

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7161 HOUSE RESOURCES

INTRODUCTION

Decades of neglect by the federal government, resource exploitation by corporations and individuals outside Alaska and a lack of control of their destiny instilled in the fifty-five drafters of the Alaska Constitution a unique vision of what would become America's 49th state. The observations and experiences of the residents of the territory who were self-reliant and independent would manifest themselves throughout the constitution. Nowhere are these concepts more evident than in Article X of the constitution where the relationship between state government and local government are unselfishly defined.

SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The delegates having been deprived of the right of self determination, thoughtfully remembered territorial governance and conferred autonomy and broad powers on municipalities of Alaska through the constitution. By offering incentives to encourage municipal incorporations, the State of Alaska furthers the goal of maximum local self-government contained in Article X.

Since 1962, one of these incentives has been receipt of state general grant land within the boundaries of the local government thereby providing a means of creating or expanding a tax base, a means to generate revenue through land sales and leases, a land base for community expansion and a land base for other public purposes.

In addition to these general grant land entitlements, municipalities can acquire otherwise unavailable state land under the public and charitable use statute (AS 38.05.810). Land acquired under this statute must be used for a public purpose that is available to the public at large. However, if the

municipality receiving the land has an outstanding municipal land grant entitlement. the acreage of the conveyance is subtracted from this balance.

Tide and submerged lands are the last category of state land made available to cities who were incorporated on or before the date of statehood. Under rigid guidelines established in the Alaska Land Act, cities could acquire tidelands adjacent their boundaries. This provision was codified AS 38.05.320.

BACKGROUND: MUNICIPAL LAND GRANTS

Legislative History

Alaska's first municipal land entitlement was created in 1962 when a new section was added to the Alaska Land Act. This section stated:

Any city of the first class may apply in the manner prescribed by the director, within five years from the effective date of this Act, for a conveyance to the city of all surplus state lands located within the present boundaries of the city. "Surplus state lands" means all land owned by the state which is not presently used or for which there is no anticipated use by the state for governmental purposes.

This act, codified AS 38.05.347, although containing scant procedural guidance, resulted in the conveyance of thousands of acres of state land to a small number of municipalities throughout the state. This law was repealed June 21, 1976.

In 1963 the state legislature enacted the "Mandatory Borough Act". This act was unrelated to the Alaska Land Act but, like AS 38.05.347, created opportunities for municipalities to acquire state land for their local use. The intent of this act (ch 52, SLA 1963) was "to provide maximum local self-government" and caused the creation of numerous boroughs statewide. These boroughs encompassed the populated areas of the state. Although boroughs could not opt out of organizing, some local options existed in the law, such as final location of the municipal boundaries. The act, additionally, provided incentives in the form of cash grants and grants of state land.

Unlike the 1962 act, the "Mandatory Borough Act" (codified AS 07.10.150) provided a formula for the amount of the state land grant entitlement.

This act provided:

(that) "an organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located within its boundaries within five years after the date of

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availability of state lands in the borough."

The act also provided certain necessary procedural guidance for the selection, survey and conveyance of these entitlement lands.

Several changes to the law were eventually enacted. In 1970 Chapter 213, SLA 1970 removed the five year selection deadline, and extended general grant land entitlements to first and second class cities by adding AS 07.05.040. In 1972 AS 07.10 was renumbered to AS 29.18.

Fifteen years of disputes between municipalities and the state over interpretation of the law culminated in the first major amendment to AS 29.18 in 1978. Some of the more important disputes illustrate the range of problems faced by the program.

-Land selections by municipalities had no time frames for adjudication and conveyance. Municipalities felt that the state deliberately dragged its feet on selections that it wanted to retain and that after approving selections that the conveyances were unnecessarily delayed.

-Southeast boroughs believed that getting concurrence of the land trust boards for conveyance of university, mental health and school trust lands was an unduly cumbersome process.

-The North Slope Borough had selected resource management and industrial lands at Prudoe Bay which were rejected in the state's interests.

-When municipalities selected agricultural lands they received only the agricultural interest. These lands often were more valuable for subdivisions and other uses than as agricultural land and municipalities wanted more than just the agricultural interest.

-Municipal land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions.

-Contention by the North Slope Borough that they have an absolute right to select 10 percent of the state land within their boundaries, irrespective the land classification.

Features of the new law were:

1) Unified home rule municipalities and all boroughs were granted acreage specific entitlements;

2) "vacant, unappropriated, unreserved" (VUU) land was now statutorily defined based on a two part test: 1) the grant type

under which the state acquired the land from the federal government and 2) the state's land classification system;

3) General grant land entitlements were limited to general grant land that the state acquired under sections 6(a) and 6(b) of the Statehood Act;

4) Entitlements were fixed as of July 1, 1978, based on the state's VUU land base on that date;

5) Entitlements were extended to municipalities incorporated after July 1, 1978, and a method of computing these entitlements was established;

6) Entitlements became vested property rights and could be fulfilled at any time before two years after the state's right to select federal land under 6(a) or 6(b) of the Statehood Act expired;

7) Selections must be approved or disapproved within nine months of selection and further patent issuance must occur within three months of survey plat approval;

8) Municipalities with an entitlement of less than one and one-half acre per capita could select vacant school, university or mental health trust lands;

9) Deficiency payments were established for municipalities whose entitlement land bases were unsuitable for residential, commercial or industrial purposes;

10) Authority for land exchanges between municipalities and the state when in the public interest was established;

11) Municipalities in litigation with the state over general grant land entitlements had to elect to benefit under the new law or receive the fruits of the litigation, but not both; and;

12) A comprehensive and detailed definitions section was added.

For the first time, a detailed and clear law existed, specifying important policies and procedures, under which general grant land entitlements would be administered.

In 1979, AS 29.18 was amended so that entitlements could no longer be fulfilled by selections filed up to two years after the state's selection rights with the federal government expired, but now must be made prior to October 1, 1980.

In 1981, to ensure that all entitlements were fulfilled, amendments gave municipalities 90 days to re-select new land upon rejection of a previous selection. This was necessary because in law a selection deadline had been established.

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In 1985 university trust land was removed from the group of lands available to a municipality with a per capita entitlement of less than one and one-half acres. This resulted from successful litigation by the University Board of Regents against the state over management of its land trust corpus.

In 1985 AS 29.18.201 - 29.18.205 were repealed effective January 1, 1986. These sections were the major provisions of the general grant land entitlement law. They were, however, replaced with the same provisions that were renumbered AS 29.65.010 - 29.65.140.

In 1987 the most recent amendments to the law occurred. The major provisions of the new law are:

- 1) Expands general grant entitlements to capture all state VUU land within the municipal boundaries between September 1, 1970 and January 1, 1988;
- 2) Bases entitlements of cities and boroughs incorporated after July 1, 1978, on the maximum amount of VUU land within their boundaries between incorporation and two years thereafter;
- 3) Establishes upper limit of entitlements to newly incorporated municipalities not to exceed 20 acres per capita based on the population of the municipality on the date of incorporation;
- 4) Extends selection deadline of boroughs and unified home rule municipalities listed in AS 29.65.010 to October 1, 1990.
- 5) Invalidates all selections of school or mental health trust lands occurring after October 4, 1985 the date of the mental health land trust litigation decision;
- 6) Prohibits a municipality from trading entitlement land for federal subsurface rights or any interest in the Arctic National Wildlife Refuge;
- 7) Categorizes material and public recreation classified land as VUU;
- 8) Categorizes resource management classified land as VUU if the classification occurred on or after September 1, 1983;
- 9) Specifies that the new entitlement for the Northwest Arctic Borough is a partial entitlement. Additional entitlement for the Northwest Arctic Borough and municipalities incorporating after the Northwest Arctic Borough depends upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan, for additional entitlement consistent with

his general grant land entitlement policy.

10) Reinstates the 89,850 acre entitlement to the North Slope Borough lost through litigation in 1978.

A brief discussion of Alaska's statehood land grant entitlement will help focus the parallel municipal general grant land entitlements. The Alaska Statehood Act granted land entitlements to the state under sections 6(a) and 6(b) totaling 103,350,000 acres to be selected from the federal public domain. In 1962, when the state enacted the first municipal entitlement law, less than eight million acres of the statehood entitlement had been received from the federal government. There were less than 40 municipalities in the state at that time. Up until the 1978 law, a municipality was entitled to select 10% of the VUU land within the municipality without a date final for fulfilling that entitlement. This appears to have been intended as an ongoing process so that as the state received more of its entitlement, the municipality could continue to select 10% of that which was VUU.

The 1978 law, for the first time established date certain time lines. The pool of land from which to compute the 10% of VUU entitlement was limited to land within the municipal boundaries between the first date of eligibility for each municipality (September 16, 1970, or date of incorporation which ever came later) and July 1, 1978. The deadline for selection was, however, set two years after expiration of the state's selection rights from the federal public domain. The state's selection deadline was 25 years from statehood (1984). The Alaska National Interest Lands Conservation Act (ANILCA) extended this by ten years to 1994.

In 1978 the state had received about 35 million acres of its entitlement. The 1978 city certifications resulted in an allocation of 7,727 acres to 19 qualifying cities and 861,608 acres to 11 unified home rule municipalities and boroughs. A total of 869,335 acres of state land were granted to municipalities under the 1978 law.

Entitlement acreages for unified home rule municipalities and boroughs contained in AS 29.18.201, as amended in 1978, did not always represent fulfillable entitlements. When the state legislature was considering provisions to be incorporated into the AS 29.18 amendments, they established acreage entitlements for each of the unified home rule municipalities and boroughs based on a complicated scheme that considered population, areal extent and availability of state land within the municipal boundaries. The Municipality of Anchorage and the Kodiak Island Borough had considerably less state VUU land within their boundaries than was needed to meet the statutory entitlement.

The Municipality of Anchorage received \$4,000,000 as deficiency payment under AS 29.18.208 for 4,000 acres of entitlement land and in 1985 entered into an agreement with the state to zero out

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a yet unfulfillable entitlement with 4,628 designated acres of state land within the municipal boundaries. Prior to the agreement, 20,671 acres of land had been approved or patented to the municipality. Under the settlement Anchorage can also receive up to 1,000 acres of National Forest Community Grant land at Girdwood if land is ever conveyed to the state.

The Kodiak Island Borough likewise entered into an agreement with the state to zero out its entitlement with 48,700 designated acres of state land within their boundaries. As part of the agreement the borough would return to the state 3,069 acres of the 13,960 acres of land that had been patented or approved for patent prior to the agreement. The borough would also receive up to 17,800 acres of land under selection by ANCSA corporations if the land was ever available to the state.

The amount of additional state land granted to cities by the 1987 amendments is 11,892.3 acres. The state had about 80 million acres of its entitlement in 1987. The major affect of the new law, however, is re-establishing a 1978, 89,850 acre entitlement to the North Slope Borough and increasing the 13,000 acre entitlement certified under the old statute to the new Northwest Arctic Borough to 133,920 acres. In round figures about 236,000 acres of state VUU land will be conveyed to two boroughs and nine cities under the 1987 law.

VUU Land Definitions History

Between 1963 and 1978, municipal entitlement selections were limited to "vacant, unappropriated, unreserved land". It appears, by extension of application, that state administrators conceptually adopted the similar guidelines used by federal administrators when statehood land selections were being adjudicated. Neither statutory nor policy definitions existed for VUU land and as a result municipalities and the state disagreed about whether specific parcels of land were VUU.

In 1978, the amended law adopted specific definitions for VUU land.

Following were the limitations placed on this definition:

- 1) Land must be Statehood Act section 6(a) or 6(b) land that has been patented or tentatively approved to the state and excludes the mineral estate;
- 2) Land cannot have been set aside by statute for one or more particular uses or purposes;
- 3) Land must be unclassified or if classified is classified agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry.

The definition of VUU land specifically excluded minerals citing section 6(i) of the Statehood Act. Section 6(i) was incorporated into the Alaska Land Act as AS 38.05.125.

Thus, "VUU" was defined clearing the way to settling many of the disputes between the state and municipalities. All of the classifications that are defined VUU are categories which the state was already allowed to dispose of by law. In 1983 the state's land classification regulations were changed so that commercial, industrial, open-to-entry, private recreation, residential and utility classifications were subsumed by a new 'settlement' classification. The effect was that unclassified land, settlement land, grazing land and the agricultural interest in agricultural land were available to municipalities for fulfillment of entitlement.

In 1987 three additional categories were added to the list of VUU classifications: 1) material; 2) public recreation; 3) resource management if classified as such on or after September 1, 1983.

1978 Entitlement Status

On July 1, 1978, there were 139 cities incorporated under state law. Certifications of entitlement under ch 180, SLA 1978, resulted in 19 cities receiving entitlements totalling 7,721 acres.

