ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7020 HOUSE JUDICIARY

Finally, the investment decisions of borough officials were found discretionary in Integrated Resources Equity Corp. v. Fairbanks North Star Borough, 799 P.2d 295 (Alaska 1990). The court, however, also held that the borough officials could be found personally liable if, in performing an alleged discretionary function, they violated a statute or ordinance that could be characterized as "clearly established law," unless they could prove that they non-negligently were not aware of the law. Id. at 301.

To determine whether a public officer is entitled to absolute versus qualified immunity, the court considers the following factors:

> (1) The nature and importance of the function that the officer performed to the administration of government (i.e. the importance to the public that this function be performed; that it be performed correctly; that it be performed according to the best judgment of the officer unimpaired by extraneous matters);
>
> (2) The likelihood that the officer will be subjected to frequent accusations of wrongful motives and how easily the officer can defend against these allegations; and
>
> (3) The availability to the injured party of other remedies or other forms of relief (i.e. whether the injured party can obtain some other kind of judicial review of the correctness or validity of the officer's action).

Aspen, 739 P.2d at 160. If, as a matter of law, the court determines that immunity should be absolute, any allegations of improper motive are irrelevant and the case is dismissed. If, on the other hand, qualified immunity is appropriate, motive becomes relevant. Under qualified immunity, a public officer is shielded from liability only when discretionary acts within the scope of the officer's authority are performed in good faith and are not malicious or corrupt. Id. at 158-60.

For example, in Bauman v. State, 768 P.2d 1097 (Alaska 1989), an action by a parent and child against a state trooper arising out of an investigation of an anonymous complaint of sexual abuse, the court found that all of the trooper's actions appeared to be within the scope of his authority and discretionary in nature. In an affidavit, the trooper had portrayed his investigation as objectively reasonable, undertaken in good

faith, not malicious, and not corrupt. In the absence of evidence to the contrary, the trooper was entitled to qualified immunity.

Applying the balancing test established in Aspen, the members of the Alaska SERC, the LEPCs, and the HSSTRC would probably enjoy qualified immunity. There is little reason to shield the members of these entities from liability for actions which are undertaken in bad faith or which are malicious or corrupt. Qualified immunity will protect the members from personal liability for discretionary acts that are within the scope of the member's statutory authority and that are performed in good faith. The members are not shielded from personal liability for negligence in performing ministerial acts or acts outside the scope of their statutory authority.

CONCLUSIONS AND RECOMMENDATIONS

1) Without statutory authorization, the Alaska SERC may not delegate interim approval authority over emergency response plans to a committee. To facilitate the approval process, the Alaska SERC may wish to adopt by regulation a procedure whereby plans which essentially fulfill all statutory requirements, but require a limited degree of fine-tuning, could be given partial approval or conditional approval, subject to resolution of all items of concern within a specified timeframe.

2) Under SARA Title III, local emergency response plans for extremely hazardous substances were to have been completed by October 1988. Both inaction and unreasonable delay might provide a basis for a tort claim. It is incumbent upon the LEPCs and the Alaska SERC to meet the federal requirements for these plans as soon as reasonably possible.

For those districts where it has proven difficult to establish an LEPC, the Alaska SERC should continue with its efforts to establish LEPCs, but at the same time, may wish to consider alternative means of preparing emergency response plans, if those districts would otherwise be without plans for a significant length of time. Under AS 46.13.040(8), the Alaska SERC is authorized to "perform other coordinating, advisory, or planning tasks related to hazardous substance emergency planning and preparedness . . . ." This statute provides the commission a measure of flexibility and discretion in establishing priorities and accommodating the planning process to the unique needs of the state of Alaska. Once an LEPC is formed; however, the LEPC must assume the emergency planning responsibilities assigned to LEPCs under SARA Title III and AS 46.13.

3) Alaska SERC policies which have the effect of regulations or standards of general application are regulations and, to be valid, must be adopted according to the Administrative Procedures Act, AS 44.62.[14] Compliance with statutory and regulatory requirements will reduce the state's liability exposure; therefore, under AS 46.13.040(11), the Alaska SERC should begin preparing regulations in accordance with the Administrative Procedures Act in order to carry out the provisions of AS 46.13 and the emergency planning provisions of SARA Title III. The development and promulgation of regulations will undoubtedly be a long term project and will entail considerable public participation. The Alaska SERC may wish begin this process by identifying those policies which should be promulgated as regulations.

4) The Alaska SERC, the LEPCs, and the HSSTRC are state agencies for purposes of tort liability and immunity. Many of the emergency planning activities of the Alaska SERC and the LEPCs are discretionary in nature and thus, the state is likely to be immune from liability for negligence in planning under AS 09.50.250(1). However, at least some planning activities occur at the operational or ministerial level, and the state would not be shielded from liability for negligence in these activities. In addition, the failure of the LEPCs or the Alaska SERC to complete their plans or unreasonable delay in the completion of the plans could expose the state to liability. Further, action outside the scope of statutory authority is not immunized.

House Bill No. 407 and its identical counterpart, Senate Bill No. 359, would clarify the law with respect to the state's liability in emergency planning for hazardous substances and oil spills by providing that a civil action for damages and costs may not be brought against the Alaska SERC, LEPCs established by the Alaska SERC, or the HSSTRC for any act or omission occurring within the course and scope of their duties under AS 46.13, unless the act or omission constitutes gross negligence or intentional misconduct. Unlike the discretionary function exception of AS 09.50.250(1), these bills would shield the state from liability for negligence occurring at the operational level.

5) A lawsuit against a member of the Alaska SERC, the LEPCs, or the HSSTRC in his or her official capacity is a suit against the state, not the individual.

6) Members of the Alaska SERC, the LEPCs, and the HSSTRC currently enjoy common law official immunity from personal

---

[14] See Kenai Peninsula Fisherman's Coop. Ass'n v. State, 628 P.2d 897, 906 (Alaska 1981).

liability for discretionary acts occurring within the scope of their statutorily authorized activities. In addition, under a Memorandum of Agreement executed June 13, 1991, between the Department of Law, the Department of Administration, and DEC, the state agreed to defend and indemnify the members of these entities against claims arising out of their acts or omissions occurring within the scope of their statutorily authorized activities on behalf of these administrative entities. The state will not indemnify for judgments resulting from gross negligence or intentional misconduct or for punitive damages. The indemnity agreement provides broader coverage than common law immunity in that the agreement extends to ministerial acts. The indemnity agreement was intended to provide interim protection from tort liability until such time as immunity legislation is enacted.

House Bill No. 407 and Senate Bill No. 359 would provide clarity and certainty for the members of the Alaska SERC, the LEPCs, and the HSSTRC by providing immunity from personal liability for any act or omission occurring within the course and scope of the member's official duties under AS 46.13, unless the act or omission constitutes gross negligence or intentional misconduct. Unlike common law immunity, which only extends to discretionary acts, these bills would shield the members from personal liability arising from negligence in performing ministerial acts.

Regardless of whether the members are protected under the common law, the indemnity agreement, or the proposed legislation, there are limits to the protection afforded. That is, the members of these entities may be held personally liable for gross negligence, intentional misconduct, or conduct that exceeds the scope of their statutory authority.

7) To varying degrees, a number of statutes protect responders, including governmental entities and their employees or agents, during emergency response actions, provided the criteria specified in the statutes are met. Local governments, in particular, enjoy broad immunity.

If you have any questions regarding this matter, please do not hesitate to contact me.

MS:tg

SB

376

Current in CSSB 376(L&C)
Sec 36.

(c) When evaluating the effect of a merger or other acquisition under (a)(2) of this section, the director may consider relevant factors including market shares, volatility of ranking market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit out of the market, but may not consider the standards under AS 21.22.065(d) or (e).

Division proposes in HCS

(c) When evaluating the effect of a merger or other acquisition under (a)(2) of this section, the director may consider relevant factors including market shares, volatility of ranking market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit out of the market, but may not consider the standards under AS 21.22.065(d)**(3)**, **(d)(4)** or (e).

Revise Sec 21.22.065 (d)(2) (Split into 2 paragraphs)

(2) there is substantial evidence that the acquisition may substantially lessen competition, create a monopoly in a line of insurance in this state or significantly increase an insurer's market concentration;

(3) there is substantial evidence when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eighth largest, has increased by seven percent or more of the market over a period of time extending from any base year five to 10 years before the acquisition up to the time of the acquisition;

Renumber (d)(3) to (d)(4)

(4) after considering an acquisition covered under (a) of this section involving two or more insurers competing in the same market there is evidence of a violation of the competitive standards contained in the following tables:

(A) if the market is highly concentrated, the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more;

(B) if the market is not highly concentrated, the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5 percent	5 percent or more
10 percent	4 percent or more
15 percent	3 percent or more
19 percent	1 percent or more.

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE JUDICIARY COMMITTEE

TO: HCS CSSB 376(JUDICIARY)

Page 125, line 24, through page 126, line 12:

Delete all material.

Renumber the following bill sections accordingly.

Page 160, lines 14 - 17:

Delete all material.

Reletter the following subsection accordingly.

Page 160, line 20:

Delete "190"

Insert "189"

Page 160, line 21:

Delete "sec. 227"

Insert "sec. 226"

7-LS1887N.7
Ford
05/10/92

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE JUDICIARY COMMITTEE

TO: SCS CSSB 376 (JUDICIARY)

Page 124, line 21:

Delete "$5,000"

Insert "$2,500"

Page 124, line 22:

Delete "$50,000"

Insert "$25,000"

7-LS1887J.8
Ford
05/10/92

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE JUDICIARY COMMITTEE

TO: SCS CSSB 376 (JUDICIARY)

Page 153, line 5, through page 154, line 1:

Delete all material.

Renumber the following bill sections accordingly.

Page 161, line 11:

Delete "sec. 228"

Insert "sec. 229"

SB

396

No. 1

Bill Version: SB396

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL (S) Publish Date: 3-9-92

Revision Date:

Title: Medical costs...children in custody

Sponsor: Senator Collins

Requestor: Governor

Dept. Affected: Health and Social Services

BRU: DFYS - Purchased Services

Component: Foster Care

COMPONENT SERIAL NO. 0252

Expenditures/Revenues (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

This bill is critical to the Division of Family and Youth Services. There will be no increased costs incurred if this bill passes, but there is a serious potential for a sizeable increase in foster care costs if it does not pass.

Prepared by: Brian Saylor, Deputy Commissioner Brian L S

Phone: 465-3030

Division: Family and Youth Services

Date: February 25, 1992

Approved by Commissioner:

Date: 3/3/92

Agency: Department of Health and Social Services

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

Changes in CSSB316 (HES) have no fiscal impact. This fiscal note is appropriate.

26MAR92 date

Comte Aide(initial)

(Rev 10/90)

FN 0 DHSS

Alaska State Legislature

During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2828

During Interim
3111 C Street, Suite 540
Anchorage, Alaska 99503
(907) 561-2040

Senator Virginia Collins

To: Rep. Dave Donley, Chair
House Judiciary Committee

From: Senator Virginia Collins

Re: CSSB 396 (HES)

Date: May 8, 1992

Please schedule CSSB 396 (HES) for a hearing before your committee.

CSSB 396 (HES) clarifies the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents.

In the August 1991 decision in the case of In re E.A.O., the Alaska Supreme Court ruled that the department must pay for the medical costs of children in state custody even though the children live with their parents.

The ramifications of this decision are enormous. The state will be responsible for substantial expenses in medical care, and, it may be held liable for other costs of child rearing such as food, shelter, and education.

CSSB 396 (HES) responds to the costly implications of this recent court decision.

Thank you for your consideration of this request.

Alaska State Legislature

During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2828

During Interim
3111 C Street, Suite 540
Anchorage, Alaska 99503
(907) 561-2040

Senator Virginia Collins

CSSB 396 (HES)

Clarifying parental responsibilities for a child in state custody

CSSB 396 (HES) clarifies the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents.

The bill responds to a recent Alaska Supreme Court decision that will incur new and potentially substantial costs to the state.

In the August 1991 decision in the case of In re E.A.O., the court reversed a lower court decision and ruled that the state must pay for the medical costs of a child in state custody even though the child lives with his or her parents. Prior to this decision, the state only paid for medical care costs of children in its custody who were placed out-of-home.

The ramifications of this decision may also lead to the state's being held liable for other costs of child rearing such as food, shelter, and education.

In an era of projected declining revenues, CSSB 396 (HES) responds to these costly implications.

