential election following January 1, 1973, and the terms of subsequent members described in paragraphs (2) and (3) shall begin on the sixty-first day after the date of a presidential election and expire on the sixtieth day following the date of the subsequent presidential election. The Board shall elect a Chairman from its members.

"(c) Compensation.

"Members of the Board (other than members described in subsection (b)(1)) shall receive compensation at the rate of \$75 a day for each day they are engaged in performing duties and functions as such members, including travel time, and, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

"(d) Status.

"Service by an individual as a member of the Board shall not, for purposes of any other law of the United States be considered as service as an officer or employee of the United States."

Sec. 9031. Short title.

This chapter may be cited as the "Presidential Primary Matching Payment Account Act".

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9031, effective with respect to tax yrs. begin. after 12/31/74

Sec. 9032. Definitions.

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he (A) takes the action necessary under the law of a State to qualify himself for nomination for election, (B) receives contributions or incurs qualified campaign expenses, or (C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf. The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

(3) The term "Commission" means the Federal Election Commission established by section 309(a)(1) of the Federal Election Campaign Act of 1971.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made, for the purpose of influencing the result of a primary election,

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose,

(C) means funds received by a political committee which are transferred to that committee from another committee, and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge, but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate, or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates

its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of (A) the date such party nominates its candidate for the office of President of the United States, or (B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

(A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and

(B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

In '76, P.L. 94-283, Sec. 306(b)(1), added a sentence to the end of para. (2), effective 5/11/76. The new sentence read as follows: "The term 'candidate' shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States."

—P.L. 94-283, Sec. 115(c)(2), substituted "306(a)(1)" for "310(a)(1)" in para. (3), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9032, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9033. Eligibility for payments.

(a) Conditions.

To be eligible to receive payments under section 9037, a candidate shall, in writing—

- (1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,
- (2) agree to keep and furnish to the Commission any records, books, and other information it may request, and
- (3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) Expense limitation; declaration of intent; minimum contributions.

To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

- (1) the candidate and his authorized committees will

not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035.

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States.

(3) the candidate has received matching contributions which in the aggregate, exceed \$5,000 in contributions from residents of each of at least 20 States, and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed \$250.

(c) Termination of payments.

(1) General rule. Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) Qualified campaign expenses; payments to secretary. Any candidate who is ineligible under paragraph (1) to receive any payments under section 9037 shall be eligible to continue to receive payments under section 9037 to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) Calculation of voting percentage. For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary election conducted on such date in which he received the greatest percentage vote.

(4) Reestablishment of eligibility.

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

In '76, P.L. 94-283, Sec. 305(c), substituted "limitations" for "limitation" in para. (b)(1), effective 5/11/76.

—P.L. 94-283, Sec. 306(B)(2), added new subsec. (c), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9033, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9034. Entitlement of eligible candidates to payments.

(a) In general.

Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds \$250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) Limitations.

The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971.

In '74, P.L. 94-283, Sec. 307(b), substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code," (sic) in subsec. (b), effective 3/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9034, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9035. Qualified campaign expense limitations.

(a) Expenditure limitations.

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000.

(b) Definition of immediate family.

For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

In '76, P.L. 94-283, Sec. 305(a), substituted "limitations" for "limitation" in the title of Sec. 9035 . . . added "(a) Expenditure limitations." before "No candidate" to designate subsec. (a) . . . added ", and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000" after "State Code" in subsec. (a) . . . added new subsec. (b), enacted 3/11/76. Sec. 305(d) of the Act provides: "For purposes of applying section 9035(a) of the Internal Revenue Code of 1954, as amended by subsection (a), expenditures made by an individual after January 29, 1974, and before the date of the enactment of this Act [3/11/76] shall not be taken into account."

—P.L. 94-283, Sec. 307(c), substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code" in subsec. (b), effective 3/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9035, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9036. Certification by Commission.

(a) Initial certifications.

Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

(b) Finality of determinations.

Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9036, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9037. Payments to eligible candidates.

(a) Establishment of account.

The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for payments under section 9008(b)(3) are available for such payments.

(b) Payments from the matching payment account.

Upon receipt of a certification from the Commission under section 9036, but not before the beginning of the matching payment period, the Secretary shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

In '76, P.L. 94-433, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in subsec. (b), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9037, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9038. Examinations and audits; repayments.

(a) Examinations and audits.

After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) Repayments.

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candi-

date, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses,

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) Notification.

No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) Deposit of repayments.

All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

In '76, P.L. 94-455, Sec. 1906(b)(1)(A), substituted "Secretary" for "Secretary or his delegate" in paras. (b)(1) and (2), and subsec. (d), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9038, effective with respect to tax. yrs. begin after 12/31/74.

Sec. 9039. Reports to Congress; regulations.

(a) Reports.

The Commission shall, as soon as practicable after each matching payment period, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees,

(2) the amounts certified by it under section 9036 for payment to each eligible candidate, and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) Regulations, etc.

The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) Review of regulations.

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

In '76, P.L. 94-283, 304(b), added three new sentences at the end of the first sentence in para. (c)(2) . . . added new para. (c)(4), effective 5/11/76. Prior to amendment, para. (c)(2) read as follows:

"(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph."

In '74, P.L. 93-443, Sec. 404(c), added Code Sec. 9039, effective with respect to tax. yrs. begin after 12/31/74.

Sec. 9040. Participation by commission in judicial proceedings.

(a) Appearance by counsel.

The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) Recovery of certain payments.

The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038.

(c) Injunctive relief.

The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) Appeal.

The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

In '74, P.L. 93-455, Sec. 1906(b)(1)(X)(A), substituted "Secretary" for "Secretary or his delegate" in subsec. (b), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(e), added Code Sec. 9040, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9041. Judicial review.**(a) Review of agency action by the Commission.**

Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) Review procedures.

The provisions of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551(13) of title 5, United States Code, by the Commission.

In '74, P.L. 93-443, Sec. 408(e), added Code Sec. 9041, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9042. Criminal penalties.**(a) Excess campaign expenses.**

Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

(b) Unlawful use of payments.