In 1978 the legislature redesignated university and mental health trust land state general grant land (Chap 182, SLA 1978). Based on what they believed to be representations by DNR that these lands would now be, not only general grant land, but also VUU available for entitlement computation as well as available for fulfillment of entitlement. Three cities in Southeast Alaska certified as "zero entitlement" believed that the department erred in the certifications because redesignated mental health trust land as general land statewide was not included as part of the land base within their corporate boundaries for the certification process. Petersburg filed suit in State Superior Court (1JU-78-1109 civ) and Kupreanof and Wrangell administratively appealed their zero entitlement certifications. The state reached an agreement with Petersburg and granted 10% of the mental health lands within their boundaries to the city. This amounted to 461.27 acres of land. The conveyances were under the authority of AS38.05.315(a) [renumbered AS 38.05.810].

As resolution of the other two appeals, the department extended the terms of the Petersburg settlement. Kupreanof received 180.82 acres of mental health land and Wrangell received 310 acres of mental health land.

Although all land selections for municipalities with entitlements from the 1978 law are in place, somewhat less than half of the

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land has been patented to them. The state cannot convey land to a municipality until the federal government has patented the land to the state. However, all 1978 municipal selections have, with few exceptions, been approved or rejected. When the state approves a selection, the municipality assumes management responsibility as if it owned the land. By statute municipalities can create third party interests on approved selections prior to patent with the approval of the director. The director generally confers broad management authority to a municipality on an approved selection unless there is an overriding public interest requiring continued involvement by the state.

1988 Entitlement Certification Results

Between the 1978 round of certifications and the 1987 amendments to AS 29.65, eight cities incorporated under state law. Only Thorne Bay had state general grant land within its boundaries that was VUU and in 1982 their entitlement was established at 612 acres. This was in error and was corrected to the proper figure of 675 acres in the 1988 certification.

Three other cities received land from the state during the period July 1, 1978, to January 1, 1988. Tenakee Springs had entered into an agreement in 1977 with Alaska Lumber and Pulp Company (AL&P) and the Department of Natural Resources. The purpose of the agreement was to "permit the proposed operations [AL&P timber contract with the USFS on Chichagof Island] to proceed in a climate of consensus and cooperation". The state's obligation in the agreement was:

"The state will convey to the City title to any selected lands conveyed to the State by the Bureau of Land Management, except that the State may retain title to those sites necessary for present or anticipated essential public purposes. The State will convey to the City all tidelands and submerged lands within or subjacent to the Sunny Cove dump, and will expeditiously consider the City's application for conveyance of other tidelands and submerged lands adjacent to any selected lands conveyed to the State by the Bureau of Land Management."

The state's part of the agreement was not carried out and in 1980 Tenakee Springs filed suit against the state in State Superior Court (1JU-80-1666). An out of court settlement resulted in a split of the state lands within the city boundaries, granting the city 2,958 acres and leaving in state ownership 1,027 acres.

Whittier sought and received a legislative grant of state land. Under chap 73, SLA 1984 Whittier received 600 acres of state general grant land within its boundaries.

Pelican sought and received a legislative grant of 8.863 acres of state land under Ch 53, SLA 1985.

The amendments to AS 29.65 in 1987 resulted in certifications of new or enhanced entitlements to nine cities of the 147 cities in existence on January 1, 1988. Kupreanof, Petersburg, Pelican, Tenakee Springs, Whittier and Wrangell each had state general grant land within their boundaries that were VUU. The previous agreements, settlements and legislation, however, resulted in the entitlements being certified at zero acres. The conveyances to Kupreanof, Petersburg and Wrangell were done under the authority of AS 38.05.810 and as provided in AS 29.65 _____ if a municipality with an entitlement is conveyed land under .810 it may be charged against the entitlement. Wrangell administratively appealed this certification because the amount of land that they received in 1978 was less than 10% of the VUU land that was available for the 1988 certification. The director reconsidered the facts and agreed with the City of Wrangell that their entitlement should be the full 10 percent of the VUU land within the city boundaries.

BACKGROUND: TIDELAND CONVEYANCES TO MUNICIPALITIES

Legislative History

In addition to the general grant land entitlements, qualified cities within Alaska have been conveyed tide and submerged land. To understand the purpose of these conveyances of public trust land it is necessary to review federal mandates for management of tide and submerged land prior to Alaska's admission into the Union.

By act of Congress, on May 17, 1884, Alaska was established as a judicial district with a governor and district court system. The general law of Oregon was applied to the district under this act.

On May 14, 1898, Congress passed an act extending the homestead laws to the District of Alaska and providing for right of way for railroads within the district. The act declared that "all such rights to [tide lands and beds of any navigable waters] shall continue to be held by the United States in trust for the people of any state or states which may hereafter be erected out of said District [Alaska]."

The Organic Act, approved by Congress August 24, 1912, created the Territory of Alaska and granted the new territory legislative powers through an elected legislative assembly. The Organic Act further extended the Constitution of the United States and all laws not locally inapplicable, to the Territory of Alaska.

Thus territorial tidelands constituted a federal trust early in Alaska's history and as such could not be disposed of through

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lease or sale. Additionally, permanent improvements were not authorized to be constructed upon tide and submerged land.

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

In full recognition of these shortcomings, Congress enacted a law on September 7, 1957 (P.L. 85-303), that conveyed tidelands adjacent surveyed townsites to the territory. The conveyance was for tidelands and all improvements and natural resources between the line of mean high tide and the pierhead line. The pierhead line was defined as a "line parallel to the existing line of mean low tide at such distance offshore from the line of mean low tide that encompasses to the landward all stationary, manmade structures in existence as of February 1, 1957". Under this law acceptance by the Secretary of Interior of new townsite surveys effected conveyances of attendant tidelands to the territory.

The act authorized the territory to manage and dispose of any tract of tidelands acquired under the act for municipal, business, residential or other beneficial purposes. A tidelands occupant or the occupant's successor in interest had a preference right to acquire an improved tract if a disposal occurred. These improved tracts could be conveyed to the incorporated town or school district. However, if this occurred, the town or school district must accord any occupant a preference right in any disposals contemplated in the future.

The Army Corps of Engineers was given the authority to establish pierhead lines for all surveyed townsites to enable conveyances to the territory. This process was initiated soon after passage of the act. Alaska's statehood interrupted this process with the conveyance of all tide and submerged land under section 6(m) of the statehood act to the new state.

The Alaska Legislature incorporated specific language in the Alaska Land Act to recognize and implement the provisions of the September 7, 1957, federal law. The provisions were soon codified AS 38.05.320(b).

The Alaska Land Act (ch 169, SLA 1959) section 5(c) enabled the conveyances of tidelands to municipal corporations. Qualifications in the act were:

1) The corporation must have been incorporated on or before January 3, 1959;

2) Tidelands subject to conveyance lay between the mean high tide line and the pierhead line, the harbor line or in their absence, a line subject to the approval of the director;

3) The corporation had to prepare a plat of the area conveyed showing all structures and improvements thereon and each tract that was occupied or developed with the owner or claimant noted; and,

4) The corporation had to recognize preference rights for occupied and developed tracts.

The tidelands conveyances to municipal corporations were mandatory and gave the department few discretionary powers over the process.

An amendment to AS 38.05.320(b) occurred in 1964 (ch 81, SLA 1964) when "municipal corporation" was changed to "(h)ome rule cities and cities of the first class." These cities had to have been incorporated on or before April 1, 1964, in order to qualify.

Another amendment to AS 38.05, although unrelated to AS 38.05.320(b), did provide for another type of tidelands conveyance to municipalities. Chapter 108, SLA 1974 (codified AS 38.05.323) allowed home rule and general law municipalities to apply for tidelands between mean high tide and mean low tide adjacent public recreation area facilities if the facility was developed under the terms of P.L. 507 (70 Stat. 130) and it was conveyed from the state to the municipality.

Under AS 38.05.320(b) 25,224.3 acres of tidelands were conveyed to 28 cities from Barrow to Saxman. Apparently no tidelands have been conveyed under AS 38.05.323.

GENERAL GRANT LAND ENTITLEMENT DISCUSSION

There are three categories of general grant land entitlements under AS 29.65:

1) A specified statutory entitlement (AS 29.65.010) for unified home rule municipalities and organized boroughs;

2) 10% of the maximum total acreage of vacant, unappropriated, unreserved (VUU) land within the boundaries between September 16, 1970 and January 1, 1988 for cities incorporated as of July 1, 1978 (AS 29.65.020); and

3) 10% of the maximum total acreage of VUU land within the boundaries between date of incorporation and two years after that

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date for cities incorporated after July 1, 1978 (AS 29.65.030).

The governor's general grant land entitlement policy required by Section 11, Chapter, 34 SLA 1987 only affects the Northwest Arctic Borough and other municipalities incorporated after formation of the Northwest Arctic Borough (incorporated June 2, 1986). Thus, only general grant land entitlements pursuant to AS 29.65.030 for municipalities incorporated on or after June 2, 1986 will be affected by this policy document.

Section 2 ch 34 SLA 1987 significantly amended AS 29.65.030 by adding a new upper entitlement limit based on municipal population on the date of incorporation. ~~This limit was imposed to help dissuade formation of municipalities for the sole purpose of obtaining large general grant land entitlements from the state.~~ Since all densely populated areas of the state are presently incorporated, newly incorporated areas will generally be rural in character. ~~State land within these areas is often not well suited for development or other municipal purposes.~~ Creating large entitlements to be fulfilled from the state's rural land base may not be in the state's interests. /

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. The Matanuska-Susitna Borough has an entitlement of 355,210 acres which is about 20 acres per capita based on the population of the borough in 1978.

From inception, the municipal entitlement law has undergone a gradual philosophical broadening of purpose. Where the early versions of the law were focused on making land available that was suitable for development for residential, commercial or industrial use, the most recent version of the law shifts to include public purpose land. This shift occurs through inclusion of public recreation classified land in the categories of land available to municipalities.

PURPOSES FOR GENERAL GRANT LAND ENTITLEMENTS

The central theme of municipal entitlements today is to provide land to municipal corporations for the purposes of:

- 1) Siting public facilities/aiding community expansion;
- 2) Providing a means of revenue production through sales or lease which also expands the municipal tax base; and;
- 3) Providing local public recreation opportunities.

The provisions of Alaska Native Claims Settlement Act (ANCSA) defeated state's title to selected and tentatively approved land within the vicinity of ANCSA village corporations. This results in extremely limited or totally absent state land bases in or near ANCSA cities (population centers) for a new borough to realize the first two purposes. The provisions of ANCSA 14(c)(3) do however, compensate for this shortcoming by requiring that an ANCSA village corporation convey up to 1,280 acres of land to the municipal corporation. This provision includes title to the remaining surface estate of the improved land and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs.

The results of AS 29.65 and ANCSA must be viewed together. If the land available under these two laws is insufficient to fulfill municipal land entitlement purposes, and other state land unavailable under AS 29.65 will meet the needs, then the municipality may make a written request, including justification, to the Department of Natural Resources for the specific additional land which increases their entitlement.

SUMMARY

The State of Alaska in furtherance of the goal of maximum local government committed in 1978 7,727 acres of state land to 19 cities and another 861,608 acres to 11 unified home rule municipalities and boroughs. With few exceptions land selections have been approved and the municipalities actively manage this land base of nearly 870,000 acres.

New incorporations after 1978 resulted in another 14,000 acres of entitlement to one city and one borough.

The 1987 amendments to AS 29.65 created new entitlements for two cities totalling over 1,200 acres, reestablished an 89,850 acre entitlement for a borough and expanded entitlements for seven cities and one borough for over 130,000 new acres.

Over 1,000,000 acres of state land have been committed under AS 29.65 to 41 municipalities statewide for local use. The state has patented nearly 430,000 acres of uplands to 48 municipalities since statehood and 25,000 acres of tidelands to 28 cities.

As the current trend toward more borough incorporations continues, general grant land entitlements promise to play a role in the viability of the new municipalities in a difficult economic environment.