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 27, 1992 FURTHER REFERRALS: Judiciary

Date of Committee Action: 5/8/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 396(HES)

CS FOR SENATE BILL NO. 396 (HES) PARENTAL CARE FOR CHILD IN STATE CUSTODY
"An Act clarifying the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents; 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) _____ 3-9-92

[ ] zero fiscal note _____ [X] zero fiscal note(s) Senate HSS

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
J. G. Gonzales	—				
Chris Davis	✓			✓	
Bettye Davis	✓				
Judy Mays	✓				

CHAIRMAN'S SIGNATURE

Alaska State Legislature

During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2828

During Interim
3111 C Street, Suite 540
Anchorage, Alaska 99503
(907) 561-2040

Senator Virginia Collins

To: Rep. Georgianna Lincoln, Co-Chair
House HESS Committee

From: Senator Virginia Collins

Re: CSSB 396 (HES)

Date: April 29, 1992

Please schedule CSSB 396 (HES) for a hearing before your committee.

CSSB 396 (HES) clarifies the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents.

In the August 1991 decision in the case of In re E.A.O., the Alaska Supreme Court ruled that the department must pay for the medical costs of children in state custody even though the children live with their parents.

The ramifications of this decision are enormous. The state will be responsible for substantial expenses in medical care, and, it may be held liable for other costs of child rearing such as food, shelter, and education.

CSSB 396 (HES) responds to the costly implications of this recent court decision.

Thank you for your consideration of this request.

sponsor statement

Alaska State Legislature
Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M March 16, 1992

SUBJECT: Sectional Summary of CSSB 396 (HES)

TO: Members, Senate Judiciary Committee

FROM: Senator Virginia Collins

What follows is a sectional analysis of the above described bill. As a preliminary matter, please note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 amends AS 47.10.084(a) by clarifying responsibilities of a child's parent when a child is committed to state custody and placed by the state with the child's parent.

Section 2 makes the Act retroactive to August 30, 1991, the date of the Supreme Count decision in the case of In re E.A.O.

Section 3 makes the Act effective immediately.

sectional analysis

SENATE BILL 396

"An Act clarifying the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents; and providing for an effective date."

The Department of Health and Social Services strongly supports SB396, which clarifies the responsibilities of the Department for children committed to its legal custody who continue to reside with the parent or parents. The Bill amends AS 47.10.084(a) to expressly require a parent or parents to provide for the day to day care of their children if the children are residing with them when the state has legal custody as a result of child protective services purposes.

This bill was made necessary as a result of the Alaska Supreme Court ruling in the case of In re E.A.O., 816 P.2d 1352 (Alaska 1991), in which the court ruled that the current AS 47.10.084 requires the department to pay for medical costs associated with the care of children, even though they live with their parents. The department has never interpreted the statute in this manner in the past. Therefore, absent an amendment, the department will incur substantial additional financial expenses for these medical costs and may also be exposed to legal suits to resolve the responsibility for other costs of child rearing, including food, shelter, and education, while a child is placed at home by the department. The department has not budgeted for these type of costs, and these costs would significantly impact our budget, as well as the Medicaid budget. Although the court did acknowledge a possible right of reimbursement from the parents, the collection would not be practical nor cost-effective.

The bill provides for a retroactive effective date to August 30, 1991, the date that the court issued its ruling. A retroactive effective date is necessary to avoid the additional unbudgeted expenses and to resolve a legal question as to the department's responsibilities for other expenses, such as shelter, which the court did not direct address in its decision.

The Department of Health and Social Services urges the passage of this bill.

Deputy Commissioner
Health and Social Services

Date: 3/3/92

Commissioner
Health and Social Services

Date: 3 March 1992

PP-92-9

SB

399

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 March 19, 1992

SUBJECT: CSSB 399(Judiciary)(1992 Revisor's Bill)

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This memorandum discusses CSSB 399(Judiciary) (the 1992 revisor's bill, Work Order No. 7-LS1706\D), which was approved by your committee.

The bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

> * * * shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of * * * the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar effects.

Sections that delete, repeal, or update obsolete provisions: Sections 3 - 5, 10, 11, 21 - 23, 29, 33, 37, and 38 delete, repeal, or update provisions that have become obsolete either through other legislative action or the passage of time.

Sections that corrects errors or oversights: Sections 1, 7 - 9, 12, 13, 18 - 20, 24, and 30 - 32 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 2, 6, 14 - 17, 25 - 28, and 34 - 36 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. AS 05.15.210(35) defines "veterans organization," but the term is not used in AS 05.15. The Department of Commerce and Economic Development treats veterans organizations as "qualified organizations," which is consistent with apparent legislative intent. The amendment to AS 05.15.210(29) in sec. 1 of the bill adds veterans organizations to the list of organizations that qualify for charitable gaming permits, thus making express that which had been implied.

Secs. 2, 6, 14, and 15. Each of these sections adds facsimile as an authorized means of communication where existing law allows the use of telegraph. The amendments are intended to keep these laws abreast of technological changes.

Secs. 3 - 5. Each of these sections deletes material that is obsolete in that it is redundant to the general provisions of AS 08.01.020, enacted in 1987.

Secs. 7, 20, 31, and 32. Delete references to the Medical Indemnity Corporation of Alaska, which is no longer functioning. Chapter 14, SLA 1991 repealed the authority for the corporation. These remaining references were overlooked when ch. 14 was enacted.

Sec. 8. This amendment corrects an erroneous reference in the laws relating to electric cooperatives. The need for the amendment was brought to our attention by the corporations section of the Department of Commerce and Economic Development.

Sec. 9. A drafting oversight in ch. 64, SLA 1991 had the effect of taking away the authority of peace officers to make warrantless arrests for violation of domestic violence restraining orders that prohibit communication between the parties. The intended effect of replacing AS 11.61.120(a)(6) with new AS 11.56.740 in last year's legislation was to increase the penalty for a violation to a class A misdemeanor. Unfortunately, AS 12.25.030(b) should have been amended to include a reference to the new provision. This section of the bill corrects that oversight, and also incorporates a change in the description of the protected class of victims to parallel other changes made by ch. 64.

Sec. 10. Deletes obsolete language relating to the initial board of the Alaska school activities association.

Sec. 11. AS 14.30.410(b) is amended to delete a reference to the statewide bilingual-bicultural center. The statutory direction for that center was deleted from subsection (a) in 1978 and the reference to it in (b) should have been deleted at the same time.

Sec. 12. The section amends AS 14.48.080(b) to correct an erroneous internal references to "this section." Minimum standards are established by AS 14.48.060, not AS 14.48.080.

Sec. 13. AS 14.48.130(c) is amended to correct an erroneous internal reference. Penalties are set out in AS 14.48.190, whereas AS 14.48.180 simply authorizes a suit for injunctive relief.

Sec. 16. This section merely relocates language in a fish and game provision and divides it into paragraphs to eliminate any ambiguity in the scope of the requirement of possession. The provision could be read to require license possession only with respect to taxidermy, when, of course, it relates to all of the listed activities.

Sec. 17. AS 16.05.420(b) makes false statements in fish and game license applications subject to prosecution for unsworn falsification. The provisions of AS 16.05.408(b) make false statements in affidavits required for applications under that section subject to a perjury prosecution. AS 16.04.420(b) applies to AS 16.05.408 as well. The amendment proposed in this bill section makes it clear that the provisions of AS 16.05.408(b) control as to those false statements.

Sec. 18. This section adds "elk" (when lawfully owned) to the definition of "domestic mammals" for purposes of the fish and game code. This should have been done when elk farming was authorized in 1987.

Sec. 19. In the 1975 revisor's bill, the spanned reference in AS 16.10.030 (a penalty provision) was amended to include AS 16.10.055, which had been enacted in 1974. The amendment was not necessary and not appropriate for a revisor's bill. AS 16.10.055 (prohibiting interference with commercial fishing gear) contains its own penalty provision, which is more stringent (a class A misdemeanor) than the penalty set out in AS 16.10.030 for a violation of AS 16.10.010 - 16.10.050 (a fine of not less than $100 nor more than $500). Further, AS 16.10.010 - 16.10.050 deal with conduct that interferes with or is destructive to waters used for spawning or propagation by salmon unless the conduct is allowed under a permit issued by DEC, and bear very little relationship to the conduct covered by AS 16.10.055. The amendment proposed in the bill restores the law to its original state. If this amendment is made, we will set out AS 16.10.055 in its own article when the AS 16 pamphlet is replaced later this year.

Sec. 21. The sentence proposed for deletion from AS 18.35.120 is meaningless because of the repeal of AS 18.35.100(a) in 1982.

Secs. 22 and 23. These provisions simply update the name of the Nuclear Regulatory Commission, formerly the Atomic Energy Commission.

Sec. 24. The Department of Transportation and Public Facilities does not regulate the referenced pressure vessels. They are regulated by the federal Department of Transportation.

Sec. 25. The proposed amendment corrects the description of the action required to initiate a judicial appeal of certain administrative action.

Secs. 26 and 27. Both sections involve changing erroneous references to the entire chapter to references to the relevant article.

Sec. 28. The first part of each of AS 18.67.020(c) and (d) duplicate each other. This amendment eliminates the redundant portion of (d).

Sec. 29. The proposed amendment updates a reference to the Alaska Rules of Court.

Sec. 30. Corrects a statutory reference in the insurance code.

Sec. 33. Deletes obsolete language relating to a deadline for certain administrative action.

Sec. 34. Rewrites the language used to describe vehicles that may receive dealer plates to correct the context. No vehicles are "specified" in AS 28.10.421(d)(10).

Secs. 35 and 36. The term "material land" is not used in AS 38.05, but the word "material" or "materials" is used frequently, most often in the context of "timber and other materials." The term "timber land" is used once in AS 38.05. These two sections of the bill amend the old definition of "'timber land' and 'material land'" to delete the reference to "material land" and the types of materials, so that the definition is now limited to "timber land," and enact a definition for "material" that incorporates the language deleted in the first amendment.

Sec. 37. The language that is amended out of AS 44.81.250(c) became obsolete in 1987 with the passage of ch. 49, SLA 1987, which removed the participation requirements formerly contained in AS 44.81.210(a)(20).

Sec. 38. Repeals provisions that are obsolete. Those provisions and the reasons for their obsolescence are:

AS 14.11.135(2) and (4) - define terms that are defined for the title in AS 14.60.010;

AS 14.17.250(3) - defines a term that is defined for the title;

AS 14.17.250(8) - defines a term that is not used;

AS 14.30.350(3) - defines a term that is defined for the title;

AS 16.05.050(19) - this provision required that a report be given to the legislature by January 1, 1991 and is now obsolete;

AS 18.31.500(3) - defines a term that is not used;

AS 18.35.230(3) - the term related to a repealed provision (see discussion for sec. 14 of this bill);

AS 18.55.950(5) - defines a term that is not used, except in a different context;

AS 18.55.950(9) - defines a term that is not used;

AS 18.60.775 - obsolete through the passage of time;

AS 26.05.040 - the provisions of federal law that are incorporated by reference in this section have all been repealed (the old federal provisions related to the Territorial Guard and have, in large part, been subsequently enacted as a part of state law in AS 26.05).

The text of all provisions proposed for repeal is set out in the appendix.

Sec. 39. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

cc: Deborah Behr
Department of Law

APPENDIX - TEXT OF REPEALED PROVISIONS

AS 14.11.135(2) and (4):

(2) "commissioner" means the commissioner of education;

* * *

(4) "department" means the Department of Education;

AS 14.17.250(3) and (8):

(3) "commissioner" means the commissioner of the Department of Education;

* * *

(8) "pre-fiscal year" means the year immediately before the fiscal year;

AS 14.30.350(3):

(3) "department" means the Department of Education;

AS 16.05.050(19):

Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

* * *

(19) to report to the legislature by January 1, 1991, concerning the production and sale of merchandise bearing designs, labels, or words associating the merchandise with the department;

AS 18.31.500(3):

(3) "asbestos product" means a product that produces airborne asbestos.

AS 18.35.230(3):

"remodeling" means any substantial modification of the physical structure or redecoration the value of which exceeds 10 per cent of the fair market value of

AS 18.55.950(5) and (9):

(5) "clerk" means the clerk or other official of the municipality who is the custodian of its official records;

* * *

(9) "mayor" means the mayor of a municipality or the officer having the duties customarily imposed upon the executive head of a municipality;

AS 18.60.775:

Sec. 18.60.775. APPLICABILITY. AS 18.60.750 - 18.60.755 apply only to installations or replacements of safety glazing materials made after January 1, 1975, but do not apply to contracts awarded, under an invitation for bids, before January 1, 1975.

AS 26.05.040:

Sec. 26.05.040. RATIFICATION AND CONFIRMATION OF EXISTING MILITARY FORCES. The provisions of 48 U.S.C. 473 - 479 pertaining to the National Guard apply to the existing units and individuals of the military forces in the state, heretofore organized and known as the Alaska National Guard, and this organization is ratified and confirmed.