(1) It is unlawful for any person who receives any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

- (A) to defray qualified campaign expenses, or
- (B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(c) False statements, etc.

(1) It is unlawful for any person knowingly and willfully—

- (A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter, or
- (B) to fail to furnish to the Commission any records,

books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(d) Kickbacks and illegal payments.

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

In '74, P.L. 93-443, Sec. 408(e), added Code Sec. 9042, effective with respect to tax. yrs. begin. after 12/31/74.

Subtitle I—Trust Fund Code**Chapter**

98. Trust fund code.

CHAPTER 98—TRUST FUND CODE**Subchapter**

- A. Establishment of Trust Funds.
- B. General provisions.

Subchapter A—Establishment of Trust Funds**Sec.**

- 9501. Black Lung Disability Trust Fund.
- 9502. Airport and Airway Trust Fund.
- 9503. Highway Trust Fund.
- 9504. Aquatic Resources Trust Fund.
- 9505. Harbor Maintenance Trust Fund.
- 9506. Inland Waterways Trust Fund.
- 9507. Hazardous Substance Superfund.
- 9508. Leaking Underground Storage Tank Trust Fund.
- 9509. Oil Spill Liability Trust Fund.
- 9510. Vaccine Injury Compensation Trust Fund.

In '77, P.L. 100-203, Sec. 9202(b), added item 9510.

In '76, P.L. 99-662, Sec. 1403(e), added item 9503 . . . Sec. 1403(c), added item 9506.

—P.L. 97-509, Sec. 8033(c), added item 9509.

—P.L. 99-499, Sec. 317(d), added item 9507 . . . Sec. 322(b), added item 9508.

In '84, P.L. 98-169, Sec. 1016(d), added item 9504.

In '83, P.L. 97-448, Sec. 531(d), added item 9503.

In '82, P.L. 97-248, Sec. 281(c)(1), amended item 9501 and added item 9502. Prior to amendment item 9501 read as follows:

"9501. Establishment of Black Lung Disability Trust Fund."

Sec. 9501. Black Lung Disability Trust Fund.**(a) Creation of trust fund.**

(1) In general. There is established in the Treasury of

HB

299

Municipality of Anchorage



ENTERPRISE ACTIVITIES

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4906

Tom Fink,
Mayor

April 16, 1991

Representative Dave Choquette
House of Representatives
P.O. Box X
Juneau, Alaska 99811

Dear Representative Choquette:

We have reviewed your draft House Bill, attached, and find it acceptable. Sec. 2. AS 46.03.822 satisfies the concerns of the Municipality of Anchorage, its utilities and the expectations of private utilities. We would expect support from all other municipalities and utilities throughout the state.

Thank you for your assistance.

Sincerely,

Will Gay
Will Gay
Executive Manager

Attachment

POSITION PAPER
HAZARDOUS MATERIAL CLEANUP
MUNICIPALITY OF ANCHORAGE

Municipality Liability for Release of Hazardous Substances by
Another Person

It is essential that Municipalities receive a waiver of liability for the cleanup of hazardous substances generated by or from a facility or vessel owned by another person. Construction projects, throughout the state and in Anchorage, will grind to a halt if the current statute is not amended.

Contamination by petroleum products is common in developed areas because of leaking underground fuel storage tanks (i.e., gasoline, furnace oil) and surface spills from vehicles, fuel stations, homeowners, etc. It is almost impossible to do extended deep excavation in Anchorage for laying or relaying a water or sewer main, telephone cable, electric cable or gas lines without encountering some evidence of petroleum products.

Unless the contamination was the direct result of negligence or misconduct by the utility, the utility should not be liable for cleanup of contamination, within Municipal rights-of-ways, discovered while either designing or constructing a utility project. The Municipality should report the discovery of any contamination to the Alaska Department of Environmental Conservation and then proceed on with the project.

It is imperative that construction contracts not be halted or delayed. The short Alaskan construction season does not allow time for project delays. The Municipality or utilities will also be liable for substantial damage claims from contractors for delay caused by halting work. In a large project these delay claims could cost more than cleaning up the contamination caused by others solely because Municipalities or utilities are perceived to be a deep pocket.

The provision of essential services such as roads, storm drains, water and sewer mains, gas lines, cable television, telephone cable, and electric cable will be severely delayed and the cost substantially increased if this issue is not promptly resolved. A number of projects in Anchorage and the surrounding area are on hold now because of this issue.

City of Fairbanks

From the
City Attorney's Office

MEMORANDUM

APR 23 1990

Deputy City Mgr.
UNR026

TO: Virgil Gillespie, Deputy City Manager - Utilities

FROM: *Ron Smith*
Ron Smith, Deputy City Attorney

SUBJECT: House Bill No. 547 - Liability of MUS for Clean-up of
Spill Discovered by MUS While Installing Underground
Utilities

DATE: April 20, 1990

Yesterday I received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for Anchorage, 343-4906. He asked that the City support House Bill No. 547 and in particular request the support of Senator Steve Frank.

This Bill provides an exemption from liability created by AS 46.03.822 to municipalities to clean up oil or other hazardous waste discovered by them in right-of-ways owned by municipalities unless the release of the hazardous waste was caused by actions of the municipality.

He related that Anchorage currently has a suit pending to require them to pay for clean up of an oil spill. This oil spill was caused by a leaking tank from a gas station. Anchorage discovered and reported the oil while excavating to install a water line in a right-of-way owned by the municipality. The landowner downstream from the gas station and the Anchorage right-of-way is suing Anchorage using the strict liability provisions of this state statute to require Anchorage to clean up the oil from the leaking gas station's underground tanks.

I could not believe that the statute could be interpreted this broadly. However, it imposes strict liability on owners of "a facility, from which there is a release...of a hazardous substance." "Facility" is defined to include "a site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located (emphasis added)."

It is not absolutely clear that Anchorage is going to be liable. However, I called Cam Leonard, the Assistant Attorney General who advises DEC here in Fairbanks. He told me that there have not yet been any court decisions interpreting this statute. He also agreed with me that imposition of liability to clean up would not be fair to a utility that has done nothing wrong. However, it was his opinion that the statute was written very broadly and that it could be argued that a municipal utility could be held liable for the cost of clean up of oil discovered when excavating to install an underground utility line.