MUNICIPAL ENTITLEMENT CERTIFICATION SUMMARY

<i>City</i>	<i>1978 Entitlement</i>	<i>Other Entitlement</i>	<i>1988 Entitlement</i>	<i>New Acres Under Ch34, SLA 1987</i>
<i>Anderson</i>	0.0	0.0	1,182.0	1,182.0
<i>Bethel</i>	40.0	0.0	0.0	
<i>Cordova</i>	235.0	0.0	0.0	
<i>Delta Junction</i>	400.0	0.0	481.8	81.8
<i>Dillingham</i>	1.0	0.0	0.0	
<i>Fairbanks</i>	15.0	0.0	0.0	
<i>Homer</i>	16.0	0.0	0.0	
<i>Hoonah</i>	15.0	0.0	0.0	
<i>Houston</i>	405.0	0.0	0.0	
<i>Kenai</i>	307.0	0.0	0.0	
<i>Ketchikan</i>	0.5	0.0	4.0	3.5
<i>Kodiak</i>	32.0	0.0	0.0	
<i>Kupreanof</i>	0.0	180.8	0.0	
<i>North Pole</i>	0.5	0.0	0.0	
<i>Ouzinkie</i>	240.0	0.0	0.0	
<i>Pelican</i>	0.0	8.9	0.0	
<i>Petersburg</i>	0.0	461.3	0.0	
<i>Port Alexander</i>	0.0	0.0	53.0	53.0
<i>Port Lions</i>	35.0	0.0	0.0	
<i>Seward</i>	562.0	0.0	565.0	3.0
<i>Skagway</i>	500.0	0.0	7,977.0	7,477.0
<i>Soldotna</i>	14.0	0.0	0.0	
<i>Tenakee Springs</i>	0.0	2,958.0	0.0	
<i>Thorne Bay</i>	0.0	612.0	675.0	63.0
<i>Valdez</i>	4,805.0	0.0	7,593.0	2,788.0
<i>Whittier</i>	0.0	600.0	0.0	
<i>Wrangell</i>	0.0	310.0	551.0	241.0
<i>Yakutat</i>	104.0	0.0	0.0	
TOTALS	7,727.0	5,131.0	19,081.8	11,892.3

TABLE 1

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
<i>Aleutians East Borough</i>	Oct-87							
<i>Bristol Bay Borough</i>	Oct-82			2,672.7				
<i>City & Borough of Juneau</i>	Jul-70			3,622.6	11.1	852.9		
<i>City & Borough of Sitka</i>	Dec-71	1.8		1,390.3	6,064.6	194.5		0.6
<i>Fairbanks North Star Borough</i>	Jan-64			83,964.9	44.9			
<i>Haines Borough</i>	Jul-68			1,082.8				
<i>Kenai Peninsula Borough</i>	Jan-64			79,206.0	181.9			117.0
<i>Ketchikan Gateway Borough</i>	Sep-83			4,033.3				
<i>Kodiak Island Borough</i>	Sep-63			11,654.0	14.3			
<i>Lake & Peninsula Borough</i>	Apr-89							
<i>Matanuska-Susitna Borough</i>	Jan-64		40.3	201,623.4	400.3			79.3
<i>Municipality of Anchorage</i>	Sep-75	391.1		12,883.7	5,897.1	1,328.5		1,256.4
<i>North Slope Borough</i>	Jul-72							
<i>Northwest Arctic Borough</i>	Jun-86							
TOTALS		392.9	40.3	402,133.6	12,614.1	2,375.9	0.0	1,453.3

TABLE 2

CONVEYANCE SUMMARY: CITIES

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aniak	May-72				24.6			
Barrow	Jan-59					870.0		
Bathel	Jan-67	82.1		5.0	317.0			42.4
Cordova	Jan-09			0.5		321.7		
Craig	Jan-22				18.2	73.0		
Delta Junction	Dec-60			340.3	40.0			
Dillingham	Jan-63				10.7			
Fairbanks	Jan-03			0.5	96.1			
Fort Yukon	Feb-59							0.3
Haines	Jan-10			20.0		109.1		
Homer	Jan-64					6,831.1		292.8
Hoonah	Jun-46	105.5				201.4		
Houston	Jan-66			418.8				
Hydaburg	Oct-27					175.0		
Kake	Nov-52					218.3		1.4
Kasaan	Feb-76				0.4			
Kenai	May-60	3,594.7		355.3	175.6	2,752.1		1.9
Ketchikan	Jan-00				1.2	169.7		
King Cove	Jan-47					178.1		
Klawock	Jan-29					272.5		
Kodiak	Jan-40	281.0		1.2	15.4	219.0		
Kotzebue	Mar-73					392.8		
Kupreanof	Aug-75			180.8				
McGrath	Jun-75				13.5			7.7
Nenana	Jan-21							35.0
Nome	Jan-01					5,717.0		42.1
North Pole	Jan-53				19.7			
Palmer	Jan-51				3.5			
Pelican	Jan-43				4.9	60.1	8.9	
Petersburg	Jan-10			231.1	314.7	449.3		12.4
Sand Point	Oct-66				2.3			
Saxman	Sep-29					53.6		
Seldovia	May-45				21.6	118.0		
Seward	Jan-12			493.1	49.1	1,677.3		
Shungnak	Mar-76				0.6			
Skagway	Jan-00			122.1		193.5		
Soldotna	Jan-67			111.9	391.5			60.3
Tenakee Springs	Oct-71					30.2		204.8
Thome Bay	Aug-82			249.2				
Unalaska	Jan-42							9.3
Valdez	Jan-01			4,420.2		1,368.6		34.5
Wemita	Jan-74				129.8			
Wrangell	Jan-03			18.5	288.7	148.8		
Yakutat	Jan-48			123.6	31.2	248.3		
TOTALS		4,063.3	0.0	7,092.1	1,970.3	22,848.4	8.9	744.9

TABLE 3

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 4, 1990

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

Dear Sam,

As you know, the general land grant entitlement program for municipalities was amended by Chapter 34, SLA 1987. All of these amendments have now been implemented except Section 11. Following is the complete text of Section 11:

The general grant land entitlement authorized for the Northwest Arctic Borough under AS 29.65.030(a), as amended in sec. 2 of this Act, is a partial entitlement for the borough.

After completion of the Northwest Area Plan prepared under AS 38.04.065, the governor shall submit to the Legislature recommendations for additional general grant land entitlements for the Northwest Arctic Borough consistent with the general grant land entitlement policy developed by the governor. The governor shall also submit recommendations for additional general grant land entitlements for other newly formed municipalities consistent with the general grant land entitlement policy developed by the governor.

The Northwest Area Plan is now adopted and the Northwest Arctic Borough has recently filed its land selections. Therefore, with this letter I am transmitting the policy envisioned by this section. The policy was developed from nearly 30 years of experience administering the municipal land entitlement program. Also enclosed is a background report describing the policy.

The policy will be used when it is time to make recommendations for additional entitlement to the Northwest Arctic Borough and the other new municipalities. Before I make such recommendations, however, the general grant land entitlement must be certified and accepted by the new municipality.

Honorable Sam Cotten

- 2 -

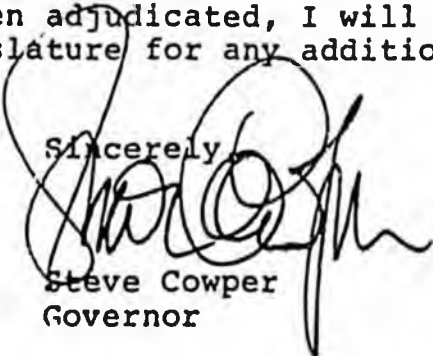
May 4, 1990

Deficiencies in acreage amount cannot be assessed until an amount is established. Second, the municipality must have filed the selections necessary to fulfill its entitlement.

Deficiencies in quality cannot be assessed until the character of the selections is established. Third, the Department of Natural Resources must have accepted the selections and processed them through the approval stage or have rejected them in the State's interest. The State's interest will, in this final step, determine the quality-quantity mix actually available to the municipality to fulfill the entitlement.

Once all selections have been adjudicated, I will submit recommendations to the Legislature for any additional entitlement.

Sincerely,



Steve Cowper
Governor

Enclosures

cc: Commissioner David Hoffman
Commissioner Lennie Gorsuch

General Grant Land Entitlement Policy

April 23, 1990

PURPOSE

This general land grant entitlement policy is adopted pursuant to Section 11, Chapter 34, SLA 1987.

BACKGROUND

In 1987, the Alaska Legislature made the most recent changes to the municipal land grant entitlement law (AS 29.65). The last major amendment to the law occurred in 1978, when acreage specific entitlements were established for all unified home rule municipalities and boroughs. Additionally, under the 1978 revision, cities were entitled to 10 percent of the vacant, unappropriated, unreserved (VUU) land that existed within their boundaries between the date of initial eligibility and July 1, 1978. Although the 1978 amendments served the needs of municipalities and the state well for nearly ten years, state land status changes and new municipal incorporations created a favorable atmosphere for adjustments to the law.

Two major conditions caused the Department of Natural Resources and certain municipalities to seek amendments to the municipal land grant entitlement law. First, the conveyance of land from the federal government to the state under the statehood act is an ongoing process. Some cities who had no state land within their boundaries for the entitlement certifications of July 1, 1978, did have later as the state received title to new land which was selected as part of the statehood entitlement. The City of Anderson, for example, was an existing city in 1978 and had no VUU land within its boundaries resulting in a 'zero' entitlement. After the 1978 certifications the state received from the federal government thousands of acres of general grant land within Anderson's boundaries. The law, without amendments, did not allow Anderson to share in the municipal land grant entitlement program because the cut-off date, by law, for an entitlement was July 1, 1978.

The second condition needing adjustment resulted from a 1985 statewide classification required by AS 38.04.020(c). All unclassified state land outside the organized borough and outside adopted department area plans was classified resource management, a classification outside the definition of VUU. This caused entitlements to new boroughs created from the unorganized borough (all areas of the state not organized as a borough) to be very small, if any. For example, the Northwest Arctic Borough incorporated in 1986. Most of the land within its boundaries came from the unorganized borough and was outside an adopted area plan. Thus, nearly all of the over two and one-half million acres of state land within its boundaries was classified resource

General Grant Land Entitlement Policy
April 23, 1990

management by the 1985 statewide classification. Since resource management land was not VUU, the resulting entitlement was just over 13,000 acres (about two acres per capita) based on the formula of 10 percent of the VUU land within the boundaries. An entitlement existed only because the state had received statehood grant lands from the federal government after the 1985 statewide classification, which were unaffected by the previous action.

From the 1987 amendments to the statute came a new round of certifications to all municipalities in existence as of January 1, 1988. Each city with state general grant VUU land within its boundaries has a new or enhanced entitlement correcting the first deficiency (the City of Anderson now has an entitlement of 1,182 acres).

The amendments also subsumed resource management classified land within the meaning of VUU land if the classification occurred on or after September 1, 1983. This date was chosen by the legislature because it was the date of adoption of new classification regulations which changed the definition of resource management land to less restrictive mandates. This adjustment allowed the Northwest Arctic Borough to fully benefit under the municipal entitlement program.

The final significant 1987 amendment to the law placed an upper limit on the amount of an entitlement to a municipality incorporating after July 1, 1978. The legislature set this upper limit at 20 acres per capita, equal to the maximum per capita entitlement of any municipality in the state since statehood. This resulted in a new entitlement to the Northwest Arctic Borough of 133,920 acres. The 20 acre cap had the effect of reducing the maximum possible entitlement to the Northwest Arctic Borough from over a quarter of a million acres based on 10 percent of the VUU land to 133,920 acres.

The last relevant provision of Chapter 34, SLA 1987 is Section 11. This section states that the entitlement authorized by AS 29.65.030(a) to the Northwest Arctic Borough is a partial entitlement, additional entitlement to be determined after completion of the Department of Natural Resources' Northwest Area Plan and based on the policy contained in this document. The department had started the planning process in the Northwest Area at the time the borough incorporation process was beginning. Since the end result of an area plan is land classifications that affect the amount of VUU land, completion of the plan was necessary to assess the affect on the entitlement to the new borough.

General Grant Land Entitlement Policy
April 23, 1990

DISCUSSION

Four additional incorporations have occurred since incorporation of the Northwest Arctic Borough on June 1, 1986: Aleutians East Borough, City of Atka, Lake and Peninsula Borough and the City of Coffman Cove. These five municipalities as well as any others that may be incorporated in the future are affected by this policy. The circumstances of this group illustrate a range of conditions.

The Northwest Arctic Borough incorporated when the state's Northwest Area Plan was initially being developed. The purpose of such plans, which are mandated by AS 38.04.065, is to set policy for managing the state land within the planning area as well as determine which lands are suitable for private ownership and which are suitable for retention in public ownership. This determination is made through land classifications that are the end result of the planning process. These classifications affect the amount of general grant land entitlements because the foundation of the entitlement process is the classification system which determines whether lands are VUU. The timing of the Northwest Arctic Borough incorporation was fortuitous for the new borough allowing it to be intimately involved in the planning process from the start so that they could influence the classifications that would result from the plan and therefore influence the amount of the entitlement.

The Aleutians East Borough incorporated years after completion of the Bristol Bay Area Plan having had no formal role in the planning process or opportunity to affect the size of the entitlement. This borough will have a very limited municipal entitlement as a result of a predominance of wildlife habitat classifications, which do not meet the legislative definition of VUU land. The Aleutians East Borough will have an entitlement estimated at just under four acres per person, well below the 20 acre cap.

The Lake and Peninsula Borough, like the Aleutians East Borough, incorporated years after adoption of the Bristol Bay Area Plan. This borough contains a small part of the Kuskokwim Area Plan as well as a large area of the Bristol Bay Area Plan. Although the Lake and Peninsula Borough had been suggested to the Department of Community and Regional Affairs as the Kuskokwim Area Plan was being developed, formal incorporation action had not been completed. Much of the settlement land (a VUU classification) within the Bristol Bay Area Plan is within the Lake and Peninsula Borough. If the borough's entitlement was based solely on 10 percent of these settlement lands, the entitlement would be quite small because the amount of settlement land is small compared to

General Grant Land Entitlement Policy
April 23, 1990

the total state land base within the boundaries of the borough. The entitlement to the Lake and Peninsula Borough will, however, be supplemented by resource management land from the Kuskokwim Area Plan. The entitlement will still be relatively small, about eight acres per person. It is noteworthy that the small settlement land base within each of the area plans is generally a result of the residents within the plan boundaries rejecting land disposals unless only local residents are allowed to participate, a goal prohibited by law.

