

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8215 SENATE COMMUNITY & REGIONAL AFFAIRS

490

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SB26

Revision Date: _____
 Title: An Act relating to the location of the
convening of the legislature in regular session...
 Sponsor: Senator Phillips
 Requestor: Senator Phillips

Department Affected: Legislature
 BRU: All
 Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	644.1	-112.1	-112.1	-112.1	-112.1
CONTRACTUAL	0	2,209.2	1,299.6	1,299.6	1,299.6	1,299.6
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	1,654.4	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	4,507.7	1,187.5	1,187.5	1,187.5	1,187.5

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	4,507.7	1,187.5	1,187.5	1,187.5	1,187.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
TOTAL	0	4,507.7	1,187.5	1,187.5	1,187.5	1,187.5

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

SB 26 proposes the convening of the Nineteenth Alaska Legislature to take place in the Municipality of Anchorage.

This fiscal note was prepared using the assumptions and analysis prepared by the Legislative Research Agency and this office.

(Continued on page 2)

Prepared By: Pamela A. Stoops, Director
 Division: Administrative Services

Phone: 465-3850
 Date: 1/20/93

Approved By: Warren W. Endicott, Executive Director
 Agency: Legislative Affairs Agency

Date: 1/20/93

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

CONTINUATION OF FISCAL NOTE: SB 26

The following assumptions have been made in preparing this fiscal note:

- Office space currently leased at 3111 C Street in Anchorage would no longer be required. A savings of this lease space would offset the cost of leasing a legislative building in Anchorage to accommodate the legislative branch.
- All legislative offices and positions now permanently located in Juneau will move to the Municipality of Anchorage except a portion of the Juneau Legislative Information Office (LIO), Juneau Legislator's offices, a portion of the Ombudsman's Office, and most of the offices of Legislative Budget and Audit. Approximately 100 positions will be transferred.
- State agencies currently leasing privately owned offices in Juneau will relocate to fill vacated state-owned Juneau legislative office space.

This analysis is limited to the direct fiscal impact on the state government of moving the Legislature to the Municipality of Anchorage. It does not attempt to evaluate the various socio-economic impacts on either Juneau or the Municipality of Anchorage; nor does it attempt to evaluate the cost of inconvenience and inefficiency associated with the physical separation of the Legislative and Executive Branches of Government or the value of benefits that might be derived from the move.

The estimates presented in this fiscal note are conservative--that is, they may understate the actual expenses that might be incurred if the move were to take place. For example, our estimate of the lease rate for a legislative building assumes that the structure will provide Class A office space, but the requirements for custom-fitted chambers, meeting rooms, and private legislative offices could cause the lease rate to be substantially higher. Also, we have assumed no new furniture would be purchased, nor computer systems. In fact, the Legislature would probably need some of both. For example, moving to a new building would provide an opportunity for a local area network computer system to be installed (at a cost of approximately \$3 million).

SUMMARY OF ESTIMATED COSTS/SAVINGS OF SB 26:

PERSONAL SERVICES

1. There are no personal services expenditures or savings. There would be a cost shifting of positions transferred from Juneau to the Municipality of Anchorage and also many session jobs would be filled in the Municipality of Anchorage versus Juneau.

TRAVEL

2. Estimated transportation costs for moving Agency full-time legislative personnel to the Municipality of Anchorage (estimate 50 people, one-time cost) - \$756,164.
3. Estimated annual savings from decreased legislator moving expenses - (\$178,907).
4. Estimated annual savings of session per diem because of more legislators residing within the 50 mile limit - (\$109,650).
5. Estimated annual increase in Executive Branch travel to the Municipality of Anchorage is approximately \$176,500.

CONTINUATION OF FISCAL NOTE: SB 26

CONTRACTUAL

6. Estimated freight costs to move legislative offices to the Municipality of Anchorage (one-time cost) - \$148,896.
7. Estimated communication costs in installing a telephone system in a leased building in the Municipality of Anchorage (one-time cost) - \$465,300.
8. Estimated annual lease cost of building in the Municipality of Anchorage - \$3,780,000.
9. Estimated annual savings from consolidation of Juneau office space - (\$2,115,359).
10. Estimated cost of moving Juneau state agencies to Juneau state-owned office space (one-time cost) - \$295,455.
11. Estimated annual savings of discontinued lease space in Anchorage for legislators, staff and LIO (3111 C Street). They would be consolidated under #8 - (\$365,072).