House Bill No. 547
April 20, 1990
Page Two

Therefore, I request that MUB take a strong position that there be a statutory exemption for municipalities in this case. House Bill 547 does this and it should be adopted or the language in it attached to a bill that is going to be adopted this year. Bill Huffman mentioned that House Bill 220 on LUST (Leaking Underground Storage Tanks) is likely to be adopted and concerns the same subject matter.

cc: Brian Phillips
Kaye Barthelme
John Mike
Marty Lanua
Jon Paul Stenberg

Ron

Fairbanks Municipal Utilities System

April 23, 1990

VIA FAX - 11:22 AM

The Honorable Steve Frank
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811



Dear Senator Frank:

This letter is to request that you support House Bill 547 or have similar language added to another bill which is likely to pass. This bill provides an exemption from liability created by AS 46.03.822 to municipalities to clean up oil or other hazardous waste discovered by them in rights-of-way owned by municipalities, unless the release of the hazardous waste was caused by actions of the municipality.

Enclosed is a memo from Ron Smith, the Fairbanks Deputy City Attorney, which shows that there is currently a real risk to the City to excavate in City rights-of-way for underground utilities. We just learned that Anchorage currently has a suit pending to require them to pay for clean up of an oil spill. This oil spill was caused by a leaking tank from a gas station. Anchorage discovered and reported the oil while excavating to install a water line in a right-of-way owned by the municipality. The landowner downstream from the gas station and the utility right-of-way is suing the City using the strict liability provisions of this state statute to require Anchorage to clean up the oil from the leaking gas station's underground tanks.

While I am sure that AS 46.03.822 was never intended to be this broadly interpreted, this lawsuit shows that it can be. Even if the courts ultimately resolve this in favor of municipalities the City can expend a tremendous amount of money defending such a law suit. If a legal theory is arguable, then with their deep pockets municipalities make attractive targets to lawyers.

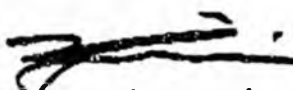
As you are aware the City of Fairbanks, as well as other Alaskan cities, is having serious financial trouble. Granting municipalities this exemption is something the Legislature can do to assist municipalities without costing the State any money.

Municipal Utilities System

The Honorable Steve Frank
April 23, 1990
Page Two

Again, I urge you to support this bill. If I or Ron Smith can assist in any way or answer any questions, please call me at 459-6211 or Ron Smith at 459-6340.

Sincerely,



V.M. Gillespie
Deputy City Manager-
Utilities

Enclosure: Memo of Ron Smith, April 20, 1990

xc: City Council
Public Utilities Board

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

WALTER J. HICKEL, GOVERNOR

April 30, 1991

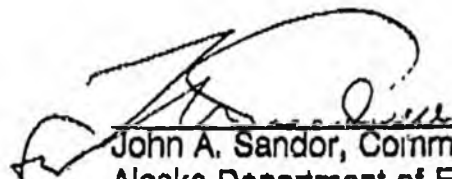
BILL NUMBER: CSHB 299 (O&G)

TITLE: Relating to municipal and utility liability for releases or threatened releases of hazardous substances.

DEPARTMENT POSITION: DEC does not oppose this bill.

ANALYSIS:

This legislation would exempt from the strict liability statutes municipalities and utilities which discover a release or possible release of hazardous substance in a state, municipal, or utility right-of-way during excavation, providing the release or threatened release was caused by the municipality's or utility's negligence, recklessness or intentional misconduct, and providing the municipality or utility reports the release or threatened release to DEC as required under current law.



John A. Sandor, Commissioner
Alaska Department of Environmental Conservation

Alaska State Legislature
House of Representatives

RECEIVED MAY 2 1991

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032



SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

May 2, 1991

To: Representative Cliff Davidson
Chair, Natural Resources Committee

From: Representative Dave Choquette *[Signature]*
Vice Chair, Special Committee on Oil and Gas

Re: Municipal Liability for Release of Hazardous Substances
by Another Person

The Municipality of Anchorage has brought to my attention a crucial issue that will affect summer construction projects throughout the state unless promptly resolved. It is addressed in HB299. As AS 46.03.822(a)(1) is now written, municipalities and utilities may be held liable by the mere act of discovery of hazardous substances for the cleanup of these substances generated by or from a facility or vessel owned by another person.

During the summer months the municipalities provide essential services -- from the laying or relaying of water and gas lines to the laying of telephone and television cable -- that require deep excavation. In developed areas it is almost impossible to complete this excavation without discovering contamination caused by petroleum products. When the municipality or utility discovers the contamination in the right-of-way or easement, the municipality is required to halt further construction or repair, which breaches contractual obligations the munis owe to third parties; remove the contaminated soil only within the right-of-way; again begin construction or repair; and finally seek damages against the responsible party who caused the contamination in the first place. In the meanwhile the newly replaced soil is only subject to further recontamination by the surrounding soil. ★

The proposed legislation would do three things. It would remove strict liability for municipalities and utilities for: ★

★ ★
★ ★



BETHEL UTILITIES CORPORATION

3380 C Street, Suite 210
Anchorage, Alaska 99503
Phone: (907) 562-2500
FAX: (907) 562-2502

May 4, 1990

The Honorable John Binkley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

VIA FAX - 4:15 P.M.

Dear Senator Binkley:

Today, we received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for the Municipality of Anchorage. He asked that we contact you regarding a development that places clean-up liability on a Utility or Municipality that discovers petroleum product, or other hazardous waste, even though such waste was not caused by them.

From time to time we are required to dig up the ground in Bethel, Alaska. According to AS 46.03.822, if in the course of performing our work we discover a petroleum waste product, we have the responsibility and liability to clean up that waste. If we caused the waste situation, such as dig up a fuel line or our equipment leaks, then it is our responsibility to clean it up. But, if we simply discover a waste situation, we should not be burdened with anything more than reporting it to the proper authorities.