The City of Atka will have no entitlement because there is no state land within its boundaries.

The City of Coffman Cove is recently incorporated and whether the amount of the entitlement will be based on the 10 percent rule or the 20 acres per capita is not known at this time. The city is within the Prince of Wales Area Plan and few non-VUU classifications exist that would hamper the city's ability to select land suitable for municipal purposes.

POLICY

Over a million acres of the state's general grant land entitlement from the federal government under the statehood act is committed to municipal governments. As new borough formations occur throughout the state this number has the potential to increase greatly. Because of its proximity to communities, this million acres represents some of the most valuable surface land owned by the state. **Municipalities have been able to fill their entitlements from large pools of state land thereby selecting only the most valuable. This results in the less desirable or undevelopable land remaining in state ownership.**

Questions of equity often arise as specific entitlements for municipalities are compared. **The municipal entitlement law was never intended to work equitably for all municipalities, but rather was a vehicle for the state to share its land wealth with communities that had state general grant land within their boundaries. While municipalities may wish to maximize their entitlements through this policy, it is important to note that the formulas already contained in the municipal entitlement law work to maximize large, usable entitlements to municipalities. This occurs by allowing municipalities to unilaterally select entitlements from a state land pool that is generally ten times larger than the entitlement and lands most suitable for development and revenue generation are precisely the land classifications from which municipalities may select.**

Although unstated, the 20 acre per person cap has been in effect

General Grant Land Entitlement Policy
April 23, 1990

since the start of the municipal entitlement program and where an adequate state land base exists there are no known instances of municipalities being unable to select the necessary acreage for municipal purposes. It is therefore the policy of the state that additional entitlements to newly incorporated municipalities above the certified entitlement under AS 29.65.030(b) will only be considered when a municipality can clearly demonstrate that the lands in the entire VUU land base from which it can make its selections fulfill none of the following purposes and that the additional land that they wish to select is needed for:

1. Siting public facilities/aiding community expansion;
2. Providing a means of revenue production through sales or leases or contributing to the overall economic vitality of the municipality;
3. Providing local public recreation; and;
4. Protection of locally unique or important cultural, traditional, archeological or other public resources.

Written justification shall be made to the Department of Natural Resources when a municipality believes its entitlement should be expanded.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

February 27, 1991

The Honorable Jerry Mackie, Chair
House Community and Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Mackie:

Subject: HB 143, relating to general grant land selections for municipalities.

Position: The Department of Natural Resources is unable to support this bill. It would increase the land entitlement of certain municipalities (those incorporated after July 1, 1978) by a large amount, whether or not a local need for additional land exists (as is required under current state policy). While we firmly support municipal land transfers as a basis for local government self-determination, the approach in this bill is contrary to existing state law and policy. If it is the Legislature's intent to place more state land under local control, the entire policy for state land needs to be changed.

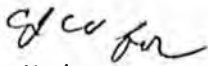
Background: In 1978, after 15 years of disputes between municipalities and the state over interpretations of the existing law, a number of amendments to the municipal land entitlement law (AS 29.18) were enacted. The new version of the law granted unified home rule municipalities and all boroughs specific state land acreage entitlements, and specified important policies and procedures. In 1987, the law was again amended. Additions expanded the category of land eligible for selection by a municipality and, among other things, placed an upper limit on the amount of "vacant, unappropriated, unreserved" land a municipality could select. The law also specified that the new land entitlement for the Northwest Arctic Borough was a partial entitlement that could be increased on a recommendation by the Governor to the Legislature. The Governor then submitted his general grant land entitlement policy to the legislature.

This bill removes the current 20 acre per capita limit on the land entitlement of a new municipality, and eliminates the criteria for the shape of a land selection. The 20 acre per capita limit is approximately equal to the maximum per capita acreage any borough has received from the state since statehood. Removal of this per capita limit, combined with the inclusion of wildlife habitat land within the "vacant, unappropriated, unreserved" land category eligible for selections, will greatly increase the land entitlement for new boroughs. Shape criteria are important if public access to adjacent state land is to be protected and sound land management

policies are to be maintained.

Recommendations: The municipalities affected by this bill have not yet received any entitlement land. It seems logical to allow them to receive their existing land entitlement before determining that additional land is needed for municipal purposes. However, the department supports Section 2 of this bill. It allows municipalities that wish to receive their land early an opportunity to have their land entitlements certified within six months of incorporation. Currently, municipalities must wait two years for certification. We would be happy to work with the committee to improve other municipal land entitlement administrative procedures that present problems to municipalities.

Sincerely,



Harold C. Heinze

cc: Committee Members
Representative MacLean
Bruce Kendall, Legislative Liaison, Office of the Governor
Edgar Blatchford, Commissioner, Department of Community and
Regional Affairs
Gary Gustafson, Director, Division of Land and Water

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 143

Revision Date: 27-Feb-91 Department Affected: Natural Resources
 Title: An Act relating to general grant BRU: Land & Water Management
land selections; and providing for date Components: Land & Water Management
 Sponsor: Rep. MacLean
 Requestor: House Community and Regional Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	136.6	136.6	136.6			
TRAVEL	3.5	3.5	3.5			
CONTRACTUAL	7.5	7.5	7.5			
SUPPLIES	0.5	0.5	0.5			
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	148.1	148.1	148.1	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	148.1	148.1	148.1			
FEDERAL FUNDS						
OTHER						
TOTAL	148.1	148.1	148.1	0.0	0.0	0.0

POSITIONS:

FULL-TIME	3.0	3.0	3.0			
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)
See Attached

Prepared by: Dennis Daigger Phone: 762-2680
 Division: Land & Water Management Date: 27-Feb-91

Approved by Commissioner: Harold Heinze Date: 27-Feb-91
 Agency: Department of Natural Resources

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

Fiscal Note HB 143, continued.

Enactment of HB 143 will result in approximately 246,000 new municipal selection acres for the Northern Region Office of the Division of Land and Water to process, and approximately 125,000 new acres for the Southcentral Region Office to process.

100	Personal Services	136.6
	1 NRO II (Fbx)	
	1 NRO I (Fbx)	
	1 NRO II (Anch.)	
200	Travel (to visit affected communities and sites)	3.5
300	Contractual (required public notices in newspapers)	7.5
400	Supplies	.5

HPB

179

CS FOR HOUSE BILL NO. 179 (MLV)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered:
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

A BILL

FOR AN ACT ENTITLED

1 "An Act to provide for the issuance of annual state park developed campsite free use
2 permits for disabled veterans."

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

4 * Section 1. AS 41.21.026 is amended by adding a new subsection to read:

5 The department shall issue free of charge to disabled veterans of this country an
6 annual state park developed campsite permit. The permit shall allow a disabled veteran to use
7 a state park developed campsite for personal recreation use without a charge or fee under (a)(2)
8 of this section. While utilizing a developed campsite without charge under this subsection, the
9 disabled veteran shall comply with all other statutes or regulations pertaining to the use of the
10 developed campsite. The department shall provide a form for use by a disabled veteran when
11 applying for a permit under this section.

HOUSE BILL NO. 179

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Introduced: 3/1/91

Referred: House Special Committee on Military and Veterans' Affairs, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act to provide for the issuance of annual state park developed campsite free use
2 permits for disabled veterans."

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

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5 (e) The department shall issue free of charge to disabled veterans of this country an
6 annual state park developed campsite permit. The permit shall allow a disabled veteran to use
7 a state park developed campsite for personal recreation use without a charge or fee under (a)(2)
8 of this section. While utilizing a developed campsite without charge under this subsection, the
9 disabled veteran shall comply with all other statutes or regulations pertaining to the use of the
10 developed campsite. The department shall determine the form of the application by a disabled
11 veteran for a permit.

Alaska State Legislature

House of Representatives

Rep. Ivan, Chair
Rep. Davidson
Rep. Foster
Rep. Gruenberg
Rep. M.W. Miller



P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 463-1327

Special Committee on Military & Veterans Affairs

SUMMARY OF HOUSE BILL 179

This bill was introduced by the House Special Committee on Military and Veterans Affairs as a priority of the Disabled American Veterans. It allows the Department of Natural Resources to issue, free of charge, an annual state park developed campsite permit to a disabled American veteran. The development of the form to be submitted by the disabled veteran will be handled by the department.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 179

Revision Date: 11-Mar-91 Department Affected: Natural Resources
 Title: Annual State Park Campsite Permit for BRU: Parks & Recreation Management
Disabled Veterans Components: Parks Management
 Sponsor: House Military & Veterans Affairs
 Requestor: House Military & Veterans Affairs COMPONENT SERIAL NO. 452

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

Based on motor vehicle information this would affect approximately 350 disabled veterans in Alaska, at \$60 per permit it would reduce possible program receipts to the state by \$21.0. It would be impossible to predict the dollar effect if disabled veterans from the rest of the country were to take advantage of this free permit. An excessive usage could require the Division to take a look at a GP request in the future.

Prepared by: Cindy Roberts Phone: 465-2400
 Division: Commissioner's Office Date: 11-Mar-91
 Approved by Commissioner: Harold Heinze Date: 11-Mar-91
 Agency: Department of Natural Resources

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

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

March 12, 1991

The Honorable Ivan Ivan, Chair
House Military and Veterans Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Ivan:

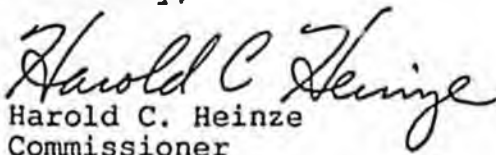
Subject: HB 179, providing for free use of state park campsites by disabled veterans.

Position: The Department of Natural Resources supports this bill. We are, however, uncertain about the number of disabled veterans who will request a free park pass and, as a result, the amount of revenue that will not accrue to the state park system.

Background: The Division of Parks and Outdoor Recreation charges \$60 for an annual state park campground pass. The Division of Motor Vehicles informs us that 344 disabled veterans have Alaska motor vehicle licenses. Veterans with motor vehicles would be the most likely users of state park campground passes. We do not know the nationwide total of motor vehicles licensed to disabled veterans.

Recommendation: We suggest the Department be required to report to the Legislature each January on the number of passes issued to disabled veterans during the previous calendar year.

Sincerely,


Harold C. Heinze
Commissioner

cc: Committee Members
Bruce Kendall, Legislative Liaison, Office of the Governor
Major General Hugh L. Cox, Department of Military and Veterans Affairs

HPB

196

Introduced by: Brown

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

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

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

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

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

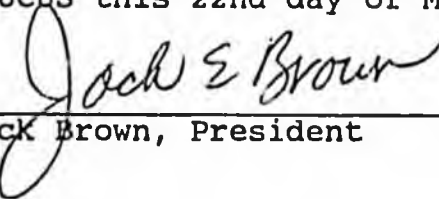
NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and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

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

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

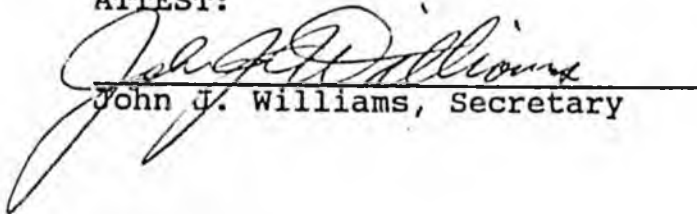
COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

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



Jack Brown, President

ATTEST:



John J. Williams, Secretary

(3/8/91)



Alaska State Legislature

Please enter into the record my testimony to the Resource
committee name
committee on H.R. 170, dated 4-1-71
bill/subject

SIR:

FROM LISTENING TO JUNEAU (Tel/comm 4-10-71)
THE LAWYERS WANT TO CRIPPLE OR OUTRIGHT KILL
THE OIL INDUSTRY, AND THE OIL INDUSTRY
SUPPORT COMPANYS WITH THE INSURANCE LIABILITY
BONDING ECT.

THE FISH INDUSTRY AND OIL INDUSTRY HAVE
WORKED IN THE SAME BODY OF WATER FOR THE
LAST 23 YEARS I KNOW OF
WHY KILL ONE AND SAVE THE OTHER - WHY CANT
WE HAVE BOTH

Signed: Eric King
Testifier

FISHERMAN / CONSTRUCTION
Representing (Optional)

BOX 8569 NIKISKI ALASKA 99635
Address

(907) 776-8254
Phone No.

**UNITED COOK INLET DRIFT ASSOCIATION**

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600

FAX (907) 283-3306

April 10, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

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

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

Presently

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

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

3. In 1989, legislature stated that:

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

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

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

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

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

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


We would like to suggest two possible options:

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

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

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

Sincerely,



Theo Matthews, Administrative Assistant
UCIDA

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



Oil Reform Alliance



ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

Tesoro's plea for immunity from Alaska's liability standards does not stem from a problem with existing law; rather, it stems from Alyeska's requirement of a one billion dollar direct action bond from all parties regardless of size. Last session countless hours were spent tailoring HB567 for both large and small operators. If Alyeska restructured its bonding requirement, Tesoro's problems evaporate.