DRD:gc
92-251.glc

(7) HOUSE COMMITTEE REPORT

Date Referred: April 1, 1992 FURTHER REFERRALS:

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered: CSSB 399(JUD)

CS FOR SENATE BILL NO. 399 (JUD) 1992 REVISOR'S BILL

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; 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
[X] 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 _____ [X] zero fiscal note(s) LAA 3-23-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	✓				
[illegible]	—	Mark C. Hanley		N	
		[illegible]		X	

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

Bill Version: SB 399
(S) Publish Date: 3-23-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:
Department Affected: Legislative Affairs Agency
Title: "An Act making corrective amendments to the Alaska Statutes as recommended by the...
BRU: Legislative Council
Sponsor: Senate Judiciary
Component: Legal Services
Requestor: Senate Judiciary
COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
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:

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Changes in CSSB 399 (JUD) have no fiscal impact. This fiscal note is appropriate.
3-20-92 date — Nick by JMR Comte Aide (initial)

Prepared By: Pamela A. Stoops, Director — Pamela A. Stoops — Phone: 465-3850
Division: Administrative Services — Date: 3/16/92

Approved By: Warren W. Endicott, Executive Director — Warren W. Endicott
Agency: Legislative Affairs Agency — Date: 3/16/92

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

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 April 9, 1992

SUBJECT: Amendment for CSSB 399(JUD) (1992 Revisor's Bill)

TO: Representative Dave Donley
Chair, House Judiciary Committee

FROM: David R. Dierdorff DRD
Revisor of Statutes

I note that you have scheduled CSSB 399(JUD) for hearing on Monday, April 13 at 1:30 p.m. At this point I have one small amendment to propose to your committee and have enclosed a copy for members' packets.

The amendment corrects a 1991 drafting error in CSSSSB 25(CRA), which became ch. 83, SLA 1991. Late revisions to the language amending AS 29.35.020(b) added an internal reference to AS 46.08.900 to pick up the definition of "village." At that time, sec. 3 of the bill, which added a different definition of "village" as a new subsection (e) for AS 29.35.020, should have been deleted, but, through oversight, it was left in the bill. It is necessary to repeal (e) to eliminate the conflict and correct the error.

If I may be of further assistance, please advise.

DRD:gc
92-294.glc

Enclosure

Thanks for getting this on your calendar so promptly.

7-LS1706\D.1
Dicrdorff
04/09/92

AMENDMENT

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

TO: CSSB 399 (JUDICIARY)

Page 11, line 10:

Delete "and"

Insert ";"

Following "AS 26.05.040", insert "; and AS 29.35.020(e)"

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 April 2, 1992

SUBJECT: CSSB 399(Judiciary), the 1992 Revisor's Bill

TO: Representative Dave Donley
Chair, House Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

I note that the revisor's bill has been referred to your committee. I enclose a copy of the sectional analysis for CSSB 399(Judiciary), as the sectional for the CS was not published in the Senate Journal. You will see that this year's bill is relatively short and sweet.

Because I am involved in more drafting than usual and anticipate a heavy load as the session approaches its end, I would appreciate it very much if you could schedule a hearing at your earliest convenience so that I can concentrate on other business during "crunch" time.

Thank you in advance for your cooperation. If you or your staff have any questions about the bill, please do not hesitate to give me a call.

DRD:gc
92-272.glc

Enclosure

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 March 19, 1992

SUBJECT: CSSB 399(Judiciary)(1992 Revisor's Bill)

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This memorandum discusses CSSB 399(Judiciary) (the 1992 revisor's bill, Work Order No. 7-LS1706\D), which was approved by your committee.

The bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

> * * * shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of * * * the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar effects.

Sections that delete, repeal, or update obsolete provisions: Sections 3 - 5, 10, 11, 21 - 23, 29, 33, 37, and 38 delete, repeal, or update provisions that have become obsolete either through other legislative action or the passage of time.

Sections that corrects errors or oversights: Sections 1, 7 - 9, 12, 13, 18 - 20, 24, and 30 - 32 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 2, 6, 14 - 17, 25 - 28, and 34 - 36 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. AS 05.15.210(35) defines "veterans organization," but the term is not used in AS 05.15. The Department of Commerce and Economic Development treats veterans organizations as "qualified organizations," which is consistent with apparent legislative intent. The amendment to AS 05.15.210(29) in sec. 1 of the bill adds veterans organizations to the list of organizations that qualify for charitable gaming permits, thus making express that which had been implied.

Secs. 2, 6, 14, and 15. Each of these sections adds facsimile as an authorized means of communication where existing law allows the use of telegraph. The amendments are intended to keep these laws abreast of technological changes.

Secs. 3 - 5. Each of these sections deletes material that is obsolete in that it is redundant to the general provisions of AS 08.01.020, enacted in 1987.

Secs. 7, 20, 31, and 32. Delete references to the Medical Indemnity Corporation of Alaska, which is no longer functioning. Chapter 14, SLA 1991 repealed the authority for the corporation. These remaining references were overlooked when ch. 14 was enacted.

Sec. 8. This amendment corrects an erroneous reference in the laws relating to electric cooperatives. The need for the amendment was brought to our attention by the corporations section of the Department of Commerce and Economic Development.

Sec. 9. A drafting oversight in ch. 64, SLA 1991 had the effect of taking away the authority of peace officers to make warrantless arrests for violation of domestic violence restraining orders that prohibit communication between the parties. The intended effect of replacing AS 11.61.120(a)(6) with new AS 11.56.740 in last year's legislation was to increase the penalty for a violation to a class A misdemeanor. Unfortunately, AS 12.25.030(b) should have been amended to include a reference to the new provision. This section of the bill corrects that oversight, and also incorporates a change in the description of the protected class of victims to parallel other changes made by ch. 64.

Sec. 10. Deletes obsolete language relating to the initial board of the Alaska school activities association.

Sec. 11. AS 14.30.410(b) is amended to delete a reference to the statewide bilingual-bicultural center. The statutory direction for that center was deleted from subsection (a) in 1978 and the reference to it in (b) should have been deleted at the same time.

Sec. 12. The section amends AS 14.48.080(b) to correct an erroneous internal references to "this section." Minimum standards are established by AS 14.48.060, not AS 14.48.080.

Sec. 13. AS 14.48.130(c) is amended to correct an erroneous internal reference. Penalties are set out in AS 14.48.190, whereas AS 14.48.180 simply authorizes a suit for injunctive relief.

Sec. 16. This section merely relocates language in a fish and game provision and divides it into paragraphs to eliminate any ambiguity in the scope of the requirement of possession. The provision could be read to require license possession only with respect to taxidermy, when, of course, it relates to all of the listed activities.

Sec. 17. AS 16.05.420(b) makes false statements in fish and game license applications subject to prosecution for unsworn falsification. The provisions of AS 16.05.408(b) make false statements in affidavits required for applications under that section subject to a perjury prosecution. AS 16.04.420(b) applies to AS 16.05.408 as well. The amendment proposed in this bill section makes it clear that the provisions of AS 16.05.408(b) control as to those false statements.

Sec. 18. This section adds "elk" (when lawfully owned) to the definition of "domestic mammals" for purposes of the fish and game code. This should have been done when elk farming was authorized in 1987.

Sec. 19. In the 1975 revisor's bill, the spanned reference in AS 16.10.030 (a penalty provision) was amended to include AS 16.10.055, which had been enacted in 1974. The amendment was not necessary and not appropriate for a revisor's bill. AS 16.10.055 (prohibiting interference with commercial fishing gear) contains its own penalty provision, which is more stringent (a class A misdemeanor) than the penalty set out in AS 16.10.030 for a violation of AS 16.10.010 - 16.10.050 (a fine of not less than $100 nor more than $500). Further, AS 16.10.010 - 16.10.050 deal with conduct that interferes with or is destructive to waters used for spawning or propagation by salmon unless the conduct is allowed under a permit issued by DEC, and bear very little relationship to the conduct covered by AS 16.10.055. The amendment proposed in the bill restores the law to its original state. If this amendment is made, we will set out AS 16.10.055 in its own article when the AS 16 pamphlet is replaced later this year.

Sec. 21. The sentence proposed for deletion from AS 18.35.120 is meaningless because of the repeal of AS 18.35.100(a) in 1982.

Secs. 22 and 23. These provisions simply update the name of the Nuclear Regulatory Commission, formerly the Atomic Energy Commission.

Sec. 24. The Department of Transportation and Public Facilities does not regulate the referenced pressure vessels. They are regulated by the federal Department of Transportation.

Sec. 25. The proposed amendment corrects the description of the action required to initiate a judicial appeal of certain administrative action.

Secs. 26 and 27. Both sections involve changing erroneous references to the entire chapter to references to the relevant article.

Sec. 28. The first part of each of AS 18.67.020(c) and (d) duplicate each other. This amendment eliminates the redundant portion of (d).

Sec. 29. The proposed amendment updates a reference to the Alaska Rules of Court.

Sec. 30. Corrects a statutory reference in the insurance code.

Sec. 33. Deletes obsolete language relating to a deadline for certain administrative action.

Sec. 34. Rewrites the language used to describe vehicles that may receive dealer plates to correct the context. No vehicles are "specified" in AS 28.10.421(d)(10).

Secs. 35 and 36. The term "material land" is not used in AS 38.05, but the word "material" or "materials" is used frequently, most often in the context of "timber and other materials." The term "timber land" is used once in AS 38.05. These two sections of the bill amend the old definition of "'timber land' and 'material land'" to delete the reference to "material land" and the types of materials, so that the definition is now limited to "timber land," and enact a definition for "material" that incorporates the language deleted in the first amendment.

Sec. 37. The language that is amended out of AS 44.81.250(c) became obsolete in 1987 with the passage of ch. 49, SLA 1987, which removed the participation requirements formerly contained in AS 44.81.210(a)(20).

Sec. 38. Repeals provisions that are obsolete. Those provisions and the reasons for their obsolescence are:

AS 14.11.135(2) and (4) - define terms that are defined for the title in AS 14.60.010;

AS 14.17.250(3) - defines a term that is defined for the title;

AS 14.17.250(8) - defines a term that is not used;

AS 14.30.350(3) - defines a term that is defined for the title;

AS 16.05.050(19) - this provision required that a report be given to the legislature by January 1, 1991 and is now obsolete;

AS 18.31.500(3) - defines a term that is not used;

AS 18.33.230(3) - the term related to a repealed provision (see discussion for sec. 14 of this bill);

AS 18.55.950(5) - defines a term that is not used, except in a different context;

AS 18.55.950(9) - defines a term that is not used;

AS 18.60.775 - obsolete through the passage of time;

AS 26.05.040 - the provisions of federal law that are incorporated by reference in this section have all been repealed (the old federal provisions related to the Territorial Guard and have, in large part, been subsequently enacted as a part of state law in AS 26.05).

The text of all provisions proposed for repeal is set out in the appendix.

Sec. 39. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

cc: Deborah Behr
Department of Law

APPENDIX - TEXT OF REPEALED PROVISIONS

AS 14.11.135(2) and (4):

(2) "commissioner" means the commissioner of education;

* * *

(4) "department" means the Department of Education;

AS 14.17.250(3) and (8):

(3) "commissioner" means the commissioner of the Department of Education;

* * *

(8) "pre-fiscal year" means the year immediately before the fiscal year;

AS 14.30.350(3):

(3) "department" means the Department of Education;

AS 16.05.050(19):

Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

* * *

(19) to report to the legislature by January 1, 1991, concerning the production and sale of merchandise bearing designs, labels, or words associating the merchandise with the department;

AS 18.31.500(3):

(3) "asbestos product" means a product that produces airborne asbestos.

AS 18.35.230(3):

(3) "remodeling" means any substantial modification of the physical structure or redesign and redecoration the value of which exceeds 10 per cent of the fair market value of the structure;

AS 18.55.950(5) and (9):

(5) "clerk" means the clerk or other official of the municipality who is the custodian of its official records;

* * *

(9) "mayor" means the mayor of a municipality or the officer having the duties customarily imposed upon the executive head of a municipality;

AS 18.60.775:

Sec. 18.60.775. APPLICABILITY. AS 18.60.750 - 18.60.755 apply only to installations or replacements of safety glazing materials made after January 1, 1975, but do not apply to contracts awarded, under an invitation for bids, before January 1, 1975.

AS 26.05.040:

Sec. 26.05.040. RATIFICATION AND CONFIRMATION OF EXISTING MILITARY FORCES. The provisions of 48 U.S.C. 473 - 479 pertaining to the National Guard apply to the existing units and individuals of the military forces in the state, heretofore organized and known as the Alaska National Guard, and this organization is ratified and confirmed.