CAPITAL OUTLAY

12. Estimated cost of renovating Capitol offices (one-time cost) - \$1,654,400.



MAXLINE™ SERIES

VideoTelecom's MaxLine series provides the industry's first open system conferencing product line designed to suit your varied requirements, now and into the future. From the personal convenience and simplicity of a VisionPlus® 113 to the full MediaConferencing™ capability of a Benchmark™ system, you can select the product which best supports your needs. All MaxLine products are standards compatible and connectible in a multiway call. Best of all, the systems are software upgradeable so you can add functionality to meet your changing needs.

VideoTelecom's VisionPlus systems provide the simplest videoconferencing controls in the industry. The Benchmark systems offer the most feature-rich conferencing capability around. And MaxLine brings it all together in a comprehensive product line that works for you—the way you like to work.

MAXLINE SERIES BENEFITS

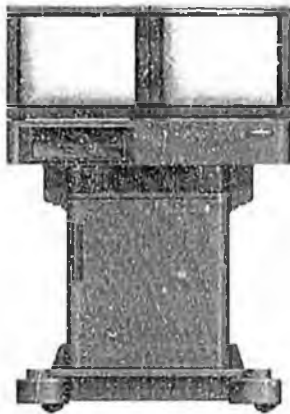
CCITT standards compatible for operation with other vendors who support standards.

Multiway conferencing compatible for meeting with multiple remote sites.

A variety of models with differing monitor sizes to suit any application.

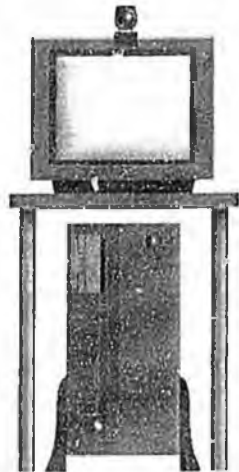
Software upgradeable to evolve with changing standards and user needs.

MediaConferencing from VideoTelecom—it's better than being there.



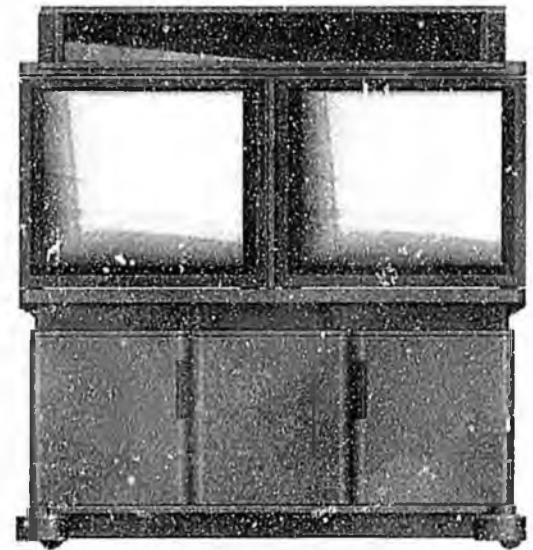
10020 and 10020

58" high 40 3/4" wide 29 1/2" deep
147cm high 103.5cm wide 75cm deep
440 lbs./ 200 Kg



10020 and 10020

62" high 38" wide 29 1/2" deep
157cm high 96.5cm wide 75cm deep
400 lbs./ 180 Kg



Model 2700

Monitor: 15-1/4" wide 24-1/4" high
 17-1/4" deep 39cm wide 62cm high
 44cm deep 31-1/2 lbs./ 14.3 Kg
 (Table not included)

Unit with stand: 11-3/4" wide 18" high 21" deep
 30cm wide 46cm high 53.5cm deep
 45 lbs./ 10.5 Kg


Model 3000

61" high 51 1/4" wide 27 3/4" deep
 155cm high 130.2cm 70.5cm deep
 500 lbs./ 227 Kg



77" high 73" wide 31 1/2" deep
 195.5cm high 185.4cm wide 80cm deep
 1100 lbs./ 500 Kg