Conoco's testimony of their recent response to a spill with an unknown responsible party is misleading. Conoco implied that "volunteer" response, in cases where the spiller is either unknown or insolvent, would be limited in the future unless RACs were immunized.

However under existing law, if the spiller is unknown or insolvent, the state assumes control of the cleanup - and reimburses RACs for reasonable expenses. It is important to realize that Conoco did respond to a spill with an unknown responsible party under existing law with existing liability standards.

Liability protection for small RACs, such as fishermen or communities, can be achieved through contractual indemnification. The problem with strict liability as perceived by Tesoro, Conoco, and even the community RACs simply does not exist.

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.09.823(a)).

Existing law provides ample protection for RACs and marginal protection for the public. To further weaken the state's liability standard would be a grave and regrettable step away from the lessons learned from the Exxon Valdez spill.



UNITED FISHERMEN OF ALASKA

Greg Selder
Executive Director

211 4th Street, Suite 112 (907) 586-2820
Juneau, AK 99801 Within Alaska 1-800-478-FISH
Fax# (907) 463 2545

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

WILLIAM C KITTO
Vice President
Crude Oil Supply

18 March 1991

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

Dear Representative Davidson:

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

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

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

Representative Cliff Davidson
18 March 1991
Page 2

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

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

Very truly yours,

U.S. OIL & REFINING CO.

W.C. Kitto

W.C. Kitto
Vice President

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9364.

Fax - (907) 262-1881.

TO: Ken L.L.O. Please deliver to H. Rep. Committee

ATTR: Alana Rossman FAX: _____ PHONE: _____

FROM: _____ PHONE: _____

INSTRUCTIONS: testimony on HB 196 hearing 4/10/91

PLEASE NOTE: ALL ODD NUMBERED PAGES WILL BE TRANSMITTED FIRST, THEN THE EVEN NUMBERED.

DATE: 4/11/91 TIME: 12:05 pm
DISCARD ORIGINALS _____ HOLD FOR PICKUP _____

NUMBER OF PAGES (not counting the cover sheet): 5

TRANSMITTED BY: - AS



Alaska State Legislature

Please enter into the record my testimony to the Resources
committee name

committee on H.B. 196, dated 4-10-91
bill/subject

*Here is a copy of our resolution
from the North Peninsula Chamber
of Commerce.*

*Thank you
Marie Seiler -*

Signed: Marie Seiler
Testifier

President North Pen. Chamber of Comm.
Representing (Optional)

P.O. Box 8053 Nikiski, Ak. 99635
Address

907 776-8369
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Resources
committee name
 committee on H.B. 196, dated 4-10-89
bill/subject

I've watched Tesoro's growth over the years and know how important they are to the peninsula and the state. I'm concerned about environmental protection and think that the Spill Responder should commence actions immediately. I also understand that Tesoro has no other source of crude oil feed to their refinery than through shipping via Bussers Washington from Valdez to Nikiski and that Alaska is demanding \$1 Billion in Insurance or cash that Tesoro can't meet. If Alaska does not change this requirement they (Tesoro) could be put out of business. I support a law that will treat Spill Responders like other emergency Responders. Tesoro has always made an effort to keep the area informed of their projects and projects. They have good credibility in our community and have a major impact on the economy here.

I strongly urge the Resources committee to pass this Bill and do everything possible to get it passed this session.

Signed: Mari Beeler
Testifier
Public
Representing (Optional)
P.O. Box 8005
Address
Nikiski, Alaska 99635
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the RESOURCES committee name

committee on H.R. 196, dated 4-10-91
bill/subject

I HAVE LIVED IN ALASKA FOR 24 YEARS. AND HAVE WORKED IN THE ROFINERIES, AS WORK AS OFF SHORE & NEAR SHORE. AS A HAND, DRENNAL, AND SUPERVISOR. I AM RESPONSIBLE FOR UPWARDS OF 40 PEOPLE. TESCO HAS PROVIDED A SORT OF LIVING FOR A GOOD PART OF THESE PEOPLE AS WELL AS COMMITTEE SERVICES THAT GO ABOVE & BEYOND ANY THING EXPECTED FROM ANY COMPANY. I DO NOT BELIEVE IN THIS BILLION DOLLAR DAILY. I THINK IT SHOULD BE TREATED AS AN EMERGENCY RESPONSE, WITH IT LOOKS BEL ORR HAVE THE STATE SUBSIDIZE IT I ALSO COMM. FISH. AND WAS INVOLVED IN THE GLACIER BAY SPILL, AND VALDEZ SPILL AS WELL. I HAVE 3.5 CHILDREN WHO LOVE THE OUT DOORS. I JUST THINK THAT THIS BILLION DOLLARS FARE AUGHTO BE STOPPED. !!!

Signed: MICHAEL A. WALKER PROJ. "

Testifier
AKCO
 Representing (Optional)
P.O. Box 2186 NIKESHKA AK 99645
 Address
726-5305 / 726-8739
 Phone No.

North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99635
NORTH PENINSULA CHAMBER OF COMMERCE

(907) 776-8348

RESOLUTION

A RESOLUTION SUPPORTING OIL SPILL RESPONDER'S LIMITED IMMUNITY

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

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

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

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE NORTH PENINSULA CHAMBER OF COMMERCE:

Section 1: That the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to the best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

Section 2: That the North Peninsula Chamber of Commerce supports and encourages Alaska State legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and



North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99835

(907) 776-

Section 3: That where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

ADOPTED BY THE NORTH PENINSULA CHAMBER OF COMMERCE ON THIS
7th DAY OF March, 1991.

Marie Becker, President of THE
NORTH PENINSULA CHAMBER OF COMMERCE



April 10, 1991

CITY OF KENAI

"Oil Capital of Alaska"

210 Fidalgo Avenue
Kenai, Alaska 99611

TELEPHONE 283-7535
FAX 907-283-3014

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

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

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

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

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

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

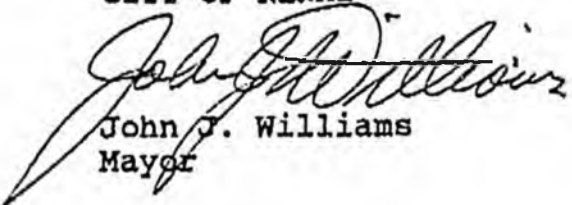
Representative Bill Hudson
April 10, 1991
Page 2

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

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

Sincerely,

CITY OF KENAI



John J. Williams
Mayor

JJW/clf

12 April 1991
PO Box 2397
Homer, Alaska 99603

RECEIVED APR 12 1991

Legislators
Alaska State Legislature
PO Box V
Juneau, Alaska 99811

Dear Representative Davidson:

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

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

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

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

Thank you for your hard work.

Sincerely,

Gail Parsons
Gail Parsons

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

RAC Liability: Summary of Recent Legislation

State	No Liability for Negligence	Time Limit for Limited Liability	Liability for Gross Negligence	Liability for Intentional Misconduct	Liability for Personal Injury or Wrongful Death	Liability for Not Following Nat. Contingency Plan or Lawful Authority	Responsible Party Liable for RAC Negligence
HB 196	X		X	X	X	X	X
Federal	X		X§	X	X	X	X
California	X†*	X	X	X	X	X	X
Delaware	X		X	X	X		X
Florida	X		X	X	X#	X	X
Georgia	X		X	X	X	X	X
Hawaii	X		X	X	X#	X	
Miss.	X		X	X	X	X	X
Texas	X		X	X	X#	X	
Virginia	X		X§	X	X	X	X
Wash.	X†		X	X	X#		

† Good faith requirement.

§ Act of God, act of war, and act of third party are defenses.

* Must be certified by State.

Personal Injury and wrongful death not specifically mentioned.

HOUSE AMENDMENT TO SENATE BILL NO. 2987

To the Secretary of the Senate:

This is to notify you that the House of Representatives adopted the following amendment(s):

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

8. SECTION 1. This act may be cited as the Mississippi
9. Liability of Persons Responding to Oil Spills Act.
10. SECTION 2. For the purposes of this act the term:
11. (a) "Damages" means damages of any kind for which
12. liability may exist under the laws of this state resulting from,
13. arising out of, or related to the discharge or threatened
14. discharge of oil;
15. (b) "Discharge" means any emission (other than natural
16. seepage), intentional or unintentional, and includes, but is not
17. limited to, spilling, leaking, pumping, pouring, emitting,
18. emptying or dumping;
19. (c) "Federal on-scene coordinator" means the federal
20. official predesignated by the U.S. Environmental Protection Agency
21. or the U.S. Coast Guard to coordinate and direct federal responses
22. under subpart D, or the official designated by the lead agency to
23. coordinate and direct removal under subpart E, of the National
24. Contingency Plan;
25. (d) "National Contingency Plan" means the National
26. Contingency Plan prepared and published under Section 311(d) of
27. the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as

28. amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104
29. Stat. 484 (1990);

30. (e) "Oil" means oil of any kind or in any form,
31. including, but not limited to, petroleum, fuel oil, sludge, oil
32. refuse and oil mixed with wastes other than dredged spoil; but
33. does not include petroleum, including crude oil or any fraction
34. thereof, which is specifically listed or designated as a hazardous
35. substance under subparagraphs (A) through (F) of Section 101(14)
36. of the Comprehensive Environmental Response, Compensation, and
37. Liability Act (42 U.S.C. 9601) and which is subject to the
38. provisions of that act;

39. (f) "Person" means an individual, corporation,
40. partnership, association, state, municipality, commission, or
41. political subdivision of a state, or any interstate body;

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

47. (h) "Responsible party" means a responsible party as
48. defined under Section 1001 of the Oil Pollution Act of 1990, Pub.
49. L. No. 101-380, 104 Stat. 484 (1990).

50. SECTION 3. (1) Notwithstanding any other provision of law,
51. a person is not liable for removal costs or damages which result
52. from actions taken or omitted to be taken in the course of
53. rendering care, assistance or advice consistent with the National
54. Contingency Plan or as otherwise directed by the federal on-scene
55. coordinator or by the state official with responsibility for oil
56. spill response.

57. (2) Subsection (1) does not apply:

58. (a) To a responsible party;

59. (b) To personal injury or wrongful death; or

60. (c) If the person is grossly negligent or engages in
61. willful misconduct.

62. (3) A responsible party is liable for any removal costs and
63. damages that another person is relieved of under subsection (1).

64. (4) Nothing in this section affects the liability of a
65. responsible party for oil spill response under state law.

66. SECTION 4. The Commission on Environmental Quality shall
67. promulgate any necessary rules and regulations in order to carry
68. out the provisions of this act.

69. SECTION 5. This act shall take effect and be in force from
70. and after its passage.

Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:

1. AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL
2. SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE
3. NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; TO
4. REQUIRE THE COMMISSION ON ENVIRONMENTAL QUALITY TO PROMULGATE
5. RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ACT; AND
6. FOR RELATED PURPOSES.

CHARLES J. JACKSON, JR.
Clerk of the House of Representatives

By: Senators Bilbo, Hall

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2987
(As Passed the Senate)

1. AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL
2. SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE
3. NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; AND
4. FOR RELATED PURPOSES.

5. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6. SECTION 1. This act may be cited as the Mississippi
7. Liability of Persons Responding to Oil Spills Act.

8. SECTION 2. For the purposes of this act the term:

9. (a) "Damages" means damages of any kind for which
10. liability may exist under the laws of this state resulting from,
11. arising out of, or related to the discharge of threatened
12. discharge of oil;

13. (b) "Discharge" means any emission (other than natural
14. seepage), intentional or unintentional, and includes, but is not
15. limited to, spilling, leaking, pumping, pouring, emitting,
16. emptying or dumping;

17. (c) "Federal on-scene coordinator" means the federal
18. official predesignated by the U.S. Environmental Protection Agency
19. or the U.S. Coast Guard to coordinate and direct federal responses
20. under subpart D, or the official designated by the lead agency to
21. coordinate and direct removal under subpart E, of the National
22. Contingency Plan;

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

28. (e) "Oil" means oil of any kind or in any form,
29. including, but not limited to, petroleum, fuel oil, sludge, oil
30. refuse and oil mixed with wastes other than dredged spoil; but
31. does not include petroleum, including crude oil or any fraction
32. thereof, which is specifically listed or designated as a hazardous
33. substance under subparagraphs (A) through (F) of Section 101(14)
34. of the Comprehensive Environmental Response, Compensation, and
35. Liability Act (42 U.S.C. 9601) and which is subject to the
36. provisions of this act;

37. (f) "Person" means an individual, corporation,
38. partnership, association, state, municipality, commission, or
39. political subdivision of a state, or any interstate body;

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

45. (h) "Responsible party" means a responsible party as
46. defined under Section 1001 of the Oil Pollution Act of 1990, Pub.
47. L. No. 101-380, 104 Stat. 484 (1990).

48. SECTION 3. (1) Notwithstanding any other provision of law,
49. a person is not liable for removal costs or damages which result
50. from actions taken or omitted to be taken in the course of
51. rendering care, assistance or advice consistent with the National
52. Contingency Plan or as otherwise directed by the federal on-scene
53. coordinator or by the state official with responsibility for oil
54. spill response.