It is our understanding that HB 220 on LUST (Leaking Underground Storage Tanks) and HB 567 are bills that can provide an exemption from liability created by AS 46.03.822 to utilities or municipalities to clean up hazardous waste discovered by them, unless the release of hazardous waste was caused by the actions of them.

We strongly urge you support any legislation that will limit our liability to clean up a hazardous waste discovery if we did not cause it. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "T S Sterrett, Jr.".

Thomas S. Sterrett, Jr.
Controller

cc: Mr. Harold Borrego, Pres. of Bethel Utilities Corp.
Mr. Edward Tilbury, V.P. of Bethel Utilities Corp.
Mr. Bill Huffman, Asst. Enterprise Manager, MOA

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Alaska State Legislature
House of Representatives

RECEIVED MAY 2 1991

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032



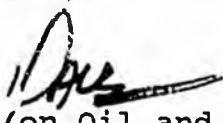
SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

May 2, 1991

To: Representative Cliff Davidson
Chair, Natural Resources Committee

From: Representative Dave Choquette 
Vice Chair, Special Committee on Oil and Gas

Re: Municipal Liability for Release of Hazardous Substances
by Another Person

The Municipality of Anchorage has brought to my attention a crucial issue that will affect summer construction projects throughout the state unless promptly resolved. It is addressed in HB299. As AS 46.03.822(a)(1) is now written, municipalities and utilities may be held liable by the mere act of discovery of hazardous substances for the cleanup of these substances generated by or from a facility or vessel owned by another person.

During the summer months the municipalities provide essential services -- from the laying or relaying of water and gas lines to the laying of telephone and television cable -- that require deep excavation. In developed areas it is almost impossible to complete this excavation without discovering contamination caused by petroleum products. When the municipality or utility discovers the contamination in the right-of-way or easement, the municipality is required to halt further construction or repair, which breaches contractual obligations the munis owe to third parties; remove the contaminated soil only within the right-of-way; again begin construction or repair; and finally seek damages against the responsible party who caused the contamination in the first place. In the meanwhile the newly replaced soil is only subject to further recontamination by the surrounding soil. ★

The proposed legislation would do three things. It would remove strict liability for municipalities and utilities for: ★

★ ★

★ ★

- a. the costs or damages that result from the release of the hazardous substance into a right of way or easement, when that release is discovered as a result of excavation by the municipality or utility;
- b. the storage of the excavated material in the easement or right of way; and
- c. the reuse or replacement of the excavated material in the easement or right of way in or near the point of excavation.

None of these provisions would apply if the municipality or utility caused the release or threatened release by their negligence, recklessness, or intentional misconduct.

If this bill were to be adopted, the municipality or utility would still be responsible for reporting all suspected discoveries of hazardous substance spills to DEC. DEC would then be able to find the responsible parties who would embark on a complete cleanup of the hazardous substance instead of only a partial cleanup within a municipal, utility, or state right-of-way.

Thank you for your attention to this matter.



BETHEL UTILITIES CORPORATION

3380 C Street, Suite 210
Anchorage, Alaska 99503
Phone: (907) 562-2500
FAX: (907) 562-2502

May 4, 1990

The Honorable John Binkley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

VIA FAX - 4:15 P.M.

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Today, we received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for the Municipality of Anchorage. He asked that we contact you regarding a development that places clean-up liability on a Utility or Municipality that discovers petroleum product, or other hazardous waste, even though such waste was not caused by them.

From time to time we are required to dig up the ground in Bethel, Alaska. According to AS 46.03.822, if in the course of performing our work we discover a petroleum waste product, we have the responsibility and liability to clean up that waste. If we caused the waste situation, such as dig up a fuel line or our equipment leaks, then it is our responsibility to clean it up. But, if we simply discover a waste situation, we should not be burdened with anything more than reporting it to the proper authorities.

It is our understanding that HB 220 on LUST (Leaking Underground Storage Tanks) and HB 567 are bills that can provide an exemption from liability created by AS 46.03.822 to utilities or municipalities to clean up hazardous waste discovered by them, unless the release of hazardous waste was caused by the actions of them.

We strongly urge you support any legislation that will limit our liability to clean up a hazardous waste discovery if we did not cause it. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T.S. Sterrett, Jr.', is written over a horizontal line.

Thomas S. Sterrett, Jr.
Controller

cc: Mr. Harold Borrego, Pres. of Bethel Utilities Corp.
Mr. Edward Tilbury, V.P. of Bethel Utilities Corp.
Mr. Bill Huffman, Asst. Enterprise Manager, MOA

Alaska State Legislature
House of Representatives



INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032

SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

May 16, 1991

To: Representative Dave Donley
Chair, House Judiciary Committee

From: Representative Dave Choquette *Dave*
Vice Chair, Special Committee on Oil and Gas

Re: CSHB 299 (Oil and Gas) Municipal Liability for Release
of Hazardous Substances by Another Person

The Municipality of Anchorage has brought to my attention a crucial issue that will affect summer construction projects throughout the state unless promptly resolved. It is addressed in HB299. As AS 46.03.822(a)(1) is now written, municipalities and utilities may be held liable by the mere act of discovery of hazardous substances for the cleanup of these substances generated by or from a facility or vessel owned by another person. At least one lawsuit has already been initiated against the Municipality on this issue.

During the summer months the municipalities provide essential services -- from the laying or relaying of water and gas lines to the laying of telephone and television cable -- that require deep excavation. In developed areas it is almost impossible to complete this excavation without discovering contamination caused by petroleum products. When the municipality or utility discovers the contamination in the right-of-way or easement, the municipality is required to halt further construction or repair, which breaches contractual obligations the munis owe to third parties; remove the contaminated soil only within the right-of-way; again begin construction or repair; and finally seek damages against the responsible party who caused the contamination in the first place. In the meanwhile the newly replaced soil is only subject to further recontamination by the surrounding soil.