Closed: 45 1/4" high 47 1/2" wide 28 3/4" deep
 115cm high 120.6cm wide 73cm deep
 Open: 45 1/4" high 70" wide 28 3/4" deep
 115cm high 177.8cm wide 73cm deep





VIDEO TELECOM

Benchmark Systems

VisionPlus Systems

Video codec	Yes	Yes
TrueTalk™ audio system	Yes	Yes
IBM-AT compatible 386 computer	Yes	Optional
Pan Tilt Zoom main camera	Yes	Yes (except on VP113)
Document camera	Yes	Optional
Pen Pal Graphics®	Yes	Optional
Standards Compatibility	Yes	Yes

Note: All VisionPlus systems are fully upgradeable to computer hosts. For more information, please refer to VisionPlus system manuals.

MEDIA MAX SPECIFICATIONS

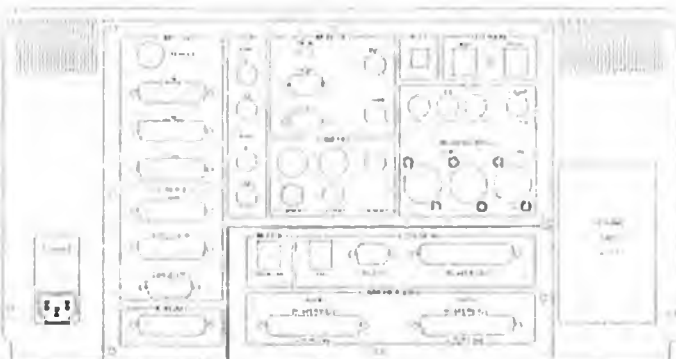
Function	Specification	Connector
VIDEO CONFERENCING		
Transmission rates	56K/64K - 384K bps (multipoint) 56/64K-768K bps (point to point)	
Algorithms and Resolutions (pixels x lines)	CCITT H.261 (Px64) 352x288 QCIF 176x144 QCIF	
Frame rate	Blue Chip (option) 352x288 QuickFrame (option) 352x288 10-15 frames per second QuickFrame (option) is up to 30 frames per second at 384K bps and above	
Monitor outputs		
Main	1 VP-P 75 ohms composite	BNC
Preview monitor opt		
Composite video		BNC
Analog RGB	0.7 VP-P, 75 ohms	DB-9S or
S Video		
Y (Luminance)	1 VP-P 75 ohms	
C (Chrominance)	0.286 VP-P (Burst) 75 ohms	
Preview monitor switch	TTL high = RGB/S-Video	DB-9S
Reverses polarity of TTL signal, available in RGB and VGA connectors	TTL low = composite	
Video input selection	Built-in 4 input video switcher	
Camera inputs		
Cameras 1 and 2	1 VP-P 75 ohms and camera power	BNC or VHS
Camera 3	1 VP-P 75 ohms	BNC
Camera 4 (or VCR)	1 VP-P 75 ohms	BNC
VCR video (play) input	1 VP-P 75 ohm	BNC
VCR video (record) output	1 VP-P 75 ohms	BNC
Auto-sync	Automatically synchronizes to VCR without time-base corrector	
Camera power	12V DC @ 1 amp total	VHS (above)
Video Format	NTSC or PAL	
Picture in picture	Video insert (option)	

AUDIO CONFERENCING

In-band coding rates (default)	64K bps MuLaw (G.711) for CCITT Px64 32K bps ADPCM @ 384/768K bps communications 12K bps @ 112/128K bps or ISDN communications 8K bps @ 56/64K bps communications	
Frequency range	200 Hz - 3.3 KHz +/- 3 dB	
Operation	Full-duplex, adaptive acoustic echo cancelling	
Inputs		
3 microphones (one switchable to 0 dBm)	-70 dBm @ 600 ohms	XLR female
Line level in	-10 dBv @ 10K ohms	RCA
VCR audio (play) input (switched on only when VCR video is selected)	-10 dBv @ 30K ohms	RCA
Outputs		
Line level out	-10 dBv @ 10K ohms	RCA
VCR audio (record) output	-10 dBv @ 30K ohms	RCA
Speaker out	.5 W @ 8 ohms	RCA
Phone Connection	Analog phone line	RJ-11 jack
Audio Adaptor	(USA, Canada)	