DRD:gc
92-251.glc

SB

405

HOUSE COMMITTEE REPORT

5-10-92
Suppl Calen
~~Rules~~

(7)

Date Referred: May 8, 1992 FURTHER REFERRALS:

Date of Committee Action: 5/10/92

The JUDICIARY Committee considered: CSSB 405(O&G)

CS FOR SENATE BILL NO. 405 (O&G) OIL FINANCIAL RESPONSIBILITY LAWS
"An Act relating to evidence of financial responsibility provided by persons who conduct oil operations; 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
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: 5/5/92 Senate letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____
[X] zero fiscal note(s) SEN DEC 4-15-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Dave Wonley		✓	
		John Ellis		X	
		Mike Thompson		✓	
		Mark Stiles		X	
		Lewis Pat Patnell		✓	

Dave Wonley
CHAIRMAN'S SIGNATURE

Senator Lyman F. Hoffman

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

District M
Akiak
Akiak
Bethel
Birch Creek
Chefornak
Chuathbaluk
Crooked Creek
Eek
Evansville
Fort Yukon
Galena
Goodnews Bay
Grayling
Holy Cross
Hughes
Huslia
Kalskag
Kaltag
Kasigluk
Kipnuk
Kongiganak
Koyukuk
Kwethluk
Kwigillingok
Lake Minchumina
Lime Village
Lower Kalskag
Manley Hot Springs
Marshall
McGrath
Mekoryuk
Minto
Mountain Village
Napaskiak
Napaskiak
Newtok
Nightmute
Nikolai
Nulato
Nunapitchuk
Oscarville
Pilot Station
Pitkas Point
Platinum
Quinhagak
Ramcoat
Red Devil
Ruby
Russian Mission
Shageluk
Sleetmute
St. Mary's
Stevens Village
Stony River
Takotna
Tanana
Telida
Toksook Bay
Tuluksak
Tuntutuliak
Tununak
Tyonek
Venetie
Wiseman

MEMORANDUM

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Senator Lyman F. Hoffman

RE: Scheduling of SB 405

DATE: May 8, 1992

SB 405 passed out of House Resources Committee this morning, and is now in House Judiciary. I respectfully request that SB 405 be scheduled for a hearing in your committee as soon as possible. This bill is critical to all of the barge owners that deliver fuel throughout Alaska, as well as the electric co-ops that rely on diesel. SB 405 gives the Department of Environmental Conservation the authority for two years to certify that non-crude operators are in compliance with oil spill pollution insurance requirements, even if they are unable to obtain the "direct action" coverage required by state law. Crude operators have not had problems in meeting state requirements. SB 405 also clarifies that an insurance company is only liable for the face amount of the insurance policy. The insurance industry has claimed that ambiguity in our state law is the main reason for their reluctance to provide direct action insurance. However, we have also been told that merely "fixing" this ambiguous language will probably not result in direct action insurance becoming available on the market since everyone is waiting to see what kind of regulations are developed as a result of the new federal oil spill law - OPA 90. This bill received a great deal of scrutiny in the Senate Oil and Gas Committee. It has a 0 fiscal note from DEC, as well as a letter of intent, and is supported by the administration.

P.O. Box 763 • Bethel, Alaska 99559 • (907) 543-3543

Senator Lyman F. Hoffman

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

SB 405
FINANCIAL RESPONSIBILITY OF NONCRUDE OPERATORS
Background Paper

History: On March 24, 1989 the *Exxon Valdez* ran aground on Bligh Reef in Prince William Sound, causing the largest crude oil spill in United States history. As a result, the Alaska Legislature and the United States Congress significantly strengthened oil spill prevention and cleanup standards. One bill, HB 567, passed in 1990, made three major changes in state oil spill protection. It 1) established new response planning standards; 2) imposed new financial responsibility requirements for contingency plan holders; and 3) allowed the Department of Environmental Conservation to give credits for incorporating prevention measures into contingency plans. These major changes were to have gone into effect on and after June 1, 1991.

Although HB 567 was passed as a result of the *Exxon Valdez* oil spill and was aimed at the crude oil industry, non-crude carriers and facilities were also subject to the changes. Regulations implementing these changes have been drafted by the Department of Environmental Conservation, and are still being reviewed by the Department of Law.

Problem: Smaller fuel distributors, barge lines that transport refined petroleum products, and rural electric utilities that must maintain fuel stores have found it all but impossible to meet the new financial responsibility requirements imposed by HB 567. Although these non-crude operators *are* able to purchase the required amounts of pollution insurance, underwriters in both the domestic and overseas markets steadfastly refuse to include the "direct action" clause in these policies that Alaska law requires.

P.O. Box 763 • Bethel, Alaska 99559 • (907) 543-3543

Alaska's direct action requirements have been in effect since 1981. The provision allows an action to be brought in state court directly against the insurer, rather than going first to the responsible party. Ambiguities about whether insurers are limited to the face amount of the policy, plus the greatly increased amounts of coverage required since the *Exxon Valdez* spill, have combined to produce the current unavailability of direct action coverage.

When it became clear by early 1991 that insurers would not provide direct action coverage, Senator Lyman Hoffman introduced legislation to delay the effective date of HB 567's financial responsibility requirements for non-crude operators. The hope was that over the year's time, either the insurance markets would overcome their objections to providing direct action, or that perhaps a risk pool could be developed to provide such coverage. The Legislature unanimously approved Senator Hoffman's bill.

Sen. Hoffman's legislation also delayed the effective date of the enhanced oil discharge prevention and contingency plans HB 567 required of non-crude operators; most operators appear to be prepared to meet the new requirements and no further delay in complying with them is being sought at this time.

Nearly one year later, however, there has been no change in the insurance markets' position on direct action coverage, and development of an insurance pool so far has proved unfeasible. With the June 1, 1992, effective date of the financial responsibility requirements approaching, and the unavailability of direct action coverage just as complete as it was in 1991, non-crude operators once again face the prospect of either operating out of compliance with Alaska law or ceasing operations. The large crude oil operators do not face this problem, because they have sufficient assets and working capital to either self-insure or comply with the law through other means, such as surety bonds or letters of credit.

Over the past two years, DEC has given conditional waivers to some non-crude operators who have been unable to obtain direct action insurance but who in all other respects meet the state's financial responsibility requirements. Whether DEC has authority to grant such waivers is highly questionable, however, and the agency recently decided to end the practice.

Solution: CS SB405 (O&G) does several things:

• Section 1 clarifies that the financial responsibility of an insurer is limited to the type of risk assumed and the amount of coverage specified in the proof of financial responsibility. It also clarifies that these limits do not apply to an applicant who self-insures.

• Section 2 gives new authority to DEC to approve an applicant's proof of financial responsibility if the applicant attests in a sworn statement that direct action insurance has been diligently sought, but is determined to be unavailable; if such efforts are made and proven every six months; and if all other financial responsibility requirements are met.

• Sections 3 and 4 ratify similar exemptions made by DEC during the past year.

• Sections 5,6 and 7 calls for an immediate effective date; if that date is after June 1, 1992, makes it retroactive to June 1, 1992; and repeals the exemption law on June 1, 1994.

• Letter of intent adopted by the Senate Oil and Gas Committee directs DEC, the Division of Insurance within Commerce Department, and the Legislative Research Agency to research possible alternative solutions to assist non-crude operators in meeting the state's financial responsibility requirements for oil spill pollution coverage.

adopted

Revised Letter of intent to SB 405:

The Department of Environmental Conservation, the Division of Insurance within the Department of Commerce and Economic Development, and the Legislative Research Agency shall research the possibility of group pooling or other mechanisms to assist non-crude operators in meeting the state's financial responsibility requirements for oil spill pollution coverage, and shall report back to the Legislature with their findings and recommendations by February 1, 1993.

MEMORANDUM STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Division of Spill Prevention and Response

TO: Lynn Kent
Env. Manager
SPAR/SPPM

THRU: Mike Manaker
Program Coordinator
SPAR/SPPM

FROM: Glenn Adams
Project Asst.
SPAR/SPPM

DATE: REVISED LIST
February 21, 1992

FILE #:

PHONE #:

SUBJECT: Insurance Not Approved as Proof of Financial Responsibility

The following is a list of applicants that have insurance that does not comply or are trying to get insurance. Some of these applicants are trying to get coverage by some other means, but most have run out of sources.

File #	Name	Subject	Insurance Coverage Type
074	Alaska Marine Charters	barge	Lloyds'
061	Anderes Oil Co.	terminal	* looking for insurance
088	Bering Sea Fisheries	barges	Lloyds'
108	Bethel Fuel Sales	terminal	Lloyds'
025	Boyer Towing	barges	P&I club
036	Brix Maritime Co.	barges	P&I club
119	City of Galena	terminal	* looking for insurance
150	City of Saint Paul	terminal	Lloyds' & ILU
133	Dojer, Ltd.	barges	Lloyds'
129	Forty Niner Transportation	barges	P&I club
071	Kugkaktlik Limited	barge	Lloyds'
087	Moodys Sea Lighterage	barges	Lloyds'
079	Northland Services, Inc.	barge	Water Quality Insurance Syndicate
095	Nushegak Electric Cooperative	terminal	ILU
089	Orca Fuel Co.	terminal	Lloyds' & ILU
065	Smith Lighterage Co.	barges	Lloyds' & ILU
070	Terminal Oil Sales	terminal	Lloyds
109	UIC Construction, Inc.	terminal	Agricultural Excess & Surplus Ins.
035	Yutana Barge Lines, Inc.	barges	P&I club
146	Island Providers Trnsp. Co.	vessel	WOIS/Lloyd's
102	Kodiak Oil Sales, Inc.	terminal	Lloyds' & ILU
040	Samson Tug & Barge Co, Inc.	barges	WOIS
072	Saupe' Enterprises Inc.	terminal	Lloyds' & ILU
045	Sitka Fuels, Inc.	terminal	Union Fire Insurance Co.
064	Arctic Slope Regional Corp.	terminal	Agricultural Excess & Surplus Ins.

At the present time: Oil barges are required to have $1 million in coverage, after June 1,1992 the amount will be $100 per barrel of storage capacity or $1 million whichever is greater to a maximum of $35 million. Most of the above barges are small enough that they will remain in the minimum amount next year, at the most I would say that $1½ million would be the maximum.

Noncrude terminals are required to have coverage in an amount of $10 per barrel of storage capacity with $1 million minimum, after June 1, 1992 it will be $25 per barrel. Because of storage capacity, some terminals will need up to $ 2 million in coverage next year.

One company, Island Providers, has a landing craft vessel classified as a noncrude tanker that now requires $20 million but will drop to $1 million next year because of small storage capacity.

Pipelines are required to provide $50 million in coverage. Cook Inlet Pipeline was able to get an insurance policy that meets the requirements.

We found that the barge operated by Brice Inc. could be classified as exempt because it only supplied fuel to other company vessels and to deck equipment.

Trident Seafoods was able to cover their barges and terminals with a letter of credit.

The Agricultural Excess and Insurance Co. thinks they will be able to provide a policy with the required endorsement, we are still waiting to hear from them.

PROOF OF FINANCIAL RESPONSIBILITY

Type of Facility	Before June 1, 1991	After June 1, 1991
OIL TERMINALS		
Oil Terminals/Crude (5,000 barrel (bbl.) and up)	$10 per bbl. of storage capacity or $1,000,000, whichever is greater, $50,000,000 maximum	$50,000,000 per incident
Oil Terminals/Non-Crude (10,000 bbl. and up)	Same as above	$25 per bbl. of storage capacity or $1,000,000, whichever is greater, $50,000,000 maximum
Oil Terminals/Crude and Non-Crude combined	Same as above	If mostly crude - $50,000,000 per incident. If mostly non-crude - $25 per bbl. of total capacity
PIPELINES & EXPLORATION FACILITIES		
Pipelines and Offshore Exploration or Production	$35,000,000 per incident	$50,000,000 per incident
Onshore Production	EXEMPT	$20,000,000 per incident
Onshore Exploration	EXEMPT	$5,000,000 per incident
VESSELS & BARGES		
Tank Vessel & Oil Barge/Crude	Trans-Alaska Pipeline related: $14,000,000. Other tankers: per Clean Water Act or $20,000,000, whichever is greater. Other barges: per CWA or $1,000,000.	$300 per bbl. per incident storage capacity or $100,000,000, whichever is greater
Tank Vessel & Barge/ Non-Crude	Same as above	$100 per bbl. storage capacity per incident or $1,000,000, whichever is greater, $35,000,000 maximum

Alaska Department of Environmental Conservation

Adams

United States Coast Guard

National Pollution Funds Center
4200 Wilson Blvd
Suite 1000
Arlington, Va 22203-1804

COPY TO
LYNN
C. LEGNN

Fax Transmittal Sheet

MIKE C
JIM CANTOR, INC
PTN TO MIKE M

Number of Pages including this page 11 Date: 2-6-92

From	Bob Lyall	To	Mike Mansdorf
Fax #	(FTS) ____ ( ) ____	Fax #	(FTS) ____ ( ) ____
Voice#	(FTS) ____ (703) 235-4704	Voice#	(FTS) ____ ( ) ____

Subject: Here are all I could find: some old thoughts on a 1985 bill and draft Admiral's Nov. 26, 1991 testimony on our proposed OPA rules -- see issue #2 on pg. 4

Transmitted By ____

Thoughts re S. 51, amendments to Superfund/CERCLA
Bruce 8/

DIRECT ACTION

1. It is doubtful that many companies, especially single-vessel "paper" corporations, will pay substantial amounts for pollution damages without being forced to. That means litigation and forced liquidation proceedings at DOJ/Coast Guard (taxpayer's) expense. Jurisdiction over a solvent vessel operator might easily be obtained, but to what end if assets are few or can't be reached? The most obvious asset, the vessel, may have been a total loss or may be worth only scrap value or may have been chartered. In the latter case, why would a completely innocent vessel owner pay for the charterer's actions without a judgement? Again, that means litigation and forced liquidation expenses for taxpayers.