★

★

★

★

★

The proposed legislation would do three things. It would remove strict liability for municipalities and utilities for:

- a. the costs or damages that result from the release of the hazardous substance into a right of way or easement, when that release is discovered as a result of excavation by the municipality or utility;
- b. the storage of the excavated material in the easement or right of way; and
- c. the reuse or replacement of the excavated material in the easement or right of way in or near the point of excavation.

None of these provisions would apply if the municipality or utility caused the release or threatened release by their negligence, recklessness, or intentional misconduct.

If this bill were to be adopted, the municipality or utility would only be released from strict liability for its discovery and storage within the right-of-way. They would still be responsible for reporting all suspected discoveries of hazardous substance spills to DEC, and taking the action DEC requires of them. Thank you for your attention to this matter.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Special Committee on Oil and Gas

Bill Hudson - Chairman

Official Business

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

May 16, 1991

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

Dear Dave:

HB 299, relating to municipal and utility liability for releases or threatened releases of hazardous substances was referred to your committee today from the House Resources Committee. I would like to take this opportunity to request a hearing on this bill as soon as possible.

Under current law, municipalities and utilities may be held strictly liable by the act of discovery of hazardous substances for the cleanup of these substances regardless of who spilled the substance. Contamination by petroleum products is common in developed areas for a number of reasons and it is almost impossible for municipalities and utilities to provide essential services that require deep excavation without encountering lengthy delays and damage claims from contractors as a result of the delays.

HB 299 would remove municipal or utility liability for hazardous substances discovered in the course of excavation provided that the contamination was not the result of negligence or misconduct by the utility or municipality.

Unless HB 299 passes the legislature this session, summer construction throughout the state will be affected and critical services offered by municipalities and utilities will be delayed. There are already a number of projects in the Anchorage area which are on hold for this very reason.

I appreciate your attention to my request and look forward to a public hearing on HB 299 soon.

Respectfully,


Bill Hudson
Chairman, House Special Committee on Oil and Gas

ANCHORAGE WATER & WASTEWATER UTILITY



Tom Fink,
Mayor

3000 Arctic Boulevard
Anchorage, Alaska 99503-3898
(907)



Owned by the Municipality
of Anchorage

May 16, 1991

Representative Dave Donley
Chairman House Judiciary Committee
Capitol, Room 122
P.O. Box V
Juneau, Alaska 99811

Re: HB-299

Dear Representative Donley:

The Municipality of Anchorage, Water & Wastewater Utility has been advised by our Legal Department that more information should be sent to the House Judiciary Committee before you meet on HB-299.

We have been asked why the Municipality of Anchorage thinks this legislation is necessary.

The MOA, AWWU has been advised by our attorneys that since the coverage of AS 46.03.822 Section 1(a) is so broad a substantial question arises. Would the MOA or its contractor be relieved of liability in the case where operations in an easement or right-of-way lead to the discovery of hazardous materials?

Our attorney's believe that a court would interpret the lead-in language, in Subsection (a): "Notwithstanding any other provision or rule of law and subject only to the defenses set out in ()....", very broadly. Because this language is so broad, adding the exception Section 2 (k) makes it clearer that a Municipality or Utility is not liable for costs or damages as a result of finding a release in a Municipal, State or Utility easement or right-cr-way.

We were asked what about the exemption provided in Subsection (b)? Why doesn't it solve the MOA's problem?

Subsection (b) of Section 46.03.822 puts the burden of proof back on the MOA to establish that a third party committed an intentional or negligent act. Rather than risk the possibility of aggravating a situation in which liability could be imposed, the MOA believes the action to take in such situations would be to simply discontinue work.

Page 2
Representative Donley
May 16, 1991

Most of our projects, although important to the community, do not justify continuing work in the face of very significant liability issues. It must be remembered that we are talking about "strict liability", and joint and several liability.

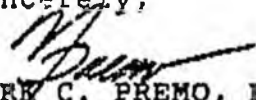
The only way to adequately address the issues raised by Subsection (b) is to enact an additional Subsection which would address the problem head-on.

Proving that a third party committed an intentional or negligent act is a burden that we simply do not want to and cannot undertake.

Copies of the sections mentioned in this writing are attached to make your review easier.

As was mentioned in my other memo of today's date, regarding the scheduling of this bill before your committee, I am available for any questions that may arise. Just telephone me at 786-5502 if I can be of further assistance. Once again, thank you and the House Judiciary Committee members for any support they can give the Municipality of Anchorage for HB-299.

Sincerely,


MARK C. PREMO, P.E.
General Manager
Anchorage Water & Wastewater Utility

cc: Joan Nockels, Assistant - Representative Choquette
Will Gay, Executive Manager - Enterprise Activities MOA
Mark Johnson, Legal Department - MOA
Anne Williams, Executive Assistant - MOA

46.04.030, with crime guilty of 0,000 barrels or more; if release is less than 10,000

46.04.900;
 given in AS 11.81.900;
 11.81.900. (§ 3 ch 120
 ch 266 SLA 1976; am
 LA 1981; am § 112 ch
 — 14 ch 59 SLA 1986;

amendments. — The 1990
 wrote subsections (a) and
 section (g); and repealed
 (e) and (f).

release of hazardous
 provision or rule of law
 of this section and the
 persons are strictly
 persons or property,
 the natural resources
 costs of response,
 provided by the state or a
 release of a hazardous
 substantial threat of
 release:

release, the hazardous
 release; this para-
 consumer use;
 facility, from which
 causes the incurrence of

any hazardous sub-
 which the hazardous
 release, or a threat-
 costs, of a hazard-

otherwise arranged
 transporter for transport
 owned or possessed
 any other party or

entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

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

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

(A) an act of war;

(B) except as provided under ^(OIL SPILL RESPONSE AND RECOVERY ACT) AS 46.03.823(c), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

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

(C) an act of God; and

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

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

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

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

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

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

ANCHORAGE WATER & WASTEWATER UTILITY



Tom Fink,
Mayor

3000 Arctic Boulevard
Anchorage, Alaska 99503-3898
(907)



Owned by the Municipality
of Anchorage

May 16, 1991

Representative Dave Donley
Chairman House Judiciary Committee
Capitol, Room 122
P.O. Box V
Juneau, Alaska 99811

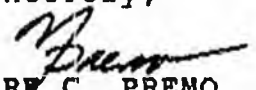
Re: HB-299

Dear Representative Donley:

The Municipality of Anchorage, Water & Wastewater Utility was informed this morning that HB-299 titled "An Act relating to municipal and utility liability for releases or threatened releases of hazardous substances" was passed out of the House Resources Committee at 8:00 AM. We understand that this bill has now been referred to your committee.