DOCUMENT CONFERENCING

Facsimile (FAX)	CCITT Standard Group III FAX Automatic FAX send button detection FAX auto-coded at 64K bps Built-in internal phone ring generator	RJ-11 jack
Pen Pal Graphics [®] option		
Image resolution	512 pixels x 480 lines • 24 bits (TARGA, JPEG format)	
User-selectable text sizes, annotation colors, and line widths		


Function Specification Connector
COMPUTER CONFERENCING COMPUTERWARE™ OPTION:

386 option:		
Built-in Intel 80386SX with 16 Mhz processor with 4 MByte memory for text-based applications		
Printer connection	Parallel port	DB-25S
Com connections		
(Com 1, Com 2)	RS-232 port	DB-25P
Remote diagnostics modem (USA, Canada)	PC Com 4, Hayes compatible 300/1200/2400 Baud	RJ-11 jack
Keyboard	PC-AT compatible keyboard	5-pin DIN
Computer output	VGA VGA (NTSC or PAL scan rate)	HD-15 DB-9S
Disk	1.44 Mbyte 3 1/2" floppy drive	
Hard disk	40 Mbytes	
Available RAM for user PC programs	512K bytes after DOS is loaded	
PC operating environment	DOS/DESQview multitasking	
PC conferencing	Local and remote sites simultaneously share PC screen and keyboard while running a PC-based application	
RS449 User data port	.3 to 128 Kbaud	DB-37S
RS232 User data port	.3 to 38.4 Kbaud	DB-9S
Option card slots	Standard PC AT board size and interface	

486 option:

For graphics applications, including Windows
Specifications are same as ComputerWare - except as noted below:

Built-in Intel 80486 with 33 Mhz processor with 16 MByte memory (optional additional memory)		
Hard disk	120 Mbytes	
Available RAM for user PC programs	512K (under Windows, 640K)	

TIME CONFERENCING-VIDEOMAIL™ OPTION

Data rate	112-128K bps
Message storage used	≤ 1 MByte/minute
Maximum message length	60 seconds

COMMUNICATIONS

Port A	56/768K bps V.35 or 56/768K bps RS-449/422 56/768K bps X.21	V.35 and DB-25P or DB-37S or DB-15P
Port B	56/64K bps V.35 or 56/64K bps RS-449/422 56/64K bps X.21	V.35 and DB-25P or DB-37S or DB-15P
Clock synchronization	Syncs to line speed automatically	
Protocol	CCITT H.221 HDLC-based proprietary	
Dialing modes	RS-366-A V.25bis, bisync and HDLC X.21 DTR Direct connect (local model) SER meter (built-in)	
Transmission Diagnostics		

CCITT STANDARDS

H.320 Compliant

SYSTEM CONTROL

Tablet	System Control	
Tablet power requirements	15W, 110-220 VAC	
Tablet connector	RS-232C tablet serial port	DB-15
Keyboard	PC control	

POWER REQUIREMENTS

Line voltage	90-132 VAC/180-264 VAC, 47-63 Hz (auto sensing power supply)
Power Consumption	36G Watts nominal
Heat dissipation	1130 BTU/hour
Weight	43 lbs / 19.5 kg
Size	17" W x 9" x 21" / 43cm W x 23cm x 52 cm

OPERATING ENVIRONMENT

Temperature	50 F - 90 F, 10 C - 32 C
Humidity	10% - 90% noncondensing

Specifications subject to change without notice

Made in USA 1/93



VideoTelecom

FOR HIGH-IMPACT MEDIACONFERRING™

Meet VideoTelecom's MediaMax. MediaMax accomplishes the impossible. It stretches time by making every meeting more productive. It takes you to two or more places at once—without cloning. And it works for you 24 hours a day, every day.


MediaMax is a MediaConferring™ platform that brings you superior integrated VideoConferring, AudioConferring, DocumentConferring, ComputerConferring, and TimeConferring™. All in a single, easy-to-use unit. For complete, long-distance information exchange, it's the only game in town.

MediaMax is the only conferencing solution with an open architecture and 100% software control. Keeping your VideoTelecom systems current with evolving standards capabilities is simple—VideoTelecom provides updates on floppy diskettes.