2. In the absence of direct action, if a liable vessel operator is solvent, but has insufficient assets to pay claims, the superfund will pay for the pollution damages. That should not be favored by the Administration because a superfund tax on oil/chemical companies is actually a tax on consumers. Had we been able to comment on these legislative changes, we would have explained that the current financial responsibility system under the FWPCA works exceptionally well <u>because</u> of direct action. CERCLA should not be any different in connection with vessel liability.

3. With respect to vessel liability insurance <u>under a financial responsibility system</u>, CERCLA's current direct action provision doesn't change the traditional way of writing coverage -- it's the only way it has ever been written for vessels. Vessel insurers live with direct action and are not testifing against it. It is the shoreside insurers who are testifying and lobbying against it -- they never had it and they are afraid of it because of the bizarre court decisions being handed down in waste dump cases. Because these Love Canal-type cases involve many technically liable entities spread over a number of years, with a resulting insoluble legal tangle, socially minded judges are creating insurance coverage where none exists and thus forcing shoreside insurers to pay claims for non-culpable insureds from whom insurers never received adequate premiums. In the case of a spill from a vessel, however, either the spiller is liable or it isn't. If it is, equity demands that under a financial responsibility system the insurer who accepted the premiums and took the risk should pay; not consumers and taxpayers. Vessel insurers, incidently, are not being driven out of business and are not threatening to stop writing pollution coverage for vessels.

4. CERCLA coverage for vessel liability is attractive and is being sold today, everywhere. Vessel underwriters, however, require and deserve a legislative fix in order to write CERCLA coverage as "guarantors" within the meaning of CERCLA. Basically such fix involves common sense changes such as allowing an insurer to know, beforehand, the maximum dollar amount of its potential liability and limiting its liability to section 107(a)(1) of CERCLA.

5. Nothing in the Treasury Department's study of June 1983 points to direct action itself as a reason why CERCLA guarantees will not be written by vessel insurers.

POLICY DEFENSES

1. Allowing an insurer/guarantor any defense it wishes makes no sense under a financial responsibility program. Either an insurer agrees to pay under predetermined circumstances or it doesn't. Unknown, unlisted policy defenses (failure of the insured to pay premiums that month, or failure of the insured to remember and notify the insurer of all of the different hazardous substances it may be able to transport, or failure to notice and correct a minor state of disrepair that leads to a spill, etc., etc.) fly in the face of a financial responsibility program. Only statutorily permitted defenses should be permitted (e.g., Act of God, fault of the claimant) to an insurer/guarantor. Those insurers who thereafter choose not to act as guarantors are free to do so.

2. Vessel underwriters do not like the absence of so-called policy defenses in the current CERCLA, but they either cannot or will not satisfactorily explain why. These same insurers readily write coverage (OCS vessel liability) without the benefit of policy defenses and have never invoked a policy defense under a financial responsibility system even when they could have done so. Moreover, the CLC international regime, in force since 1975 and ratified by 55 countries, proscribes policy defenses but suffers from no lack of ready and willing insurers -- insurers who currently issue CERCLA coverage and who would willingly act as CERCLA guarantors if CERCLA's guarantor liability provisions were amended as urged by the Coast Guard. The lack of policy defenses is not anathema to vessel underwriters, but they will not look a gift horse (S.51) in the mouth.

3. There was no actual analysis or study of the policy defenses issue in the Treasury Department's "study". All it did was restate the insurers' dislike of the absence of policy defenses. The Coast Guard's Financial Responsibility Division is certain that the availability of policy defenses is not mandatory to the execution of CERCLA insurance. If in fact some defense, now termed a policy defense, was absolutely necessary, that defense would have been articulated and added to the law years ago.

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
STATEMENT OF REAR ADMIRAL RICHARD A. APPELBAUM
ON VESSEL FINANCIAL RESPONSIBILITY FOR WATER POLLUTION
BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
NOVEMBER 6, 1991

GOOD MORNING, MR. CHAIRMAN. I AM HONORED TO APPEAR BEFORE THIS DISTINGUISHED SUBCOMMITTEE TODAY TO DISCUSS THE STATUS OF THE COAST GUARD'S ACTIONS TO IMPLEMENT THE VESSEL FINANCIAL RESPONSIBILITY PROVISIONS IN THE OIL POLLUTION ACT OF 1990 (OPA 90) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA). IT IS ONE OF THE RESPONSIBILITIES OF MY COMMAND, THE NATIONAL POLLUTION FUNDS CENTER, TO CARRY OUT THE VESSEL FINANCIAL RESPONSIBILITY PROVISIONS OF THESE ACTS.

THE COAST GUARD PUBLISHED A NOTICE OF PROPOSED RULEMAKING IN THE FEDERAL REGISTER ON SEPTEMBER 25, 1991 (CGD 91-005). THIS NOTICE ALLOWS A PERIOD FOR THE PUBLIC TO SUBMIT COMMENTS. AFTER THE COMMENT PERIOD CLOSES, WE PLAN TO PUBLISH A FINAL RULE WHICH WILL INCORPORATE ANY CHANGES MADE. WE LOOK FORWARD TO RECEIVING THE PUBLIC'S INPUT TO HELP US CRAFT THE BEST REGULATORY PACKAGE.

IN ADDITION TO THE USUAL REGULATORY EVALUATION, THE COAST GUARD WILL PREPARE A REGULATORY IMPACT ANALYSIS. THIS ANALYSIS WILL ASSESS THE POTENTIAL EFFECTS ARISING FROM DIFFICULTIES OCEANGOING OPERATORS MAY ENCOUNTER IN OBTAINING THE USUAL GUARANTIES OF INSURANCE FROM THEIR INSURANCE ENTITIES ONCE THE RULE GOES INTO EFFECT. TO ASSIST IN PREPARING THIS ANALYSIS, THE NOTICE OF PROPOSED RULEMAKING CONTAINS A LIST OF QUESTIONS

SOLICITING SPECIFIC INFORMATION REGARDING SOME OF THE SUBJECTS THAT MAY BE ADDRESSED IN THE ANALYSIS. UPON CONSIDERATION OF THE COMMENTS AND OTHER INFORMATION RECEIVED, THE ANALYSIS WILL BE COMPLETED AND NOTICE OF ITS AVAILABILITY WILL BE PLACED IN THE FEDERAL REGISTER. BASED ON THE COMMENTS RECEIVED IN RESPONSE TO THE NOTICE OF PROPOSED RULEMAKING, IF ADDITIONAL OPPORTUNITY FOR PUBLIC COMMENT ON THE ANALYSIS IS INDICATED, THE COAST GUARD WILL PROVIDE AN OPPORTUNITY FOR SUCH COMMENT BEFORE PUBLISHING A FINAL RULE.

CURRENTLY, PENDING PROMULGATION OF A FINAL RULE, FOR PURPOSES OF CERTIFICATION (AS CONTRASTED WITH LIABILITY), WE ARE USING VESSEL FINANCIAL RESPONSIBILITY NUMBERS THAT ARE PROVIDED IN PRE-OPA 90 LAWS, SUCH AS THE CLEAN WATER ACT. TODAY, TO OBTAIN A CERTIFICATE AND OPERATE IN THE U.S., A VESSEL OPERATOR NEED ONLY PROVIDE EVIDENCE OF FINANCIAL RESPONSIBILITY WHICH IS A FRACTION OF THAT PRESCRIBED IN OPA 90. THAT OWNER OR OPERATOR MAY BE LIABLE UP TO MUCH HIGHER AMOUNTS, BUT ABSENT UPDATED RULES, THERE IS NO REQUIREMENT TO PRODUCE EVIDENCE OF FINANCIAL RESPONSIBILITY COMMENSURATE WITH SUCH HIGHER AMOUNTS. THE PROPOSED RULE SEEKS TO BLEND THE SPECIFIC REQUIREMENTS OF THE ACT, INCLUDING ITS INCREASED LIMITS OF LIABILITY WITH BASIC PROCEDURAL STEPS THAT HAVE BEEN IN EFFECT FOR MANY YEARS.

THE REQUIREMENTS FOR VESSEL FINANCIAL RESPONSIBILITY HAVE BEEN IN EFFECT IN THE U.S. SINCE 1971. OPA 90 HAS NOT CHANGED THE MECHANICS OF THIS SYSTEM. ALTHOUGH THE STATUTORY LIMITS AND SCOPE OF LIABILITY HAVE INCREASED THROUGHOUT THE YEARS, THE SYSTEM FOR ESTABLISHING FINANCIAL RESPONSIBILITY HAS REMAINED THE

SAME. HISTORICALLY, FOUR WORKABLE METHODS FOR ESTABLISHING FINANCIAL RESPONSIBILITY HAVE BEEN IDENTIFIED BY INDUSTRY AND GOVERNMENT: 1) INSURANCE GUARANTIES, 2) SURETY BOND GUARANTIES, 3) SELF-INSURANCE AND 4) FINANCIAL GUARANTIES, WHICH ARE SIMILAR TO SELF-INSURANCE. OF THESE METHODS, INSURANCE GUARANTIES ARE, BY FAR, THE MOST FREQUENTLY USED, PARTICULARLY IN THE INTERNATIONAL VESSEL OPERATING COMMUNITY.

THE COAST GUARD CERTIFICATION PROCESS IS SIMPLE: ONCE THE OWNER/OPERATOR AND THE VESSELS ARE IDENTIFIED ON AN APPLICATION FORM, AND THE GUARANTOR OR SELF-INSURER HAS PROVIDED THE COAST GUARD WITH SUFFICIENT EVIDENCE OF FINANCIAL RESPONSIBILITY, THE AFFECTED VESSELS ARE ISSUED CERTIFICATES OF FINANCIAL RESPONSIBILITY (COFR'S). APPLICATION AND CERTIFICATION FEES MUST BE PAID. IN GENERAL TERMS, VESSELS LACKING VALID COFR'S ARE PROHIBITED BY THE COAST GUARD, AS WELL AS THE U.S. CUSTOMS SERVICE, FROM OPERATING IN U.S. WATERS, ENTERING OR LEAVING U.S. PORTS. OPA 90 AND CERCLA CONTINUE TO MANDATE SUCH ENFORCEMENT.

OVER THE PAST SEVERAL MONTHS, THE NATIONAL POLLUTION FUNDS CENTER HAS BEEN NOTIFIED OF SEVERAL CONCERNS OF THE MARITIME COMMUNITY. I WILL IDENTIFY THE PRINCIPAL ISSUES RAISED THUS FAR.

ONE CONCERNS THE LIMITS OF LIABILITY. UNDER OPA 90, THE LIMITS OF LIABILITY FOR TANK VESSELS GENERALLY ARE SEVERAL TIMES HIGHER THAN UNDER THE PREVIOUS STATUTES. BUT, EVEN WITH THIS INCREASE, THE LIMITS OF LIABILITY ARE WELL BELOW THE COVERAGE THAT WE UNDERSTAND IS ROUTINELY PROVIDED BY THE INTERNATIONAL SHIPPING COMMUNITY'S INSURANCE ENTITIES, CALLED PROTECTION AND INDEMNITY (P&I) CLUBS. ALSO, THE LIMITS OF LIABILITY ARE

SPECIFIED IN THE STATUTE AND THERE ARE NO NEW PROCEDURAL CONCEPTS IN THE PROPOSED RULE. VIRTUALLY ALL OCEANGOING OPERATORS WHO USE U.S. WATERS ALREADY WOULD HAVE MORE THAN THE NECESSARY INSURANCE COVERAGE FOR FEDERAL PURPOSES FROM THEIR P&I CLUBS. ALL THAT IS REQUIRED BY OPA 90 AND CERCLA, AND THEREFORE BY THE PROPOSED RULE, IS THAT THE COVERAGE BE SUBMITTED IN A FORM ACCEPTABLE TO ESTABLISH EVIDENCE OF FINANCIAL RESPONSIBILITY, BUT ONLY UP TO THE LIMITS OF OPA 90 AND CERCLA. I SHOULD ADD HERE THAT FOR THE GREAT MAJORITY OF OCEANGOING VESSELS, THE P&I CLUBS HAVE ALWAYS BEEN THE GUARANTORS FOR U.S. FINANCIAL RESPONSIBILITY PURPOSES. THE CLUBS ALSO PROVIDE FINANCIAL SECURITY FOR THE OIL POLLUTION DAMAGE LIABILITY OF SHIP OWNERS WHO TRADE IN, OR FLY THE FLAGS OF, SIXTY-NINE OTHER COUNTRIES PARTY TO THE 1969 CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE. WE UNDERSTAND THAT INSURANCE GUARANTIES FOR THE NON-OCEANGOING OR "BROWN WATER" VESSEL OPERATORS ARE READILY AVAILABLE FROM THE COMMERCIAL MARINE INSURANCE INDUSTRY IN THE UNITED STATES. I AM TOLD THAT THEY WILL REMAIN AVAILABLE.