We would appreciate prompt scheduling of this bill before your committee. If a teleconference is scheduled, along with your committee meeting, I will do my best to attend here in Anchorage and be available for any questions your committee may have. Please notify me when and if a teleconference will be scheduled. Thank you for any support you can give to the Municipality of Anchorage for HB-299.

Sincerely,


MARK C. PREMO, P.E.
General Manager
Anchorage Water & Wastewater Utility

cc: Joan Nockels, Assistant - Representative Choquette
Will Gay, Executive Manager - Enterprise Activities - MOA
Mark Johnson, Legal Department - MOA
Anne Williams, Executive Assistant - MOA

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

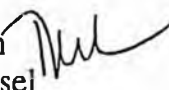
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

December 13, 1991

SUBJECT: Municipal Liability for Releases of Hazardous Substances Found During Excavation (HB 299)

TO: Representative Dave Choquette

FROM: Terri Lauterbach 
Legislative Counsel

You have submitted a draft copy of a Memorandum of Agreement (MOA) between the Municipality of Anchorage and the Department of Environmental Conservation and have asked whether that agreement would accomplish the purposes of CSHB 299(O&G).

In my opinion, the MOA would not achieve the same effect as passage of CSHB 299(O&G) for two reasons:

(1) the MOA is only an agreement between Anchorage and DEC; it would not affect any other municipality or any utility that is involved in construction projects;

(2) the MOA only lays out procedures to be followed by Anchorage when it finds or suspects contamination; it does not relieve Anchorage of liability for discovered contamination.

DISCUSSION

The first reason the MOA does not achieve the same effect as CSHB 299(O&G) is because the MOA relates only to Anchorage while CSHB 299(O&G) relates to every municipality and every utility in the state. No matter what the MOA accomplishes for Anchorage, it does absolutely nothing for any other municipality or for any utility.

The second reason the MOA does not achieve the same effect as CSHB 299(O&G) is because there is no agreement in the MOA to relieve Anchorage of any liability for discovered releases. On page 8 of the MOA, DEC specifically "reserves the right to take further action when necessary as provided for in Title 46 of the Alaska

Represent
December 13, 1991
Page 2
ative Dave Choquette

Statutes." This could include holding Anchorage responsible for damages from contaminated soils discovered on their rights of way.

All the MOA really does is lay out some procedures for Anchorage to follow during construction. If Anchorage follows these procedures, DEC agrees to help Anchorage identify other parties who may be responsible for the original contamination. However, DEC does not agree that Anchorage will not also be held to be a responsible party. DEC should not be faulted for this. Since liability for releases is set by statute under AS 46.03.822, DEC does not have authority to waive Anchorage's liability in a MOA. Only a statutory amendment to AS 46.03.822 can relieve Anchorage from strict liability.

I hope you find this discussion helpful in understanding the relevant issues. Please let me know if I can be of further assistance.

TML:lmb:mi
91-315.lmb

HAZARDOUS MATERIALS IMPACT
ON
DOT/PF CENTRAL REGION PROJECTS

DRAFT

The following are typical projects which have encountered hazardous materials during design development.

1. Boniface Parkway - Tudor to Debarr
2. Sterling Highway MP79-94
3. Eagle River Highland Drive
4. Raspberry Road
5. Minnesota/International Airport Road Interchange
6. Old Seward Highway Dowling to Huffman
7. Anchor River Intersection
8. AIA Ramp Reconstruction
9. DeArmoun/Rabbit Creek Interchange

Hazardous materials can be expected on almost all major projects which are located within established developed areas.

The consequence of encountering hazardous materials during project development is dependent upon when the identification occurs. If the material is identified during design development, the associated costs and delays can be managed and to some extent controlled. If, however, the material is identified during construction when you have contract obligations, the cost and schedule impacts are more difficult to manage. It is, therefore, essential to adopt a process which assures early identification of potential hazardous materials sites and audits those sites in a systematic manner.

The range of impacts we have experienced include delays of up to several years in project delivery, added costs for material disposal and complicated right-of-way procurement requiring litigation to accomplish resolution.

Attached are outlines and checklists developed by AASHTO for use as a guide for dealing with hazardous waste during project development.