Relax. MediaMax telescopes distance so you can meet with your colleagues as if you're all in the same room. With the touch of a button, you're transported across thousands of miles. And your data, files, documents, and colleagues are transported with you. Nothing gets left behind. MediaMax helps you work smarter and faster, not harder. Start with the basic MediaMax platform for high-quality standards — compatible VideoConferring and AudioConferring. As your meeting requirements change, you can add modular options to meet your needs:

Requirement	Option
DocumentConferring	Pen Pai Graphics®
ComputerConferring	ComputerWare™
TimeConferring	VideoMail™

MediaConferring from VideoTelecom - it's better than being there.



100% software-based VideoConferring algorithms



ComputerConferring Option



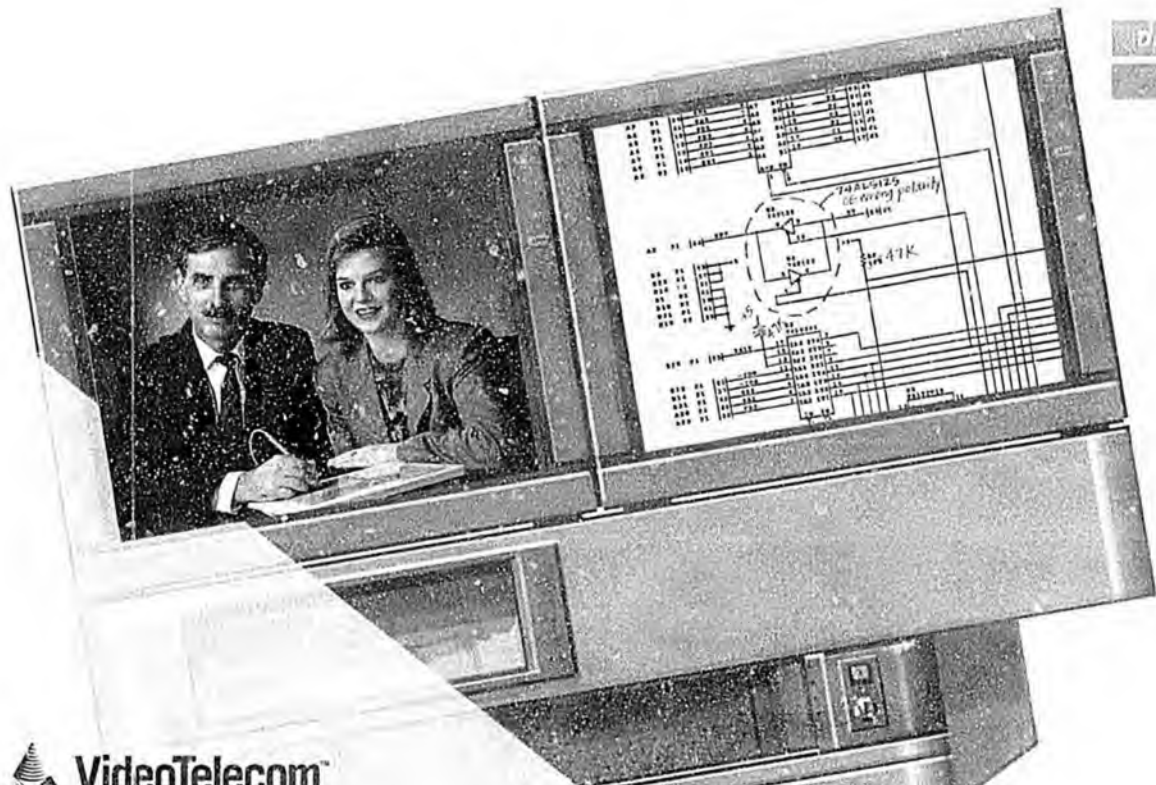
Top quality TrueTalk AudioConferring



Display and edit documents with DocumentConferring Option

DOCUMENT CONFERENCING WITH

PEN PAL GRAPHICS®



VideoTelecom™

PEN PAL GRAPHICS
EXPERIENCE THE POWER OF THE PEN

VideoTelecom's Pen Pal Graphics adds simple yet powerful Document Conferencing capabilities to MaxLine™ products. With the touch of a pen on the electronic tablet, you can:

- ▲ View documents or objects in high resolution at local and remote sites with Pen Pal Graphics image capture and forward capabilities.
- ▲ Mark up high-resolution documents interactively in six different colors using electronic draw and text annotation.
- ▲ Store, retrieve, or print out high-resolution documents with your annotation for later review.
- ▲ Control your MaxLine system with the stroke of a pen—including camera selection and adjustment; audio control; and high-resolution image capture, storage and retrieval.
- ▲ Select the controls that are best for you with MaxLine Tablet Overlays.