55. (2) Subsection (1) does not apply:

56. (a) To a responsible party;

57. (b) To personal injury or wrongful death; or

58. (c) If the person is grossly negligent or engages in
59. willful misconduct.

60. (3) A responsible party is liable for any removal costs and
61. damages that another person is relieved of under subsection (1).

62. (4) Nothing in this section affects the liability of a
63. responsible party for oil spill response under state law.

64. SECTION 4. This act shall take effect and be in force from
65. and after its passage.

Citation
DE LEGIS 5 (1991)
1991 Delaware Laws Ch. 5 (S.B. 5)

Rank(R)
R 1 OF 1

Database Mode
DE-LEGIS P

DELAWARE 1991 SESSION LAW SERVICE
FIRST SESSION OF THE 136TH GENERAL ASSEMBLY
OPR. (C) WEST 1991 No Claim to Orig. Govt. Works

Additions and deletions are not identified in this document.

Ch. 5
S.B. No. 5
HAZARDOUS WASTE CLEANUP--LIABILITY OF THIRD PARTIES

AN ACT TO AMEND TITLE 10, DELAWARE CODE, RELATING TO LIMITATION OF LIABILITY FOR OIL AND HAZARDOUS MATERIAL DISCHARGE CLEANUP.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 31, Title 10 of the Delaware Code by adding thereto a new Section to read as follows:

<< DE ST TI 10 s 8135 >>

"s 8135. Limitation on Liability of Third Parties Rendering Assistance in Oil or Hazardous Material Discharge Cleanup.

(a) The provisions of any law, rule or regulation to the contrary notwithstanding, the liability of any person rendering care, assistance, or advice to prevent, minimize or mitigate oil or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice shall be limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, willful, wanton and/or intentional acts of misconduct on the part of such person.

(b) The limit of liability as set forth in Subsection (a) of this Section shall not apply to the actions of any person responsible for the initial discharge.

(c) Any person responsible for the initial discharge is liable for any removal costs and damages that another person is relieved of under Subsection (a) of this Section.

(d) This Section shall not be construed to limit any liability of any person for personal injuries or wrongful death as a result of the acts or omissions of such person."

<< DE ST TI 10 s 8134 >>

Section 2. Amend Chapter 31, Title 10 of the Delaware Code by striking s 8134 in its entirety.

SYNOPSIS

This bill is proposed by the Delaware River and Bay Oversight Committee. The bill would limit liability for removal costs and damages (other than personal injury or wrongful death) of a third party who renders assistance in a cleanup operation to those acts which amount to gross negligence or reckless, wilful, wanton, or intentional misconduct.

Approved January 31, 1991.

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1 any action brought by the state, a county, city, or district.
 2 (h) Except as provided in Section 1431.2 of the Civil
 3 Code, liability under this section shall be joint and
 4 several. However, this section does not bar a cause of
 5 action that a responsible party has or would have, by
 6 reason of subrogation or otherwise, against any person.

7 (i) This section does not apply to claims for damages
 8 for personal injury or wrongful death, and does not limit
 9 the right of any person to bring an action for personal
 10 injury or wrongful death under any provision or principle
 11 of law.

12 (j) Any payments made by a responsible party to
 13 cover liabilities arising from a discharge of oil, whether
 14 under this division or any other provision of federal, state,
 15 or local law, shall not be charged against any royalties,
 16 rents, or net profits owed to the United States, the state,
 17 or any other public entity.

18 (k) Any action which a private or public individual or
 19 entity may have against a responsible party under this
 20 section may be brought directly by the individual or
 21 entity or by the state on behalf of the individual or entity.
 22 However, the state shall not pursue any action on behalf
 23 of a private individual or entity which requests the state
 24 not to pursue that action.

25 (l) For the purposes of this section, "vessels" means
 26 vessels as defined in Section 21 of the Harbors and
 27 Navigation Code.

28 **8670.56.6.** (a) (1) Except as provided in subdivisions
 29 (b) and (d), and subject to subdivision (c), no person,
 30 including, but not limited to, an oil spill cooperative, its
 31 agents, subcontractors, or employees, shall be liable
 32 under this chapter or the laws of the state to any person
 33 for costs, damages, or other claims or expenses as a result
 34 of actions taken or omitted in good faith in the course of
 35 rendering care, assistance, or advice in accordance with
 36 the National Contingency Plan, the state oil spill
 37 contingency plan, or at the direction of the administrator,
 38 onsite coordinator, or the Coast Guard in response to a
 39 spill or threatened spill of oil.

40 (2) The qualified immunity under this section shall

1 not apply to any oil spill response action which is
 2 inconsistent with the directions of the Coast Guard, the
 3 director, or, in the absence of overriding directions of the
 4 Coast Guard or the director, is inconsistent with
 5 applicable contingency plans implemented under this
 6 division.

7 (3) Nothing in this section shall, in any manner or
 8 respect, affect or impair any cause of action against or any
 9 liability of any person or persons responsible for the spill,
 10 for the discharged oil, or for the tanker, barge, terminal,
 11 pipeline, or facility from which the oil was discharged.
 12 The responsible person or persons shall remain liable for
 13 any and all damages arising from the discharge, including
 14 damages arising from improperly carried out response
 15 efforts, as otherwise provided by law.

16 (4) The qualified immunity under this section shall
 17 only apply to response activity during the first 60 days
 18 after the spill for persons whose primary purpose is the
 19 business of responding to oil spills and who are regularly
 20 engaged in the business of responding to oil spills. No
 21 immunity shall attach to response activity after
 22 expiration of the first 60 days for the parties described
 23 herein.

24 (5) The qualified immunity under this section shall
 25 attach, without the limitation described in paragraph (4),
 26 to those responding parties that do not "regularly
 27 engage" in the oil spill response business and to persons
 28 and entities who are primarily dedicated to the
 29 preservation and rehabilitation of wildlife. There shall be
 30 no limitation on the duration of the immunity.

31 (b) Nothing in this section shall, in any manner or
 32 respect, affect or impair any cause of action against or any
 33 liability of any party or parties responsible for the spill, or
 34 the responsible party's agents, employees, and
 35 subcontractors, for the discharged oil, or for the tanker,
 36 terminal, pipeline, or marine facility from which the oil
 37 was discharged.

38 (c) The responsible party or parties shall:

39 (1) Notwithstanding subdivision (b) or (h) of Section
 40 8670.56.5, or any other provision of law, be strictly and

1. jointly and severally liable for all damages arising
2. pursuant to subdivision (g) of Section 8670.46 from the
3. response efforts of its agents, employees, subcontractors,
4. or an oil spill cooperative of which it is a member or with
5. which it has a contract or other arrangement for cleanup
6. of its oil spills, unless it would have a defense to the
7. original spill.

8. (2) Remain strictly liable for any and all damages
9. arising from the response efforts of a person other than
10. a person specified in paragraph (1).

11. (d) Nothing in this section shall immunize a
12. cooperative or any other person from liability for acts of
13. gross negligence or willful misconduct in connection with
14. the cleanup of a spill.

15. (c) This section shall not apply to any action for
16. personal injury or wrongful death.

17. (f) As used in this section, a "cooperative" means an
18. organization of private persons which is established for
19. the primary purpose and activity of preventing or
20. rendering care, assistance, or advice in response to a spill
21. or threatened spills of oil.

22. (g) Except for the responsible party, membership in a
23. cooperative shall not, in and of itself, be grounds for
24. liability resulting from cleanup activities of the
25. cooperative.

26. (h) For purposes of this section, there shall be a
27. rebuttable presumption that an act or omission described
28. in subdivision (a) was taken in good faith.

29. (i) In any situation in which immunity is granted
30. pursuant to subdivision (a) and a responsible party is not
31. liable, is not liable for noneconomic damages caused by
32. another, or is partially or totally insolvent, the fund
33. provided for in Article 7 (commencing with Section
34. 8670.46) shall, in accordance with its terms, reimburse
35. claims of any injured party for which a person who is
36. granted immunity pursuant to this section would
37. otherwise be liable.

38. (j) The immunity granted pursuant to subdivision (a)
39. shall apply to a cooperative only if that cooperative has
40. contracted with the administrator to respond to oil spills

1. in accordance with the state oil spill contingency plan
2. and this chapter. The administrator shall enter into
3. contract with any cooperative that is qualified and that
4. offer to contract, on mutually acceptable terms, in
5. accordance with the state oil spill contingency plan and
6. this chapter.

7. (j) (1) The immunity granted by this section shall
8. only apply to response efforts that are undertaken after
9. the administrator certifies that contracts with qualified
10. and responsible persons are in place to ensure an
11. adequate and expeditious response to any foreseeable oil
12. spill that may occur in marine waters for which the
13. responsible party (A) cannot be identified or (B) is
14. unable or unwilling to respond, contain, and cleanup the
15. oil spill in an adequate and timely manner. In negotiating
16. these contracts, the administrator shall, to the maximum
17. extent practicable, procure the services of persons who
18. are willing to respond to oil spills with no, or lesser,
19. immunity than that conferred by this section, but, in no
20. event, a greater immunity. The administrator shall make
21. the certification required by this subdivision on an annual
22. basis. Upon certification, the immunity conferred by this
23. section shall apply to all response efforts undertaken
24. during the calendar year to which the certification
25. applies. In the absence of the certification required by
26. this subdivision, the immunity conferred by this section
27. shall not attach to any response efforts undertaken by any
28. person in marine waters.

29. (2) In addition to the authority to negotiate contracts
30. described in (1) above, the administrator shall also be
31. authorized to negotiate and enter into indemnification
32. agreements with qualified and financially responsible
33. persons to respond to oil spills that may occur in marine
34. waters for which the responsible party (A) cannot be
35. identified or (B) is unable or unwilling to respond,
36. contain, and cleanup the oil spill in an adequate and
37. timely manner.

38. (3) The administrator may indemnify response
39. contractors for (A) all damages payable by means of
40. settlement or judgment that arise from response efforts

1 to which the immunity conferred by this section would
 2 otherwise apply, and (B) reasonably related legal costs
 3 and expenses incurred by the responder, provided that
 4 indemnification shall only apply to response efforts
 5 undertaken after the expiration of any immunity that
 6 may exist as the result of the contract negotiations
 7 authorized in this subdivision. In negotiating these
 8 contracts, the administrator shall, to the maximum extent
 9 practicable, procure the services of persons who are
 10 willing to respond to oil spills with no, or as little, right to
 11 indemnification as possible. All indemnification shall be
 12 paid by the administrator from the Oil Spill Response
 13 Trust Fund.

14 (k) (1) With regard to a person who is regularly
 15 engaged in the business of responding to oil spills, the
 16 immunity conferred by this section shall not apply to any
 17 response efforts by that person that occur later than 60
 18 days after the first day the person's response efforts
 19 commence.

20 (2) Notwithstanding the limitation contained in
 21 paragraph (1), the administrator may, upon making all
 22 the following findings, extend the period of time, not to
 23 exceed 30 days, during which the immunity conferred by
 24 this section applies to response efforts:

25 (A) Due to inadequate or incomplete containment
 26 and stabilization, there exists a substantial probability
 27 that the size of the spill will significantly expand and (i)
 28 threaten previously uncontaminated marine or land
 29 resources, (ii) threaten already contaminated marine or
 30 land resources with substantial additional contamination,
 31 or (iii) otherwise endanger the public safety or welfare.

32 (B) The remaining work is of such a difficult or
 33 perilous nature that extension of the immunity is clearly
 34 in the public interest.

35 (C) No other qualified and financially responsible
 36 contractor is prepared and willing to complete the
 37 response effort in the absence of the immunity, or a lesser
 38 immunity, as negotiated by contract.

39 (3) The administrator shall provide five days' notice of
 40 his or her proposed decision to either extend, or not

1 extend, the immunity conferred by this section.
 2 Interested parties shall be given an opportunity to
 3 present oral and written evidence at an informal hearing.
 4 In making his or her proposed decision, the administrator
 5 shall specifically seek and consider the advice of the
 6 relevant Coast Guard representative. The administrator's
 7 decision to not extend the immunity shall be announced
 8 at least 10 working days before the expiration of the
 9 immunity to provide persons an opportunity to terminate
 10 their response efforts as contemplated by paragraph (4).

11 (4) No person or their agents, subcontractors, or
 12 employees shall incur any liability under this chapter or
 13 any other provision of law solely as a result of that
 14 person's decision to terminate their response efforts
 15 because of the expiration of the immunity conferred by
 16 this section. A person's decision to terminate response
 17 efforts because of the expiration of the immunity
 18 conferred by this section shall not in any manner impair,
 19 curtail, limit, or otherwise affect the immunity conferred
 20 on the person with regard to the person's response efforts
 21 undertaken during the period of time the immunity
 22 applied to such response efforts.