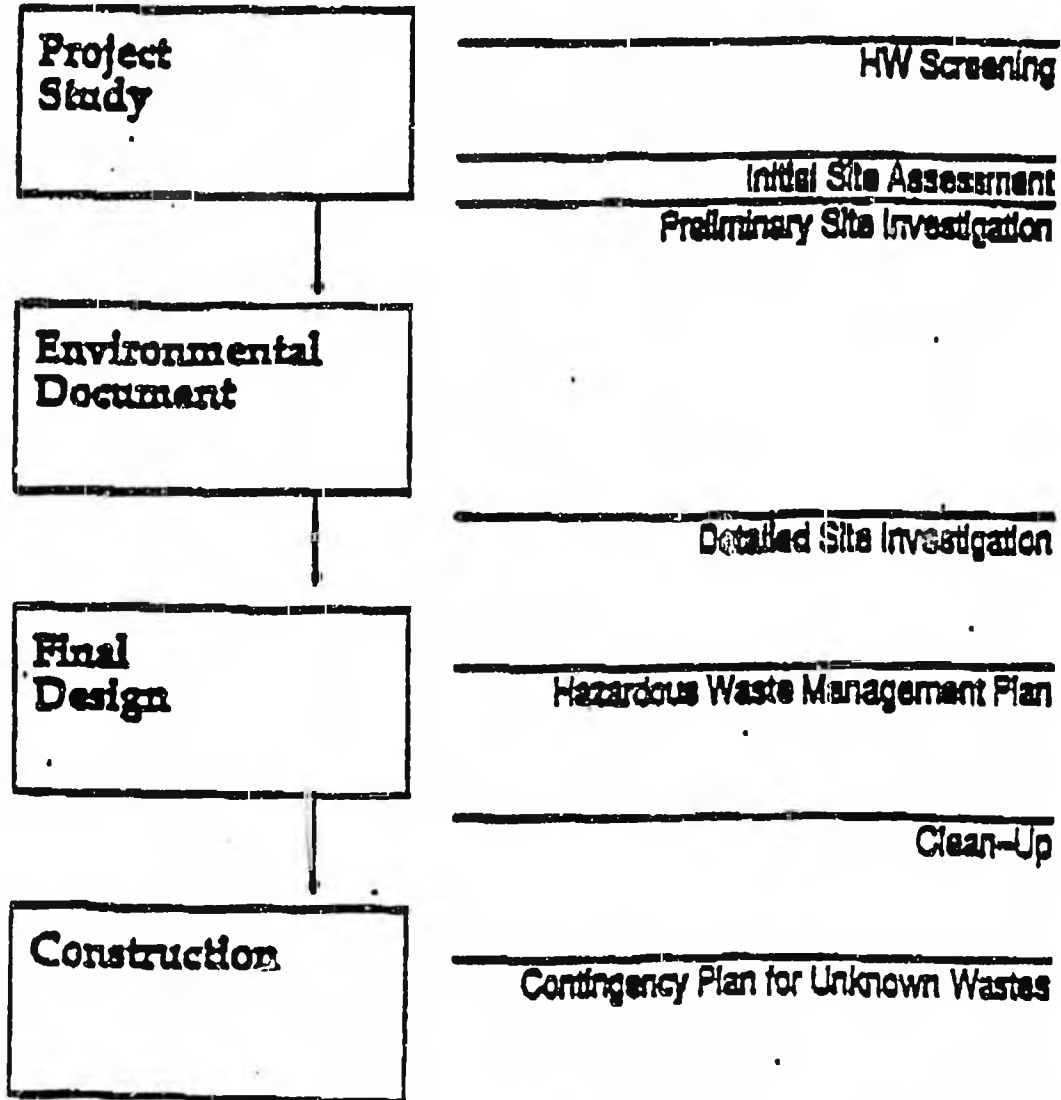
Attachments

DRAFT

K-2.2B

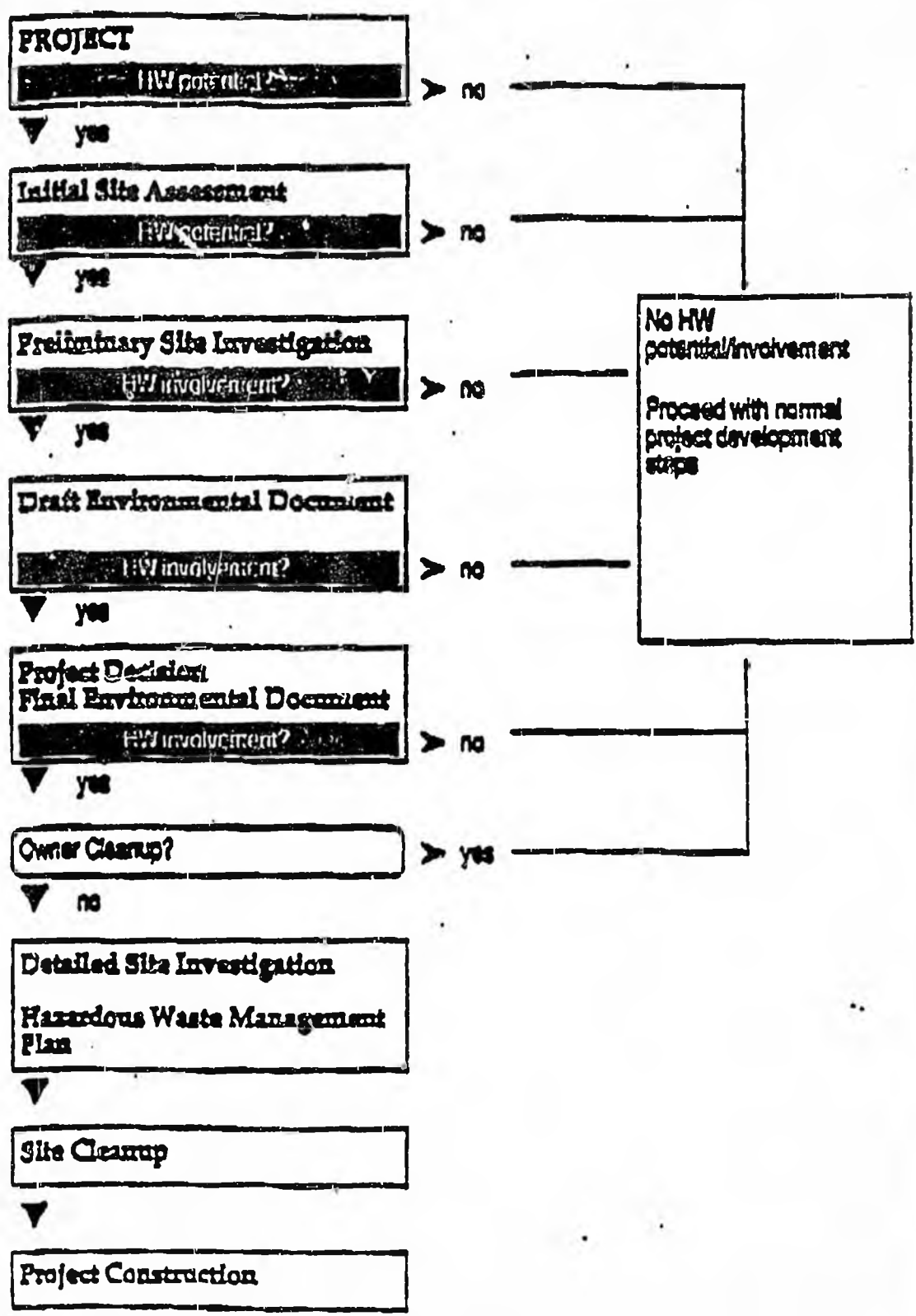
FIGURE 1

PROJECT DEVELOPMENT/HAZARDOUS WASTE STEPS



H-2.23
FIGURE 2

STEPS IN HAZARDOUS WASTE PROCESS



K-2.28

FIGURE 3

INITIAL SITE ASSESSMENT (ISA) CHECKLIST

Project Information
 District _____ County _____ Route _____ Postmile _____
 Description _____

Does the project have potential hazardous waste involvement?