Benefits

- ▲ Exchange and edit documents with the immediacy and effectiveness of a face-to-face meeting
- ▲ Save original high-resolution images and your revision for later review
- ▲ Enjoy instant effectiveness with familiar controls—no training required
- ▲ Create and deliver hard-hitting presentations from built-in hard disk or standard floppy diskette

Features

- ▲ 512 pixel x 486 line resolution
- ▲ Simple, familiar controls and interface
- ▲ Hard disk or floppy diskette storage of images, with or without annotation
- ▲ User-selectable freehand annotation, typed text operation, color, line width and type size using on-screen control bar
- ▲ Electronic local and remote pointer
- ▲ JPEG compression image storage for maximum hard disk space efficiency; 20-30 high-resolution images can be stored on a standard 3 1/2" diskette
- ▲ Compatible with all VideoTelecom MaxLine systems

User Requirements

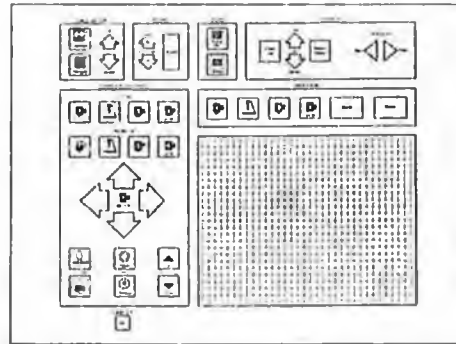
- ▲ VideoTelecom MaxLine system
- ▲ Factory installation

Pen Pal Graphics® Tablet Requirements
Function

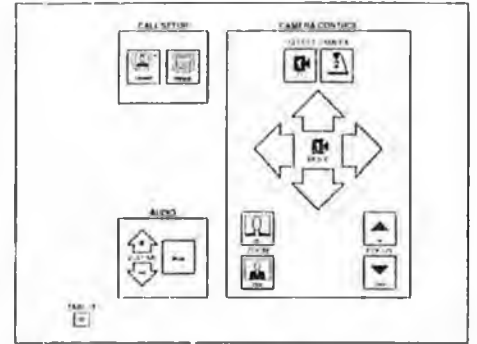
Power
Line Voltage

Specification

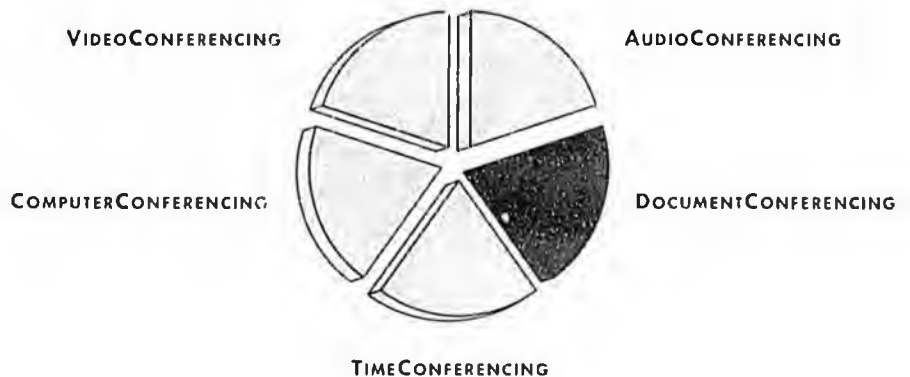
15W
110/220 VAC



MEDIA CONFERRING
For powerful Document Conferencing capability, the Media Conferencing tablet overlay provides feature-rich controls for slides, annotation and camera selection and control.