23 (5) The immunity granted under this section shall
 24 attach, without the limitation contained in this
 25 subdivision, to the response efforts of persons who are not
 26 regularly engaged in the business of responding to oil
 27 spills. Persons who are not regularly engaged in the
 28 business of responding to oil spills includes, but is not
 29 limited to, (A) persons who are primarily dedicated to
 30 the preservation and rehabilitation of wildlife and (B)
 31 persons who derive their livelihood primarily from
 32 fishing.

33 (1) As used in this section, "response efforts" means
 34 rendering care, assistance, or advice in accordance with
 35 the National Contingency Plan, the state oil spill
 36 contingency plan, or at the direction of the administrator,
 37 onsite coordinator, or the Coast Guard in response to a
 38 spill or threatened spill of oil.

IN THE LEGISLATURE
of the
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT
SECOND SUBSTITUTE HOUSE BILL NO. 2494


Passed the House February 13, 1990 Passed the Senate March 1, 1990
as amended as amended
Yeas 98 Nays 0 Yeas 47 Nays 1

March 6, 1990: The House concurred in the Senate amendments
and passed the bill as amended by the Senate.

Yeas: 96 Nays: 0

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that
the attached is a ^{350th} ~~second~~ SUBSTITUTE HOUSE BILL NO. 2494
as passed by the House of Representatives and the Senate on the 13th day of February, 1990.


ALAN THOMPSON, Chief Clerk

1 ((department-at-its-office-in-Olympia,-or-a-regional-office--thereof,
2 of--such--discharge--or--entry)) coast guard and the division of
3 emergency management. The notice to the division of emergency
4 management within the department of community development shall be
5 made to the division's twenty-four hour state-wide toll-free number
6 established for reporting emergencies.

7 NEW SECTION. Sec. 25. (1) The following persons shall not be
8 liable for necessary expenses or property damage caused by an act or
9 omission of that person during the cleanup of oil spilled into the
10 navigable waters of the state, unless the act or omission was
11 performed in bad faith or with gross negligence:

- 12 (a) The state or any unit of local government;
- 13 (b) A person who volunteers to assist in the cleanup of the
14 spilled oil; and

15 (c) A person meeting the standards of section 4 of this act.

16 (2) This section shall not affect the liability of any person
17 responsible for the spilled oil or responsible for the facility or
18 covered vessel from which the oil was spilled.

19 NEW SECTION. Sec. 26. A new section is added to chapter 88.16
20 RCW to read as follows:

21 An oil tanker under escort of a tug or tugs pursuant to the
22 provisions of RCW 88.16.190 shall not exceed the service speed of the
23 tug or tugs that are escorting the oil tanker.

24 Sec. 27. Section 8, chapter 18, Laws of 1935 as last amended by
25 section 2, chapter 264, Laws of 1987 and RCW 88.16.090 are each
26 amended to read as follows:

27 (1) A person may pilot any vessel subject to the provisions of
28 this chapter on waters covered by this chapter only if appointed and
29 licensed to pilot such vessels on said waters under and pursuant to
30 the provisions of this chapter.

31 (2) A person is eligible to be appointed a pilot if the person is
32 a citizen of the United States, over the age of twenty-five years and
33 under the age of seventy years, a resident of the state of Washington
34 at the time of appointment and only if the pilot applicant holds as a
35 minimum, a United States government license as a master of freight

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL STATUTES.

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

1 SECTION 1. Section 342B-7, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) If the director determines that [the] any person has
4 violated an accepted schedule[,] or an order issued under this
5 section, [any rule adopted pursuant to this chapter, any condition
6 of a permit or variance issued pursuant to this chapter, or has
7 continued to violate this chapter,] the director shall impose
8 penalties by sending a notice in writing, either by certified mail
9 or by personal service, to that person, describing such
10 nonadherence or violation with reasonable particularity."

11 SECTION 2. Section 342D-1, Hawaii Revised Statutes, is
12 amended by deleting the definition "individual wastewater system".

13 ["Individual wastewater system" means a facility which
14 disposes of treated or untreated domestic wastewater generated
15 from dwelling units or other sources generating domestic
16 wastewater of similar volume and strength such as: (1)
17 developments of a density not greater than one dwelling unit per
18 5,000 square feet of ultimate development; (2) developments with
19 buildings other than dwellings but involving the generation of

1 pollutant or contaminant concerned, taking into
2 consideration the characteristics of such hazardous
3 substance[,] or pollutant or contaminant, in light of
4 all relevant facts and circumstances; and precautions
5 were taken against foreseeable acts or omissions of any
6 such third party and the consequences that could
7 foreseeably result from such acts or omissions; or
8 (4) Any combination of the foregoing paragraphs.

9 [(c)] (d) No person shall be liable under this chapter or
10 otherwise under the laws of the State or any of the counties,
11 including the common law to any government or private parties for
12 costs, damages, or penalties as a result of actions taken or
13 omitted in the course of rendering care, assistance, or advice in
14 accordance with this chapter or at the direction of an on-scene
15 coordinator, with respect to an incident creating a danger to
16 public health or welfare or the environment as a result of any
17 release of a hazardous substance or pollutant or contaminant or
18 the threat thereof. This subsection shall not preclude liability
19 for costs, damages, or penalties as the result of gross
20 negligence or intentional misconduct on the part of such person.

21 (e) No county or local government shall be liable under
22 this chapter for costs or damages as a result of actions taken in
23 response to an emergency created by the release or threatened

ENROLLED

CS for CS for SB's 1068 and 22

First Engrossed (ntc)

CS for CS for SB's 1068 and 22

First Engrossed (ntc)

CH 90-54 Laws of Florida

Fl. - Spill Response

1 A bill to be entitled
 2 An act relating to pollution; amending s.
 3 106.9939, F.S., relating to taxes imposed for
 4 coastal protection; providing for certain
 5 offshore oil drilling activity; providing for
 6 catastrophic discharges; creating s. 293.039,
 7 F.S.; requiring commercial vessels to anchor in
 8 designated anchorage areas; amending s.
 9 310.071, F.S.; providing for evaluation of
 10 certificated deputy pilots; amending s.
 11 310.101, F.S.; providing additional grounds for
 12 disciplinary actions by the Board of Pilot
 13 Commissioners; providing certain accountability
 14 in directing foreign vessels; amending s.
 15 310.111, F.S.; providing for report of certain
 16 marine incidents; amending s. 310.141, F.S.;
 17 providing that certain vessels are subject to
 18 pilotage, and reenacting s. 310.161, F.S.,
 19 relating to penalties for piloting without a
 20 license, to incorporate said amendment in a
 21 reference thereto; creating ss. 313.21, 313.22,
 22 313.23, and 313.24, F.S.; authorizing ports to
 23 regulate certain vessel movements and adopt
 24 certain guidelines for bottom clearance, vessel
 25 movements, and traffic communications; amending
 26 s. 376.031, F.S.; providing definitions;
 27 amending s. 376.051, F.S.; providing for
 28 issuance of spill prevention and response
 29 certificates; amending s. 376.06, F.S.;
 30 providing a penalty for operation of a terminal
 31 facility without a required registration

1068,
22

CODING: Words stricken are deletions; words underlined are additions.

1 certificate; increasing the maximum application
 2 fee; amending s. 376.069, F.S.; prohibiting
 3 operation of a terminal facility without a
 4 spill prevention and response certificate;
 5 providing requirements for application and
 6 operation; providing a penalty; amending s.
 7 376.07, F.S.; providing for rules of the
 8 Department of Natural Resources; providing for
 9 spill prevention, abatement, and cleanup and
 10 for wildlife rescue and rehabilitation;
 11 requiring adequate booming in the transfer of
 12 pollutants; providing penalties; prohibiting
 13 use of certain lobster traps after a specified
 14 date; creating s. 376.071, F.S.; requiring
 15 certain vessels to maintain spill prevention
 16 and control contingency plans; providing
 17 requirements; providing penalties; amending s.
 18 376.09, F.S.; providing certain immunity from
 19 liability for described persons; amending s.
 20 376.11, F.S.; providing additional sources and
 21 uses for moneys in the Florida Coastal
 22 Protection Trust Fund; amending s. 376.12,
 23 F.S.; increasing certain maximum liabilities
 24 for pollutant cleanup costs and damages;
 25 specifying conditions for limits on liability;
 26 providing financial security requirements;
 27 providing penalties; providing liability of
 28 cargo owner; specifying conditions for use of
 29 certain defenses; providing an exemption from
 30 certain notification requirements; creating s.
 31 376.121, F.S.; providing liability for damages

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CODING: Words stricken are deletions; words underlined are additions.

1 ability of a felony of the second degree, punishable as
 2 provided in s. 775.082, s. 775.083, or s. 775.084, as required
 3 in s. 337.012 or 339.04.

4 (h) Requirements that any registrant causing or
 5 permitting the discharge of a pollutant in violation of the
 6 provisions of ss. 376.011-376.21, and at other reasonable
 7 times, be subject to a complete and thorough inspection. If
 8 the department determines there are unsatisfactory preventive
 9 measures or containment and cleanup capabilities, it shall, a
 10 reasonable time after notice and hearing in compliance with
 11 chapter 120, suspend the registration until such time as there
 12 is compliance with the department requirements.

13 (i) Such other rules and regulations as the exigencies
 14 of any condition may require or as may reasonably be necessary
 15 to carry out the intent of ss. 376.011-376.21.

16 (j) After July 31, 1990, no lobster trap or traps to
 17 be deposited into waters of the state shall be impregnated
 18 with a petroleum product that may be released from such trap
 19 or traps. After July 31, 1995, no person shall deposit into
 20 the waters of the state any lobster trap or traps that have
 21 been impregnated with a petroleum product that may be released
 22 from such trap or traps into the waters of the state.

23 Section 15. Section 376.071, Florida Statutes, is
 24 created to read:

25 376.071 Spill contingency plan.--After December 31,
 26 1990, any vessel operating in state waters with a storage
 27 capacity to carry 10,000 gallons or more of pollutants as fuel
 28 and cargo shall maintain an adequate written ship-specific
 29 spill prevention and control contingency plan. Any such
 30 vessel shall have on-board a "spill officer," designated by
 31 the contingency plan, who is responsible for training crew

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NOTE: Words stricken are deletions; words underlined are additions.

1 members to carry out spill response efforts required in the
 2 contingency plan and coordinating all on-board response
 3 efforts in case of a spill. An adequate plan shall include
 4 provisions for on-board response, including notification,
 5 verification, pollutant incident assessment, vessel
 6 stabilization, discharge mitigation, and on-board discharge
 7 containment, in accordance with this chapter, department
 8 rules, and the Florida Coastal Pollutant Spill Contingency
 9 Plan. A plan in compliance with the federal requirement for a
 10 ship-specific spill contingency plan shall satisfy the
 11 requirements for an adequate ship-specific spill contingency
 12 plan required by this section. On or after January 1, 1991,
 13 the master of a vessel with a storage capacity to carry 10,000
 14 gallons or more of pollutants as fuel and cargo, which vessel
 15 is operating in state waters without an adequate contingency
 16 plan, commits a noncriminal infraction. The master shall be
 17 cited by the department and shall appear before the county
 18 court for the county in which the violation occurred or the
 19 county court closest to the location at which the violation
 20 occurred. The civil penalty for such an infraction shall be
 21 up to \$5,000. An adequate contingency plan must be submitted
 22 to the department prior to the vessel reentering a Florida
 23 port. Failure to submit the required plan shall result in a
 24 civil penalty of \$10,000.

25 Section 15. Present subsections (5) and (6) of
 26 section 376.09, Florida Statutes, are renumbered as
 27 subsections (6) and (7), respectively, and a new subsection
 28 (5) is added to said section to read:

29 376.09 Removal of prohibited discharges.--

30 (5) Notwithstanding the provisions in subsection (4),
 31 any person who is authorized by the department or the federal

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CODING: Words stricken are deletions; words underlined are additions.

1 government or the person alleged to be responsible for the
 2 discharge, or by a designee thereof, to render assistance in,
 3 containing or removing pollutants shall not be liable for
 4 costs, expenses, and damages, unless such costs, expenses, and
 5 damages are a proximate result of acts or omissions caused by
 6 gross negligence or willful misconduct of such authorized
 7 person.

8 Section 17. Subsections (3) and (6) and paragraph (c)
 9 of subsection (6) of section 376.11, Florida Statutes, are
 10 amended to read:

11 376.11 Florida Coastal Protection Trust Fund.--

12 (2) The Florida Coastal Protection Trust Fund is
 13 established, to be used by the department as a nonlapsing
 14 revolving fund for carrying out the purposes of ss. 376.011-
 15 376.21. To this fund shall be credited all registration fees,
 16 penalties, judgments, damages recovered pursuant to s.

17 376.121, other fees and charges related to ss. 376.011-376.21,
 18 and the excise tax revenues levied, collected, and credited
 19 pursuant to ss. 206.9935(1) and 206.9945(1)(a). Charges
 20 against the fund shall be in accordance with this section.

21 (4) Moneys in the Florida Coastal Protection Trust
 22 Fund shall be disbursed for the following purposes and no
 23 others:

24 (c) All costs and expenses of the cleanup,
 25 restoration, and rehabilitation of waterfowl, wildlife, and
 26 all other natural resources damaged by the discharge of
 27 pollutants, including the costs of assessing and recovering
 28 damages to natural resources, whether performed or authorized
 29 by the department or any other state or local agency.