A SECOND ISSUE RAISED IS THAT OF DIRECT ACTION AGAINST A GUARANTOR BY PRIVATE CLAIMANTS. OPA 90 REQUIRES THAT CLAIMANTS, INCLUDING PRIVATE CLAIMANTS, BE ABLE TO PRESENT A CLAIM FOR REMOVAL COSTS OR DAMAGES DIRECTLY AGAINST AN INSURER OR OTHER GUARANTOR SHOULD A VESSEL BE INVOLVED IN A POLLUTION INCIDENT. DIRECT ACTION BY PRIVATE CLAIMANTS IS NOT A NEW CONCEPT. ALTHOUGH ONLY THE FEDERAL GOVERNMENT COULD TAKE DIRECT ACTION AGAINST THE GUARANTOR UNDER THE CLEAN WATER ACT, DIRECT ACTION BY PRIVATE CLAIMANTS WAS A FEATURE OF THE FINANCIAL RESPONSIBILITY

REQUIREMENTS UNDER THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT OF 1973 AND THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978. DIRECT ACTION BY PRIVATE CLAIMANTS AGAINST AN INSURER OR OTHER PERSON PROVIDING FINANCIAL SECURITY IS ALSO AN UNDERPINNING OF THE SCHEME UNDER THE 1969 CIVIL LIABILITY CONVENTION. WHILE NEITHER THE 1969 CONVENTION NOR THE 1984 PROTOCOLS TO THAT CONVENTION HAVE BEEN RATIFIED BY THE UNITED STATES, THE 1969 CONVENTION HAS BEEN IN EFFECT SINCE AS EARLY AS 1975 IN THE NATIONS PARTY TO THE CONVENTION (CURRENTLY SIXTY-NINE IN NUMBER). THEREFORE, COVERAGE OF OIL POLLUTION RISK UNDER BOTH OPA 90 AND THE CURRENT PRIMARY INTERNATIONAL REGIME REQUIRES DIRECT ACTION AGAINST INSURERS BY PRIVATE CLAIMANTS.

A THIRD ISSUE CONCERNS THE MATTER OF FEDERAL PREEMPTION. OPA 90 DOES NOT PREEMPT STATES FROM IMPOSING ADDITIONAL LIABILITY OR OTHER REQUIREMENTS WITH REGARD TO OIL POLLUTION. WE UNDERSTAND THAT SOME OPERATORS HAVE EXPRESSED CONCERN THAT, IN THE AFTERMATH OF THE EXXON VALDEZ INCIDENT, SOME STATES MAY LEGISLATE PROHIBITIVELY IN THIS AREA. STATE LIABILITY REQUIREMENTS DO NOT AFFECT OPA 90 FINANCIAL RESPONSIBILITY REQUIREMENTS. STATE AND FEDERAL REGULATIONS ON THE SUBJECT OF FINANCIAL RESPONSIBILITY ARE SEPARATE AND DISTINCT.

A FOURTH ISSUE IS THAT OF UNLIMITED FEDERAL LIABILITY. OPA 90 EXPRESSLY PROVIDES LIMITS OF FEDERAL LIABILITY FOR RESPONSIBLE PARTIES INVOLVED IN AN OIL POLLUTION INCIDENT. THE PROPOSED RULE REFLECTS THOSE LIMITS, HOWEVER, IF AN INCIDENT WAS CAUSED BY GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR A VIOLATION OF CERTAIN FEDERAL REGULATIONS, THE LIMITS OF LIABILITY WOULD NOT APPLY. IN

A CASE WHERE A RESPONSIBLE PARTY'S LIMIT OF LIABILITY IS BROKEN, THE GUARANTOR WOULD STILL ONLY BE LIABLE UP TO THE LIMITS OF ITS GUARANTEE. IN THE EVENT OF THE RESPONSIBLE PARTY'S WILLFUL MISCONDUCT, THE GUARANTOR IS NOT LIABLE AT ALL. IT IS THE RESPONSIBLE PARTY - NAMELY THE OWNER AND/OR OPERATOR OF THE VESSEL - WHO WOULD BE RESPONSIBLE FOR ANY UNLIMITED LIABILITY.

A FIFTH ISSUE CONCERNS POLICY DEFENSES. INSURANCE GUARANTIES, TO HAVE ANY PRACTICAL MEANING, CANNOT CONTAIN POLICY DEFENSES, WHICH ARE A HOST OF EXCLUSIONS IN THE UNDERLYING INSURANCE CONTRACT, AS WELL AS IN CASE LAW, BETWEEN THE INSURER AND INSURED. THESE DEFENSES OR EXCLUSIONS VOID THE UNDERLYING INSURANCE FOR A VARIETY OF REASONS. WHILE OPA 90 ALLOWS THE SECRETARY TO SPECIFY NECESSARY POLICY DEFENSES IN PROMULGATING FINANCIAL RESPONSIBILITY REQUIREMENTS, WE HAVE FOUND NONE, OTHER THAN THOSE PERMITTED BY STATUTE, THAT WOULD "EFFECTUATE THE PURPOSES OF THIS ACT." IT APPEARS TO US THAT CONGRESS INTENDED DIRECT ACTION TO BE A PRINCIPAL FEATURE OF THE LAW, AND POLICY DEFENSES APPEAR TO RUN COUNTER TO THE CONCEPT OF DIRECT ACTION.

THE FINAL ISSUE CONCERNS SELF-INSURANCE. SELF-INSURANCE IS ONE OF THE STATUTORILY-PERMITTED METHODS OF ESTABLISHING FINANCIAL RESPONSIBILITY. THE MEANS OF ESTABLISHING SELF-INSURANCE IN THE PROPOSED RULE HAVE NOT CHANGED FROM CURRENT REGULATIONS. TO SUMMARIZE THEIR REQUIREMENTS: A SELF-INSURER MUST HAVE ASSETS IN THE U.S. THAT CAN BE ATTACHED BY CLAIMANTS (INCLUDING THE OIL SPILL LIABILITY TRUST FUND), IF NECESSARY TO SATISFY A JUDGMENT. IN ADDITION, U.S. ASSETS MUST BE BALANCED AGAINST INTERNATIONAL LIABILITIES. THAT IS, A SELF-INSURER'S

WORLDWIDE LIABILITIES MUST BE LESS THAN ITS U.S. ASSETS. THIS IS TO HELP ENSURE THAT THE U.S. ASSETS REMAIN AVAILABLE TO U.S. CLAIMANTS AND ARE NOT DEPLETED IN MEETING FOREIGN LIABILITIES.

I HAVE RECENTLY HEARD OF A PROPOSAL TO ALLOW THE USE OF P&I CLUB MEMBERSHIP OR INSURANCE AS AN "ASSET" FOR SELF-INSURANCE PURPOSES. THERE ARE SEVERAL POINTS I WOULD LIKE TO MAKE CONCERNING THIS PROPOSAL. FIRST, AS BETWEEN THE INSURED AND THE INSURER, INSURANCE IS SUBJECT TO POLICY DEFENSES, SOME OF WHICH MAY NOT BE EXPLICIT IN INSURANCE CONTRACTS. FOR A HOST OF REASONS, AN INSURED MAY END UP WITHOUT ANY COVERAGE. THAT, BY ITSELF, SEEMS TO ELIMINATE AVAILABILITY OF MEMBERSHIP OR INSURANCE AS AN ASSET FOR SELF-INSURANCE PURPOSES. SECOND, TYPICALLY, P&I CLUB INSURANCE SPECIFICALLY PROHIBITS ATTACHMENT OR DIRECT ACTION BY CLAIMANTS. IF SOMETHING CAN NOT BE ATTACHED, IT PROBABLY SHOULD NOT BE USED AS AN ASSET FOR PURPOSES OF SELF-INSURANCE. THIRD, WE UNDERSTAND THAT P&I INSURANCE NORMALLY CAN BE CANCELLED WITHOUT THE CONSENT OF THE SHIPOWNER AND WITHOUT THE KNOWLEDGE OF THE COAST GUARD. FOURTH, P&I INSURANCE IS TYPICALLY CHARACTERIZED AS INDEMNITY INSURANCE. THAT MEANS THAT IF A VESSEL COVERED BY A P&I CLUB HAS AN OIL SPILL, THE INSURED MUST FIRST PAY FOR THE REMOVAL COST AND DAMAGES OUT OF ITS OWN POCKET. THEN, AND ONLY THEN, WOULD THE SHIPOWNER HAVE LEGAL STANDING TO DEMAND THAT THE P&I CLUB PAY UP; PROVIDED, OF COURSE, THAT THE CLUB DID NOT HAVE THE RIGHT TO ASSERT A POLICY DEFENSE. AS AN EXAMPLE, THE SUBCOMMITTEE RECENTLY WROTE THE COMMANDANT CONCERNING A CASE INVOLVING THE CIBRO SAVANNAH SPILL IN WHICH A POLICY DEFENSE WAS EMPLOYED AGAINST THE INSURED. WHILE THIS DID

NOT AFFECT THE GUARANTEE OF FINANCIAL RESPONSIBILITY TO THE COAST GUARD, IT DEMONSTRATES ONE OF THE SHORTCOMINGS OF USING INSURANCE AS AN ASSET.

IN SHORT, OUR ANALYSIS TO DATE INDICATES THAT USE OF TYPICAL MEMBERSHIP OR INSURANCE AS AN "ASSET" FOR SELF-INSURANCE PURPOSES WOULD NOT ENSURE FINANCIAL RESPONSIBILITY. MOREOVER, MR. CHAIRMAN, OPA 90 DEFINES ANY PERSON, OTHER THAN THE RESPONSIBLE PARTY, WHO PROVIDES EVIDENCE OF FINANCIAL RESPONSIBILITY AS A "GUARANTOR." IT FURTHER PROVIDES FOR DIRECT ACTION AGAINST ANY "GUARANTOR." IF REGULATIONS PERMITTED AN INSURANCE POLICY TO BE COUNTED AS AN ASSET, THEREBY ALLOWING THE INSURER TO AVOID THE DIRECT ACTION REQUIREMENTS OF OPA 90, THE REGULATIONS WOULD APPEAR TO BE CONTRARY TO THE SPIRIT OF THE LAW.

MR. CHAIRMAN, I WILL BE GLAD TO RESPOND TO ANY QUESTIONS YOU OR THE OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

The American Waterways Operators

Pacific Regional Office

5615 West Marginal Way, S.W.
Seattle, WA 98106

TEL: (206) 764-1321
FAX (206) 764-1323

Gerald P. McMahon
Vice President - Pacific Region

February 20, 1992

Senator Lyman Hoffman
Capitol Building
P.O. Box V
Juneau, AK 99811

Dear Senator Hoffman

The American Waterways Operators (AWO) is the national trade association representing the inland and coastal barge and towing industry. Several of our members are based in Alaska or operate in Alaskan waters involving the marine transportation of petroleum and petroleum products.

I write in support of Senate Bill 405 which will provide statutory relief from the existing State of Alaska "direct action" requirements of evidence of financial responsibility. This requirement has been a longstanding problem with our industry which makes it impossible to obtain insurance to meet this Alaskan requirement. This is a responsible bill which would establish a financial responsibility standard which protects claimants who have been harmed by a spill and recognizes the realities of the insurance marketplace, and does not bring a major and essential portion of Alaska's petroleum distribution network to a grinding halt.

We thank you for introducing HB 501 and urge your colleagues to support its passage as soon as possible.

Sincerely,

Gerald P. McMahon

Gerald P. McMahon

FORTY NINER TRANSPORTATION, INC.

Reply to:
1600 A Street, Suite 308 • Anchorage, Alaska 99501 • (907) 279-5878 • Fax (907) 278-5700
P.O. Box 389 • Seward, Alaska 99664 • (907) 224-3190

February 27, 1991

Senator Lyman Hoffman
Capitol Bldg.
P. O. Box V
Juneau, AK 99811

Ref: House Bill 501 - Statutory relief to "Direct Action" Requirement Evidence of Financial Responsibility

Dear Senator Hoffman:

Forty Niner Transportation, Inc. is an Alaskan owned and operated marine transporter of refined petroleum products.

I support House Bill 501 which will provide statutory relief from the existing State of Alaska "direct action" requirement of evidence of financial responsibility.

We have tried to meet the Alaskan insurance requirements with no success. This is a responsible bill which would establish a financial responsibility standard, protects claimants who have been harmed by a spill, recognizes the realities of the insurance marketplace and does not disrupt service to our customers who rely on us.