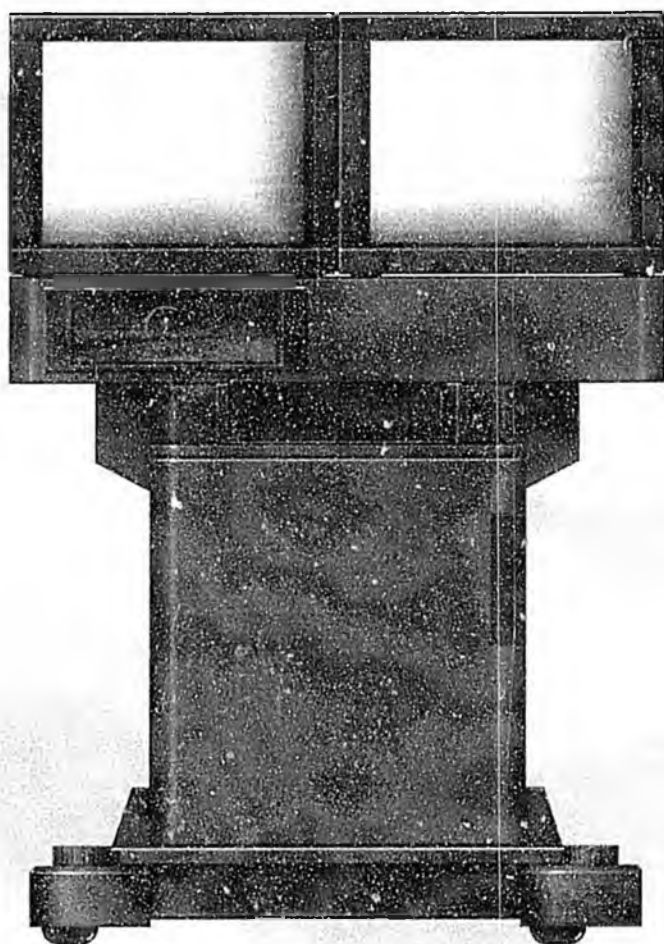
VIDEO CONFERRING
For simple meetings, the Video Conferencing tablet overlay provides instantly familiar controls. With no training, a first-time user can conduct an effective face-to-face meeting across distances.



Note: Some advanced functionality shown here may be provided through software updates. For availability, please contact your VideoTelecom authorized reseller.

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Specifications subject to change without notice

FLY ME.



VideoTelecom MediaConferencing™

Better than videoconferencing. Better than being there.

 **VideoTelecom™**

1 (8 0 0) 2 8 4 - 8 8 7 1



VIDEOCONFERENCING

Face to Face in a MediaConference™

BEING THERE:

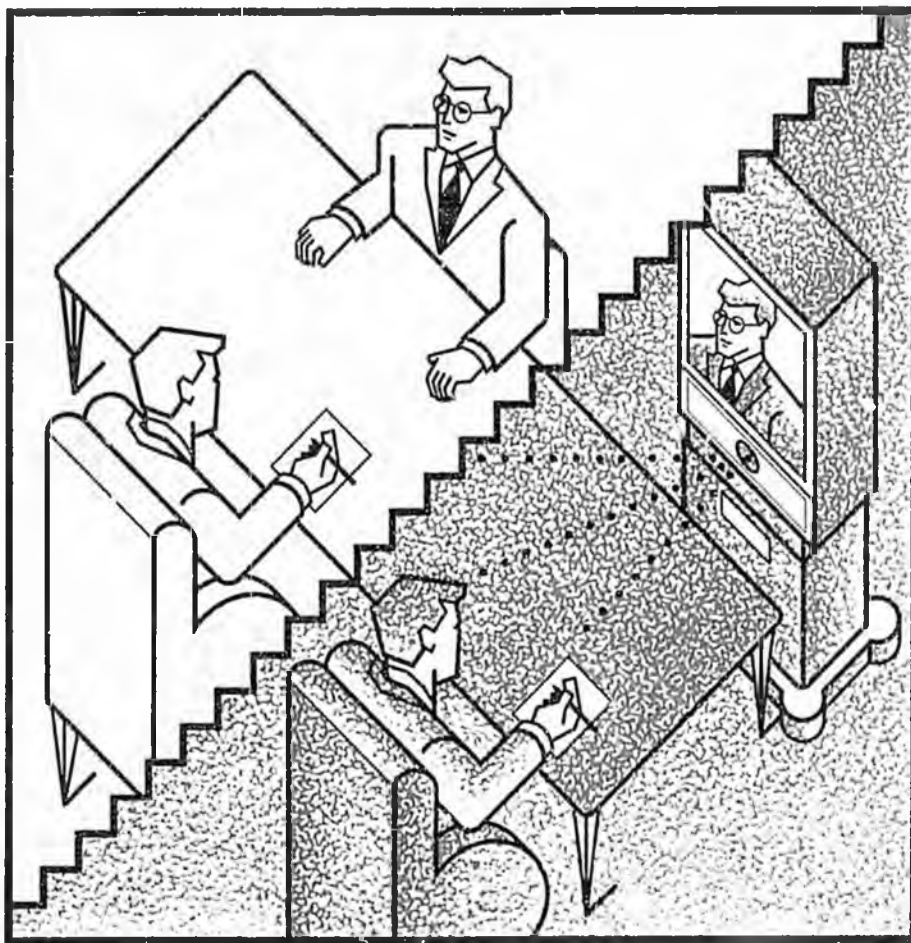
Understand the whole picture.