Screening Criteria

1. Project features: New R/W? _____ Excavation? _____ Relocate utilities? _____
2. Land Use History and Development Setting _____ (rural/urban)
 Current land uses _____
 Previous land uses _____
 Adjacent land uses _____

(Industrial, Light Industry, Commercial, Agriculture, Housing, Other -- LIST)

3. In-house records review _____
4. Any known hazardous waste sites in vicinity? _____ (If yes, identify & explain)

(If no HW potential determined, sign form otherwise survey project as necessary to supplement screening information)

Optional Records
 County Assessor _____ Fire Dept. _____ Sanborn Ins. _____ Other _____

(Take photos of sites or sketch on back of ISA)

Visual Inspection _____ date _____

Storage Structures	Contaminations	Potential asbestos-containing materials
Underground tanks _____	Surface staining _____	Buildings _____
Surface tanks _____	Oil sheen _____	Sprayed-on fireproofing _____
Sumps _____	Ceases _____	Pipe wrap _____
Drums _____	Vegetation damage _____	Friable tile _____
Transformers _____	Other _____	Acoustical plaster _____
Landfill _____		
Other _____		
Site(s) _____	Site(s) _____	Site(s) _____

Comments _____ **Conducted by:** _____

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 24, 1991

FURTHER REFERRALS:

Resources
Judiciary
Finance

Date of Committee Action: 4-29-91

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:

HB 299

HOUSE BILL NO. 299

MUNICIPAL LIABILITY/HAZARDOUS SUBSTANCES

"An Act relating to municipal and utility liability for releases or threatened releases of hazardous substances."

RECOMMENDATIONS:

be replaced with _____

CS HB 299

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. HB 299

Revision Date: _____
 Title: Municipal and utility liability for
release of hazardous substances
 Sponsor: House Oil & Gas Comm.
 Requestor: House Oil & Gas Comm.

Department Affected: DEC
 BRU: Environmental Quality
 Component: E.Q. Projects

COMPONENT SERIAL NO.

1	1	0	1	1	6
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-2600
 Date: 4/30/91

Approved by Commissioner: 
 Agency: Dept. of Environmental Conservation

Date: 4/30/91

HB

301

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

SPONSOR STATEMENT

HB 301, "An Act relating to regular sessions of the legislature."

HB 301, introduced by the House Judiciary Committee, changes the beginning day of the legislative session from the second to the fourth Monday of January. The bill also repeals the third Monday convening date following a gubernatorial election as unnecessary.

The state constitution originally set the beginning of the legislative session for the fourth Monday of January. As the legislative sessions grew longer and began to impinge on the fishing seasons, the date was moved back by statute to the third Monday in January in gubernatorial election years and the second Monday in other years. However, the session limit of 120 days has removed conflicts between the session and the fishing season.

On the other hand, there are definite difficulties with the current schedule. Those who have to travel to Juneau have to take care of their packing and travel arrangements on the heels of the holiday season. It means that those who are driving to the capitol must do so in the harshest winter weather. And finally, the present starting date means that we are here an extra two weeks before we receive the March revenue forecasts which are so crucial in shaping the budget.

This bill stands for the proposition that a date closer to the one set by the drafters of our constitution remains the best date for beginning legislative sessions.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAEN • WINDEMERE • WOODLAND PARK



MEMORANDUM

TO: All members of the House of Representatives

FROM: Representative Dave Donley **DB**

RE: HB 301
A bill to change the beginning day
of regular legislative sessions

DATE: January 16, 1992

CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE

LABOR AND COMMERCE COMMITTEE

This bill, changing the starting date of regular legislative sessions from the second to the third Monday of January, is currently before the House State Affairs Committee.

HB 301, if passed, would resolve a number of conflicts currently faced by legislators and legislative staff. The 18th session of the Alaska Legislature, for example, is scheduled under existing law, AS 24.05.090, to begin on January 11, 1993, at 10 a.m. This early starting date requires that staff must be in legislative offices by January 4th. Those who must travel to Juneau will face the burden of travelling over the New Year holiday, after having had to prepare for the trip in the midst of hectic December holiday schedules.

By pushing back the starting date, legislators will have more in-session time after receiving March revenue forecasts. And we will have less in-session time during Juneau's most dark and dismal winter weather.

Moreover, by returning to a later starting date, we will be more closely in line with the original intent of those who forged Alaska's constitution. They established from the outset a beginning date of the fourth Monday in January. Conflicts with long sessions interfering with fishing seasons led to the change to an earlier starting date. When the 120-day session limit was established, those conflicts were eliminated.

Your support and comments on HB 301 are welcome. Please make your feelings on the bill known to the State Affairs committee, as well as to my staff and myself. Thank you.

DD:jls



JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661 • rsc

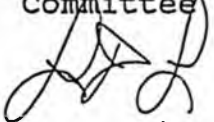


REPRESENTATIVE LOREN LEMAN West Anchorage

3111 C Street Anchorage, AK 99503 561-7614 During Session: P.O. Box V Juneau, AK 99811 465-2095

JAN 31 1992

M E M O R A N D U M

DATE: January 30, 1992
TO: Members of the State Affairs Committee
FROM: Representative Loren Leman 
SUBJECT: HB 301--A Bill to Change the Beginning Day of Regular Session

=====
I have attached my April 16, 1991 memo to Representative Donley on the topic of the beginning day of the regular session.

Please use this during your discussion of HB 301.