We urge you and your colleagues to support the passage of HB 501.

Sincerely,

FORTY NINER TRANSPORTATION, INC.

Louis Audette Jr

Louis Audette, Jr.
General Manager

ANDERSON TUG & BARGE CO.
BOX 1315 • SEWARD, ALASKA 99664
(907) 224-5506

February 21, 1992

Senator Lyman Hoffman
Capitol Building
P.O. Box V
Juneau, AK 99811

Dear Sen. Hoffman,

I am writing to urge you and your colleagues to support the passage of House Bill 501 which will provide statutory relief from the existing State of Alaska "direct action" requirements of evidence of financial responsibility.

Our company will have great difficulty obtaining insurance (if at all!) to meet this Alaskan requirement. House Bill 501 will not bring those of us in the petroluem distibution network to a halt, but does protect claimants who have been harmed by a spill by establishing a financial responsibility standard.

Thank you.

Sincerely,

Sharon E Anderson

Sharon E. Anderson
Sec/Treasurer

Alaska State Legislat

465-4179

Please enter into the record my testimony to the Senate Oil & Gas
committee name

committee on SB 405 , dated 2-25-92
bill/subject

Testimony in support of SB 405

Kodiak Oil Sales Inc is a fuel distributor serving the Kodiak area. We are a family owned business and have operated as a family business since 1930. My comments relate to the availability of insurance which meets the State of Alaska's requirements for non-crude oil terminals.

The State at times passes laws which have effects which were not the intent of the original legislation. I do not believe that it was the intent of the legislature to make it impossible to meet the financial responsibility requirements of the statute. But that is what has occurred by having the "direct access" clause as a requirement for insurance.

Kodiak Oil Sales like many non-crude operators depends on insurance to provide "proof of financial responsibility". We are able to get insurance that meets or exceeds the requirements with the exception of the "direct access" clause. At this time there is no insurance company in the world which will write a policy that contains this "direct access" clause.

Companies such as mine supply petroleum products to the people who live and work in Alaska. If the "direct access" clause is not removed from the statutes we will not be able to meet the financial responsibility requirements, and State of Alaska will have to tell us not to sell fuel anymore.

Signed: Louis Kanagli
Testifier

Kodiak Oil Sales Inc
Representing (Optional)

Box 1487 - Kodiak AK
Address

486-3205 Fax

Alaska State Legislature

Please enter into the record my testimony to the Senate Oil & Gas
committee name

committee on SB 405, dated 2-25-92
bill/subject

What this means in real terms is that there will be no place in most of Alaska for people to buy petroleum products. Can you imagine living in Alaska without heating oil, gasoline and diesel fuel, I can't.

I further ask that the Department of Environmental Conservation have the authority to grant "conditional approval" in the case of financial responsibility. There may be a time in the future when a problem such as this arises and it may not be convenient to ask the legislature to change the law. The DEC should have the authority to work with industry till the situation can be resolved.

Jim Ramaglia
Vice President
Kodiak Oil Sales Inc.

Signed: Jim Ramaglia Jim Ramaglia
Testifier

Kodiak Oil Sales Inc
Representing (Optional)

Box 1487 Kodiak AK
Address

486-3245- 486-3205 Fax
Phone No.

Alaska
Rural
Electric
Cooperative
Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503
(907) 561-6103
FAX (907) 561-5547

ARECA
Electric Service for 300,000 Alaskans

February 24, 1992

Dear Senator Hoffman:

Thank you for the interest and concern you have shown for a problem common to many residents throughout the state who have to handle petroleum products in the course of business. SB 405, which you recently introduced, is certainly a step in the right direction. But I fear that, as drafted, it does not go for enough toward resolving the problem.

The people I represent on this issue are small electric utilities owned by the consumers or the communities they serve. They have found it absolutely impossible to purchase insurance policies which both transfer risk and satisfy AS 46.04.040(e). We have no reason to believe this situation is temporary.

From our perspective there are three basic problems in attempting to buy insurance to cover this risk:

(1) The "direct access" language in AS 46.04.040(e) is something no insurance company will accept. The insurance industry's method of doing business is to pay for losses experienced by their insureds rather than providing a pot of money to be used at the discretion of some third party. If there is a dispute regarding a loss, an insurance company pays only after a court determines the responsibility for and the amount of the loss. This is inherent to the insurance industry, and they will not change just because the State of Alaska would like for them to do so.

The big companies can satisfy their proof of financial responsibility without insurance by simply posting their financial statement and qualifying as self-insurers. Most of our members don't qualify as self-insurers, and they are small enough that it would be prudent for them to transfer the risk if they could do so at a reasonable cost.

(2) The "strictly liable, jointly and severally" language in AS 46.04.040(g) is another severe problem. It is unusual for an insurance company to be willing to write a policy under those conditions because they would be required to pay a loss without any finding of fault on the part of their insureds. This provision severely limits the number of insurance companies that will issue these policies, and that seriously increases the cost of such insurance.

(3) The third basic problem is the sheer complexity of the drafting of the statutes involved. In diagramming the statutes in an effort to understand them, I came up with this:

Page 2, line 21 of SB 405 refers to "judgments under statutes listed in (l) of this section..."

"(l) of this section" refers to:

a loss compensable under
AS 46.03.760(e) which refers to
AS 46.03.740-750 and
AS 46.03.822
or
AS 46.03.822

and assessments under
AS 46.03.758 which also includes
liability under AS 46.03.760(a)
AS 46.03.759
AS 46.03.760(a) which also refers to
AS 46.08.070(c)
or
AS 46.04.030(g)

My point is that this is such complex and confusing legalese that insurance companies simply will not deal with it unless they expect to earn very large premiums on policies issued under the law.

With large businesses able to satisfy the financial responsibility requirements in some way other than through buying insurance, the small businesses like my members face the formidable task of trying to find insurance companies willing to write this coverage just for them.

What needs to happen is for non-crude handlers to be completely separated under the law from crude handlers. There should be a simple, concise statement of the requirements that apply to them which eliminates "direct access" and "strictly liable, jointly and severally." Then the commercial insurance industry could do its job of providing insurance at a reasonable cost for businesses like those I represent.

Members of ARECA will be pleased to assist you in this effort in any way we can.

Sincerely,

Dave

David Hutchens
Executive Director

Ray Gillespie
Gillespie & Associates
Lobbying & Governmental Affairs

10390 Mendenhall Loop Road
Juneau, Alaska 99801
Telephone: (907) 463-3375
Fax: (907) 463-5522

MEMORANDUM

TO: Senate and House Oil and Gas Committees

DATE: February 10, 1992

FROM: Ray Gillespie, for Crowley Maritime, Delta Western and Petro Marine

RE: Marine Pollution Insurance Problems

This will outline three problems non-crude carriers and operators are experiencing in obtaining marine pollution insurance to satisfy the financial responsibility and "direct action" provisions of Alaska law.

Briefly, these problems are:

1. Confusion created by apparent inconsistencies between statute and regulations concerning insurer liability/exposure when issuing a policy meeting the specific requirements of financial responsibilities statutes.

2. P&I club and insurance coverage with "direct action" endorsement is virtually unavailable to most Alaska operators in the present commercial insurance or P&I club market.

3. Whether D.E.C. has statutory authority to grant conditional operating permits to operators who have met the financial responsibility requirement dollar amounts, but can not satisfy the "direct action" endorsement due to its unavailability.

I.

LIABILITY LIMIT/EXPOSURE OF INSURERS OR GUARANTORS.

Environmental Conservation Regulation, 18 AAC 75.230 (b), requires a policy of insurance certificate or binder to carry an endorsement which reads in part as follows:

> "Any other provision of this policy notwithstanding: (1) this policy insures against any liability the insured may incur under Alaska Statute 46.04.040 (i), or any provision cited in it as a result of an unlawful discharge of oil within or affecting Alaska lands or waters within the territorial jurisdiction of the State of Alaska; however, the insurer's liability does not exceed the limits of coverage set out in Section_____ of this policy...." (emphasis added)

Alaska Statute 46.04.040 (i) reads as follows:

> "Financial responsibility under this section extends to loss compensable under AS 46.03.760 (e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760 (a) or 46.04.030 (g)."

This statute in combination with 18 AAC 75.230 (b) has led P&I clubs and insurance underwriters to conclude that their exposure under a policy may not be limited to the face amount of the policy even though it meets the other monetary requirements for financial responsibility (AS 46.04.030 (k)). In other words, because statutes generally supersede any inconsistent regulation, insurers have advised operators that the potential for unlimited liability and the uncertainty of a judicial interpretation of these statutes and regulations prevents insurance underwriters and P&I clubs from writing the insurance with the required endorsement.

II.

"DIRECT ACTION" PROBLEM

AS 46.04.040 (e) reads in part as follows:

> "An action brought under AS 46.03.758, 46.03.759, 46.03.760 (a) or (e), 46.03.822, or AS 46.04.030 (g) may be brought in a state court directly against the insurer, the group, or any person providing evidence of financial responsibility. The applicant, and insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent or service of process in the state...." (emphasis added)

This provision requires that any insurer or P&I club submit directly to the Alaska jurisdiction and be subject directly to legal action against it in Alaska courts without first proceeding against the spilling operator. The State of Alaska or private party can, under this provision, proceed directly in Alaska courts against the insurer. Typically, P&I club coverage is an indemnity policy, which first requires a provable loss against the operator before the P&I club pays that loss. This is the so-called "direct action" provision which prevents many operators from securing coverage meeting the requirements of Alaska Statutes.

In the States of Washington and California recently enacted financial responsibility statutes do not require the "direct action" endorsement. In essence, California and Washington simply allow for P&I club and insurance coverage which meets the monetary financial responsibility requirements and requires no other showing of a "direct action" endorsement.

III.

UNCERTAINTY OF D.E.C. AUTHORITY TO ISSUE CONDITIONAL OPERATING PERMITS WHERE DIRECT ACTION ENDORSEMENTS ARE NOT AVAILABLE.

AS 46.04.040 (l) provides that under certain circumstances DEC may issue permits to an operator who has proof of financial

responsibility without the "direct action" endorsement. This provision has been interpreted as authority to issue conditional permits only upon proof of at least $50 million in insurance or other financial responsibility which has the direct action endorsement. Since the maximum financial responsibility coverage for a non-crude operator (tank vessel and barges) is $35 million under AS 46.04.040 (c) (2), the waiver or conditional permit provisions of subsection (1) is not available to them.

The D.E.C. has, however, been issuing conditional permits to non-crude operators which have complied with the monetary financial responsibility requirements, but are unable to get such coverage with the "direct action" endorsement. The "direct action" endorsement is unavailable in the market place to some, if not most, non-crude operators. Due to the commercial unavailability of financial responsibility with the required endorsement, the DEC is in the unpleasant predicament of denying operating permits to established responsible carriers who have been doing business in Alaska for years. Denial of such operating permits because of commercial unavailability of "direct action" endorsement is potentially devastating and would likely eliminate most non-crude refined product delivery to many Alaskan communities.

This provision should be revisited by the Legislature to reflect the realities of the insurance market and availability of coverage. As of last week, D.E.C. has suspended any Conditional Permits.

IV.

SUGGESTED SOLUTIONS

Legislation which:

1. Places explicit language in statute which limits the exposure of an insurer or P&I club to the face amount of the policy;

2. Eliminates the "direct action" requirement;

3. Provides a substitute mechanism to "direct action" which satisfies the State of Alaska and yet recognizes the realities of the available insurance or P&I club coverage;

4. Clarifies D.E.C. authority to grant conditional operating permits to non-crude operators who have otherwise complied with the monetary requirements for financial responsibility; or

5. Combination of the above.

GOV 92-076

City of Galena

Antoski Hall • P.O. Box 149 • Galena, Alaska 99741 • Telephone (907) 656-1301

January 16, 1992

Governor Walter Hickel
Third Floor, Capitol Bldg.
P.O. Box A
Juneau, AK 99811

Dear Governor Hickel:

I am writting you in regards to AS 46.04.040 which is having a drastic effect on communities with fuel storage facilities in this state, in particular Galena. Either this piece of legislation is so stringent in wording that Lloyds of London will not underwrite insurance policies in this regard, or they are gun shy because of past oilspills in the state. In any event, there is a red flag up! The City of Galena does not have sudden or accidental spill coverage at this time for it's bulk fuel facility.

Since no carrier in the state can get coverage the DEC has accepted self insurance as an option. This is an end run around the problem. All one needs for self insurance is to show that $10/barrel is on hand in reserves, proved by submitting financial statements each quarter. In our case that is $142K for a 600K gallon facility. This would probably clean up a small spill but nothing major.

I believe this issue needs to be addressed head on. The answer to the problem will have to come from the legislature and soon. I am not comfortable with the situation since my name is on the fuel spill contingency plan for Galena. There are a lot of fuel storage facilities in the state at risk because of this problem. I'd like to see something done about it.