30 (6) The department shall recover to the use of the
 31 fund from the person or persons causing the discharge or from

1 the Federal Government, jointly and severally, all sums owed
 2 or expended from the fund, pursuant to s. 376.12(6)(f), except
 3 that recoveries resulting from damage due to a discharge of a
 4 pollutant or other similar disaster shall be apportioned
 5 between the Florida Coastal Protection Trust Fund and the
 6 General Revenue Fund so as to repay the full costs to the
 7 General Revenue Fund of any sums disbursed therefrom as a
 8 result of such disaster. Requests for reimbursement to the
 9 fund for the above costs, if not paid within 30 days of
 10 demand, shall be turned over to the Department of Legal
 11 Affairs for collection.

12 Section 18. Effective October 1, 1990, section 376.12,
 13 Florida Statutes, is amended to read:

14 376.12 Liabilities and defenses of terminal facilities
 15 and vessels.--

16 (1) Because it is the intent of ss. 376.011-376.21 to
 17 provide the means for rapid and effective cleanup and to
 18 minimize cleanup costs and damages, any vessel, or its agents
 19 or servants, who permits or suffers a prohibited discharge or
 20 other polluting condition to take place within state
 21 boundaries shall be liable to the fund for all costs of
 22 cleanup or abatement, up to an amount not to exceed \$50 914
 23 million or \$625 9100 per gross registered ton of such vessel,
 24 whichever is the lesser. When the department can show that
 25 such discharge was the result of willful or gross negligence
 26 or willful misconduct within the privity or knowledge of the
 27 owner or operator or agent thereof, such owner or operator
 28 shall be liable to the fund for the full amount of such sums
 29 expended. When a discharge of pollutants occurs from a
 30 terminal facility, recovery of costs of abatement and cleanup
 31 shall be limited to an amount not to exceed \$25 98 million,

transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every thirty-six months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § 9.6-14:11, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;

2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or

3. There has been a significant change in the best available technology since the plan was approved.

D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval has been violated. (1990, c. 917.)

Editor's note. — Acts 1990, c. 919, cl. 2 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective on July 1, 1992. Clause 3 of this act also stated that the Board should regard certain considerations in adopting such regulations.

§ 62.1-44.34:16. Financial responsibility. — A. (For effective date see Editor's note) The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Underground Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator whose financial responsibility is accepted by the Board under this

subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

D. Acceptance of proof of financial responsibility shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

E. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

F. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or the operator of the tank vessel had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board. (1990, c. 917.)

Editor's note. — Acts 1990, c. 917, c. 4 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective 90 days after the effective date of such regulations. Clause 4 also provides that in promulgating such regulations, the Board shall provide that, if evidence of financial responsibility provided to the federal government or any other state meets the requirements of subsection C of this section, comments shall be accepted by the Board in full or partial satisfaction requirements of subsection A of this section as appropriate.

§ 62.1-44.34:17. Exemptions. — Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil. (1990, c. 917.)

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge. — A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat

of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be necessary to contain and clean up such discharge or threat of such discharge, including any actions directed by any on-scene coordinator acting pursuant to the Federal Water Pollution Control Act. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons. The costs of such containment and cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund available for this purpose.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge;
2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;
3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and
4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages under this section that are caused by the acts or omissions of such person in rendering such assistance; provided, however, that such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; provided that this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection H of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:10 or \$10,000,000, whichever is greater; provided that there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection D of this section. (1973, c. 417; 1976, c. 61; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962.)

Editor's note. — Acta 1990, c. 962 purported to amend §§ 62.1-44.34:2 and 62.1-44.34:3, which were repealed by Acta 1990, c. 917. The effect of these amendments was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, these amendments have been effectuated in this corresponding new Code section.

§ 62.1-44.34:19. Reporting of discharge. — Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters shall, immediately upon learning of the discharge, notify the Board and appropriate federal authorities of such discharge. (1978, c. 816; 1990, cc. 917, 962.)

Editor's note. — Acta 1990, c. 962 purported to amend § 62.1-44.34:4, which was repealed by Acta 1990, c. 917. The effect of this amendment was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, this amendment has been effectuated in this corresponding new Code section.

A BILL, RC, BY EXTENSION
AND AMT.

1
2 relating to the prevention of, and the damage, cleanup, costs, and
3 liability for, oil spills in coastal waters of the state; providing
4 for adequate response to spills of oil and other pollutants in
5 coastal waters; levying a coastal protection fee; creating the
6 coastal protection fund; enacting licensing requirements for pilots
7 in state waters; making an appropriation; and providing civil and
8 criminal penalties.
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
11 SECTION 1. Subtitle C, Title 11, Natural Resources Code, is
12 amended by adding Chapter 10 in read as follows:
13 CHAPTER 10. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991
14 SUBCHAPTER A. GENERAL PROVISIONS
15 SEC. 10.001. SHORT TITLE. This chapter may be cited as the
16 OIL Spill Prevention and Response Act of 1991.
17 SEC. 10.002. POLICY. (a) The legislature finds, and
18 declares that the preservation of the Texas coast is a matter of
19 the highest urgency and priority. It is the policy of this state
20 to keep its coastal waters, rivers, bays, estuaries, marshes,
21 tidal flats, beaches, and public lands as pristine as possible,
22 making into account multiple use accommodations necessary to
23 provide the broadest possible protection of public and private
24 interests. Spills, discharges, and escapes of crude oil,
25 petroleum, and other such substances resulting from their handling,

1 storage, and transportation, particularly by vessel, threaten the
2 coastal environment of the state, public and private property on
3 the coast, and the well-being of those deriving their livelihood
4 from marine-related activity in coastal waters. The legislature
5 by the handling, storage, and transportation of these substances in
6 the coastal waters are susceptible to the paramount interests of the
7 state. These state interests outweigh the economic burden imposed
8 under this chapter.
9 (b) The legislature intends by this chapter to exercise the
10 police power of the state to protect its coastal waters and
11 adjacent shorelines by conferring upon the Commissioner of the
12 General Land Office the power to:
13 (1) prevent spills and discharges of oil by requiring
14 and monitoring preventive measures and response planning;
15 (2) provide for prompt response to abate and contain
16 spills and discharges of oil and ensure the removal and cleanup of
17 pollution from each spill; and discharges;
18 (3) provide for development of a state coastal
19 discharge contingency plan through planning and coordination with
20 the Texas Water Commission to protect coastal waters from (A) types
21 of spills and discharges; and
22 (4) administer a fund to provide for funding their
23 activities and to guarantee the prompt payment of certain
24 reasonable claims resulting from spills and discharges of oil.
25 (5) The legislature declares that it is the intent of this

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1 coastal waters or at any other place where, unless controlled or
 2 removed, they may drain, seep, run, or otherwise enter coastal
 3 waters.

4 (8) "Discharge cleanup organization" means any group
 5 or cooperative, incorporated or unincorporated, of owners or
 6 operators of vessels or terminal facilities and any other persons
 7 who may elect to join, organized for the purpose of abating,
 8 containing, removing, or cleaning up pollution from discharge of
 9 oil or rescuing and rehabilitating wildlife or other natural
 10 resources through cooperative efforts and shared equipment,
 11 personnel, or facilities. Any third-party cleanup contractor,
 12 industry cooperative, volunteer organization, or local government
 13 shall be recognized as a discharge cleanup organization, provided
 14 the commissioner properly certifies the organization.

15 (9) "Federal fund" means the federal Oil Spill
 16 Liability Trust Fund.

17 (10) "Fund" means the coastal protection fund.

18 (11) "Harmful quantity" means that quantity of oil the
 19 discharge of which is determined by the commissioner to be harmful
 20 to the environment or public health or welfare or may reasonably be
 21 anticipated to present an imminent and substantial danger to the
 22 public health or welfare.

23 (12) "Hazardous substance" means any substance, except
 24 oil, designated as hazardous by the Environmental Protection Agency
 25 pursuant to the Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980 (42 U.S.C. Sec. 1601 et seq.) and
 2 designated by the Texas Water Commission.

3 (13) "Marine terminal" means any terminal facility
 4 used for transferring crude oil to or from vessels.

5 (14) "National contingency plan" means the plan
 6 prepared and published, as revised from time to time, under the
 7 Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.)
 8 and the Comprehensive Environmental Response, Compensation, and
 9 Liability Act of 1980 (42 U.S.C. Sec. 1601 et seq.).

10 (15) "Natural resources" means all land, fish,
 11 shellfish, fowl, wildlife, biota, vegetation, air, water, and other
 12 similar resources owned, managed, held in trust, regulated, or
 13 otherwise controlled by the state.

14 (16) "Oil" means oil of any kind or in any form,
 15 including but not limited to crude oil, petroleum, fuel oil,
 16 sludges, oil refuse, and oil mixed with wastes other than dredged
 17 soils, but does not include petroleum, including crude oil or any
 18 fraction thereof, which is specifically listed or designated as a
 19 hazardous substance under Subparagraphs (A) through (F) of Section
 20 101(1) of the Comprehensive Environmental Response, Compensation,
 21 and Liability Act of 1980 (42 U.S.C. Sec. 1601 et seq.) and which
 22 is subject to the provisions of that Act, and which is so
 23 designated by the Texas Water Commission.

24 (17) "Owner" or "operator" means:

25 (A) any person owning, operating, or chartering

1 national contingency plan, in responding to the discharge the
 2 commissioner or the state-designated on-scene coordinator shall to
 3 the greatest extent practicable act in accordance with the national
 4 contingency plan and cooperate with the federal on-scene
 5 coordinator or other federal agency or official exercising
 6 authority under the national contingency plan.

7 (c) The commissioner or the state-designated on-scene
 8 coordinator may act independently to the extent no federal on-scene
 9 coordinator or authorized agency or official of the federal
 10 government has assumed federal authority to oversee, coordinate,
 11 and direct response operations.

12 Sec. 40.10J. ASSISTANCE AND COMPENSATION. (a) Subject to
 13 the commissioner's authority under this chapter, any person or
 14 discharge cleanup organization may assist in abating, containing,
 15 or removing pollution from any unauthorized discharge of oil. This
 16 chapter does not affect any rights not inconsistent with this
 17 chapter that any such person or organization may have against any
 18 third party whose acts or omissions caused or contributed to the
 19 unauthorized discharge.

20 (b) Any person or discharge cleanup organization that
 21 renders assistance in abating, containing, or removing pollution
 22 from any unauthorized discharge of oil may receive compensation
 23 from the fund for response costs, provided the commissioner
 24 approves compensation prior to the assistance being rendered.
 25 Prior approval for compensation may be provided for in the state

1 coastal discharge contingency plan, the commissioner, on petition
 2 and for good cause shown, may waive the prior approval
 3 prerequisite.

4 Sec. 40.10I. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.

5 (a) No action taken by any person or discharge cleanup
 6 organization to abate, contain, or remove pollution from an
 7 unauthorized discharge of oil, whether such action is taken
 8 voluntarily, or pursuant to the national contingency plan or state
 9 coastal discharge contingency plan, or pursuant to a discharge
 10 response plan required under this chapter, or pursuant to the
 11 request of an authorized federal or state official, or pursuant to
 12 the request of the responsible person, shall be construed as an
 13 admission of responsibility or liability for the discharge.

14 (b) No person or discharge cleanup organization that
 15 voluntarily, or pursuant to the national contingency plan or the
 16 state coastal discharge contingency plan, or pursuant to any
 17 discharge response plan required under this chapter, or pursuant
 18 to the request of an authorized federal or state official, or
 19 pursuant to the request of the responsible person, renders
 20 assistance or advice in abating, containing, or removing pollution
 21 from an unauthorized discharge of oil is liable for response costs,
 22 damages, or civil penalties resulting from acts or omissions
 23 committed in rendering such assistance or advice, except for acts
 24 or omissions of gross negligence or willful misconduct.

25 Sec. 40.10K. EQUIPMENT AND PERSONNEL. The commissioner shall

of such discharge. Implement any applicable oil spill contingency plan approved under this article or take such other action as may be necessary to contain and clean up such discharge or threat of such discharge, including any actions directed by any on-scene coordinator acting pursuant to the Federal Water Pollution Control Act. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons. The costs of such containment and cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund available for this purpose.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages under this section that are caused by the acts or omissions of such person in rendering such assistance; provided, however, that such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge.

Commonwealth, political subdivision, or negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section, that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; provided that this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:10 or \$10,000,000, whichever is greater; provided that there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section. (1973, c. 417; 1976, c. 61; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend §§ 62.1-44.34:2 and 62.1-44.34:3, which were repealed by Acts 1990, c. 917. The effect of these amendments was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, these amendments have been effectuated in this corresponding new Code section.

§ 62.1-44.34:10. Reporting of discharge. — Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters shall, immediately upon learning of the discharge, notify the Board and appropriate federal authorities of such discharge. (1976, c. 816; 1990, cc. 917, 962.)

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