Sincerely,

Chris Hladick
City Manager

RECEIVED
JAN 31 1992
GOVERNOR'S OFFICE

RECEIVED
JAN 31 1992
A.D.E.C.
COMMISSIONER'S OFFICE

Isle shippers: Oil flow may not go

It's 'a potentially crippling problem'

By Ilene Aleshire
Advertiser Commuter Writer

State officials have called a meeting next week of utilities, sugar plantations, shipping and oil companies to discuss what one shipping official calls "a potentially crippling statewide problem."

The problem is how to make sure that the flow of oil into the state, and the shipment of fuel oil between islands, is not interrupted as a result of new state and federal laws.

Because of these laws, shippers are facing virtually unlimited liability for accidents such as major oil spills. This means the shipping companies either will not be able to obtain insurance, which they must have to operate, or it will be prohibitively expensive, according to officials at Hawaiian Tug and Barge, a subsidiary of Hawaiian Electric Industries.

"This is a community dilemma that touches all of us," said barge company president Charles Swanson.

In February, one of Hawaii's two refineries, Pacific Resources Inc., announced it would stop shipping fuel oil to the Neighbor Islands. Primary users of fuel oil are the state's electrical utilities and sugar plantations, which also supply power to Neighbor Island utilities as a result of burning sugar by-products.

Hawaiian Tug and Barge said it would pick up the slack, shipping oil to the plantations on a space-available basis. But the tug and barge company, which already ships fuel oil to its sister companies — Maui Electric Co. and Hawaii Electric Light Co. — has made clear it is not eager to make a career of this.

Chevron, which operates the state's other refinery, also has some existing contracts to ship fuel oil to the Neighbor Islands, which it will honor, regional manager C.P. "Chuck" Woodland said. "The real problem is going to come up as contracts start to expire in a year or 18 months," he said.

Chevron imports crude oil and some refined products such as gasoline into the state and would be affected by the national law if something isn't done to put a limit on the liability a shipper faces, Woodland said.

However, he said he is confident this national problem will be dealt with before the rules implementing the federal law come out next year.

In the future though, Woodland said, shippers are going to increasingly be asking themselves if it is worth the risk of liability to continue to ship fuel oil, which is produced during the refining process, and is a low-profit product.

Murray Towill, director of the state Department of Business, Economic Development & Tourism, said next week's meeting will bring together "... all of the parties involved, to make sure we're dealing with the same facts, the same information, and hopefully put together a group that can pursue options and solutions (to the problems.)"

PRI to stop interisland oil shipping

☐ Industries that sell electricity depend on oil and could be hit hard

By Russ Lynch
Star-Bulletin

Neighbor island fuel oil users are scrambling to find new ways to get supplies because of a decision by refiner Pacific Resources Inc. to stop shipments to them at the end of March.

PRI said it has no choice because it faces potentially unlimited liability for spills under new federal and state laws.

Chevron U.S.A., facing the same insurance problems, said it will continue to satisfy existing contracts but will seek no new fuel oil business on the neighbor islands.

Because alternatives may be found, there is no suggestion yet that the oil shipment problem might result in more power shutdowns or brown-outs on the other islands.

However, sugar plantations, which sell electricity to the neighbor island utilities to earn money to help compensate for low returns from sugar, could be hit hard.

"It's a big item for us, because of the contract with the utility," said Richard Cameron, president of Hawaiian Commercial and Sugar Co., which supplies power to Maui Electric Co.'s grid.

"We have this firm power contract with the utility," he said.

The sugar company, part of Alexander & Baldwin Inc., uses about 300,000 barrels of oil a

See Oil, Page A-4

Continued from Page A-1

year, shipped by PRI to Maui.

PRI has told the company it will not ship fuel oil to Maui after the end of February, Cameron said. HC&S's contract with PRI expired at the end of December, but PRI has continued to supply oil.

"We're in the throes, thrashing around like all the other users of heavy oils on the outer islands," he said. Cameron said he does not yet know how his company will get the oil it needs.

"The risk is just too great," said Andrea Simpson, spokeswoman for PRI, which owns the Hawaiian Independent Refinery at Barbers Point.

PRI's last neighbor island supply contract runs out on March 31. Beginning April 1, it will make the oil available at the barge harbor at Barbers Point but will not carry it to sea.

Provisions of the federal Oil Pollution Act of 1990 and new state laws could lead to oil carriers having to prove that they have unlimited liability coverage, which no insurance company is willing to sell.

"It's part of our risk management," said Colleen Jones, marketing services pricing manager at Chevron. "We are honoring existing arrangements, but we are not taking on additional business to ship by barge."

A reliable oil supply is a big concern for the sugar companies who use hundreds of thousands of barrels of oil to run generators.

The Hilo Coast Processing Co., for example, had electricity sales of about $9 million last year, about one-third of its total revenues. "It's significant to our operation because we have to use oil whenever the sugar operation is down," said James Andrasick, executive vice president of C. Brewer & Co., majority partner in the Big Island cooperative with a few independent growers.

"We'd really be stuck between a rock and a hard place," Andrasick said. The contract with Hawaii Electric Light Co. allows Hilo Coast Processing only four weeks' total down time each year. Bagasse is burnt a lot of the time to heat the boilers that run the generators. But at best, Hilo Coast can maintain only a two-day supply of bagasse. Oil is essential.

The company could burn coal and has done so in the past but it is much more expensive than oil, Andrasick said. "There would be an economic penalty." Since Hilo Coast's payment for oil is based on HELCO's costs, it would not rise if Hilo Coast's costs alone went up. Hilo Coast would have to absorb the difference.

A Brewer subsidiary, Brewer Environmental Industries, already ships bulk quantities of aggregates, sand and so on to the other islands and is looking into what it might be able to do with oil, he said.

The Hawaiian Electric Industries Inc. subsidiary that hauls oil and commercial goods between the islands is also concerned about how it is going to surmount the new requirements. Kent Whitman, vice president of operations for Hawaiian Tug & Barge and Young Brothers Ltd., said that when the final rules and regulations are drawn up, they could be prohibitive.

"When they go into effect, it might be intolerable for the operators to actually continue. You couldn't buy enough insurance," Whitman said.

PRI said that the Maui and Big Island electric utilities have made arrangements to buy fuel oil from PRI at the barge harbor and ship it themselves. Gasoline and other light fuels are not affected by PRI's decision, only the hard-to-clean-up heavy oils such as those burned to heat boilers.

ony. But for computers to be used most effectively, the telephone network must be able to transmit the information computers generate. The ordinary copper wires still in use in most places, and many of the electromechanical switches that route calls, can't do the job.

Fiber optics can. Made from glass and using light as the transmission medium, fiber can carry [illegible] ers such as MCI, and ot[illegible] interests that swing heav[illegible] bats. As a result, the United States is strapped with policies that discour[illegible]

tion hampers progress.

The manufacturing ban prevents the Bell companies from making everything from telephones to advanced switching equipment. Worse, it prevents them from doing applied

J. Commerce & Commercial
Sept 13, 1991
P 4 A (1)

Paying for Oil Spills

THE 1989 EXXON VALDEZ oil spill produced legislative and regulatory ripples that are about to wash up on yet another industry: the mutual insurance societies that cover shipowners against pollution liability risks.

Those insurers, known as protection and indemnity clubs, are fighting new potentially burdensome financial requirements in the 1990 Oil Pollution Act. Even if the clubs succeed in softening the requirements, the rules are likely to change the marine insurance landscape forever.

Detailed rules requiring vessel owners and operators to prove they can pay for the after-effects of a spill are expected soon from the Bush administration. The regulations are an expression of Congress' single-minded resolve in the wake of the Exxon Valdez fiasco: avoid the environmental nightmare of a future spill in which no responsible party can pay for the cleanup and compensate other parties for damage.

With that goal in mind, Congress virtually removed liability limits in pollution cases involving negligence, willful misconduct or violation of federal safety rules. It also required all shipowners to prove that someone stands ready to pay claims arising from a spill.

In most cases, this means vessel owners will have to obtain a certificate from their insurer in which the underwriter agrees to pay claims directly to claimants, even if a spill involved negligence. In effect, the protection and indemnity clubs are being asked to pledge their collective assets to cover the liabilities of any member involved in a spill in U.S. waters.

That requirement, referred to as direct action, strikes at the heart of the present-day insurance system. The mutual insurance societies collect premiums from their members and promise coverage, but reserve the right to deny payment if an insured member acted negligently.

To force government to remove the pay-at-all-costs requirement, or at least to soften its impact, the insurance clubs are threatening to stop providing coverage for ships that call at U.S. ports. Since they cover the oil pollution risks of 95% of the world's merchant vessels, their refusal to provide coverage would threaten to bring oil shipping to the United States to a halt.

But that's unlikely to happen. The clubs have made similar threats in the past, only to back down when other insurers agreed to provide coverage. There are reasons to believe that in this case, too, new insurance options would appear to fill gaps created by the clubs.

Oil companies and some independent tanker owners say privately they aren't likely to let oil shipping to the United States cease. If they lose their current coverage, they may form smaller, specialized mutual insurance pools that closely monitor their members' safety procedures. These new, miniature protection and indemnity clubs would guarantee payment of claims, but only up to the limits set in the law for accidents not caused by negligence. This alternative, too, may fall short of the law, but it goes further than the P&I clubs by permitting direct claims against insurers for damage caused by oil spills. This may be an acceptable compromise to the government.

Another substitute for P&I club coverage could come from the government itself, in the form of greater latitude for vessel owners to show financial responsibility and to self-insure against pollution risks. An increase in self-insurance could reduce the amount of coverage vessel owners purchase from protection and indemnity clubs.

Under either alternative — a market-based replacement for current insurance coverage or more lenient government self-insurance rules — traditional insurers can expect a harsher world under the new rules. At a minimum, they will face the unenviable choice between agreeing to open-ended guarantees of coverage and losing some of their business to new providers of pollution insurance.

Old Enemies, New Friends

CHINA AND VIETNAM have been forging closer polit-

Encouraging Ameri

By JOHN T. BENNETT

The lackluster economic performance of the United States over the past decade compared with Japan is best explained by the difference in saving behavior in the two countries. The U.S. personal saving rate since 1981 has remained close to 6% of disposable income. The Japanese personal saving rate is twice that. Japan's generally high saving rate, including business savings, has allowed it to achieve a net investment rate of 20% of its gross national product compared with the U.S. rate of 10% of GNP.

A higher rate of savings is essential to greater investment and higher growth. But what can be done to improve the U.S. savings rate? The answer to that lies in an examination of each of the components of savings — households, business and government.

Most households save with a specific end in mind — a new car, a house, retirement, a child's education. Because the motives are so particular and diverse, much household savings behavior would seem beyond the reach of public policy.

Other individuals will save and invest for the return. They forgo present consumption for a larger future benefit. But saving for this purpose faces a startling disincentive: federal and state taxes take about 40% of investment earnings. With taxes and last year's 4.1% inflation, a money market fund yielding 5% actually delivered a loss of 1.4% in real terms. A long-term bond yielding 10% translated to a real return of only 1.6% — a tiny yield for the risk that their value will fall if rates increase.

Studies indicate that there is no positive correlation between interest rates and household saving. Under present conditions, that is no surprise. In short, there is little or no financial incentive for an individual to save, given current tax rates and inflation.

Besides reducing inflation or tax rates, a number of measures would raise households' incentive to save. Restoring Individual Retirement Accounts defers taxes on savings, increasing their return. Reducing the capital gains tax would do the same thing and would be even more effective in raising productive investment if it were applied only to new investments. The largest incentive would come from taxing consumption and exempting savings, particularly that invested in new assets.

Several other measures could achieve a one-time increase in household savings. The most important one already has been taken — the removal of the interest deduction from the personal income tax. People are more likely now to save before they buy rather than save to pay off their consumption loans.

The tax deduction on mortgages might still be eliminated. To do so,

Can Soviets Leap

By WILLIAM NEIKIRK

WASHINGTON — Consider, for a second, the ruble. This may be an unexciting subject to you after watching the recent political drama in the Soviet Union, or what's left of it. But reflection on the ruble reveals that there is more political and economic chaos ahead, and that democracy is no sure thing.

It appears that the ruble is going to be, if it isn't already, worthless. That is because Moscow is printing money recklessly to pay its soldiers, retirees and bureaucrats. It is doing so because it doesn't have enough money of its own to pay them. The budget deficit is already one-fifth of its domestic production, and could

old days, the republics collected taxes for the central government, which in turn redistributed them back into the regions after extracting money to run things in Moscow. But with the chaos in the last six months, the republics have refused to send the taxes back to the central government.

When the republics said they would send a payment to Moscow as a "voluntary contribution," the central government said if you want it that way, we won't pay any more subsidies. Fine, said the republics, we will pay the subsidies.

So, said Mr. Bosworth, that leaves the central government with the huge burden of paying a military

SB

409