Make eye-to-eye contact.

Read body language.

Observe your surroundings.

Make your best impression.



BETTER THAN BEING THERE:

Understand the whole picture—through close-up views of people and objects

Make eye-to-eye contact—through any one of four video inputs

Read body language—with superior picture quality

Observe your surroundings—-with local and remote camera control

Make your best impression—and know how you look at all times with "preview"

VideoTelecom's VideoConferencing gives you the full impact of face-to-face meetings, but with the lower cost and convenience of electronic communications.



VideoTelecom

VIDEOTELECOM'S VIDEOCONFERENCING CAPABILITY

Fully interactive video transports you across thousands of miles.

VideoTelecom Blue Chip™ video compression algorithm for superior picture quality and full-function meetings with VideoTelecom MediaMax™-based systems.

VideoTelecom Blue Chip 30™ video compression algorithm: upgrade option for up to 30 frames per second at 384K bps transmission speed.

CCITT Px64 (H.261 and H.221) standards-compatibility for instant communications with any other Px64 videoconferencing systems anywhere.

CS350-compatible video compression algorithm for interaction with your existing VideoTelecom Conference Systems.

NTSC or PAL for international use.

Wide range of transmission speeds offers wide communications flexibility on switched or private networks

Dial-up (switched) ISDN and dual 56/64 kbps network interface for instant access at phone-call prices.

Dedicated network interface at 56-384 kbps for high-quality video on higher capacity networks.

Multiple video inputs with a built-in switcher provide flexible capabilities.

Remote main camera control so you can focus your attention in the remote site's room.

Document stand input so you can share your written or graphic material with faraway participants.

VCR input so you can play a videotape or record an entire meeting.

Fourth camera input for the video source of your choice.

BENCHMARK SERIES enclosures feature a range of monitor sizes and system capability.

Dual monitors give you the big picture.

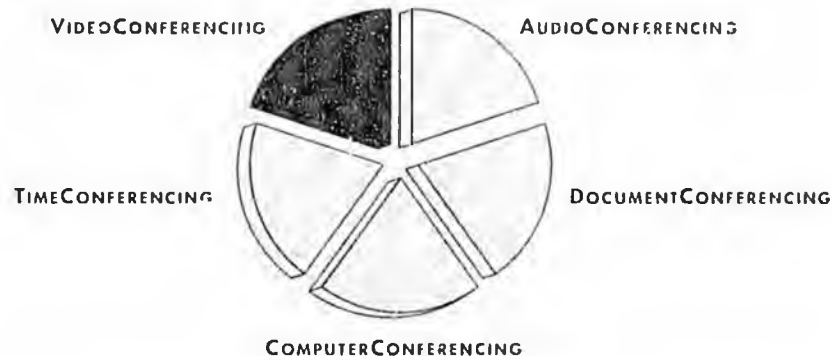
Incoming video is fully visible at all times so you can get the whole picture.

Multipurpose second monitor displays video preview of any local camera, high-resolution graphics, electronic annotation, and computer displays for complete, instant information.

Picture-in-a-picture windowing supports two live video images on main monitor.

Specifications subject to change without notice.

FIVE INTEGRATED ELEMENTS OF MEDIA CONFERENCING





AUDIOCONFERENCING

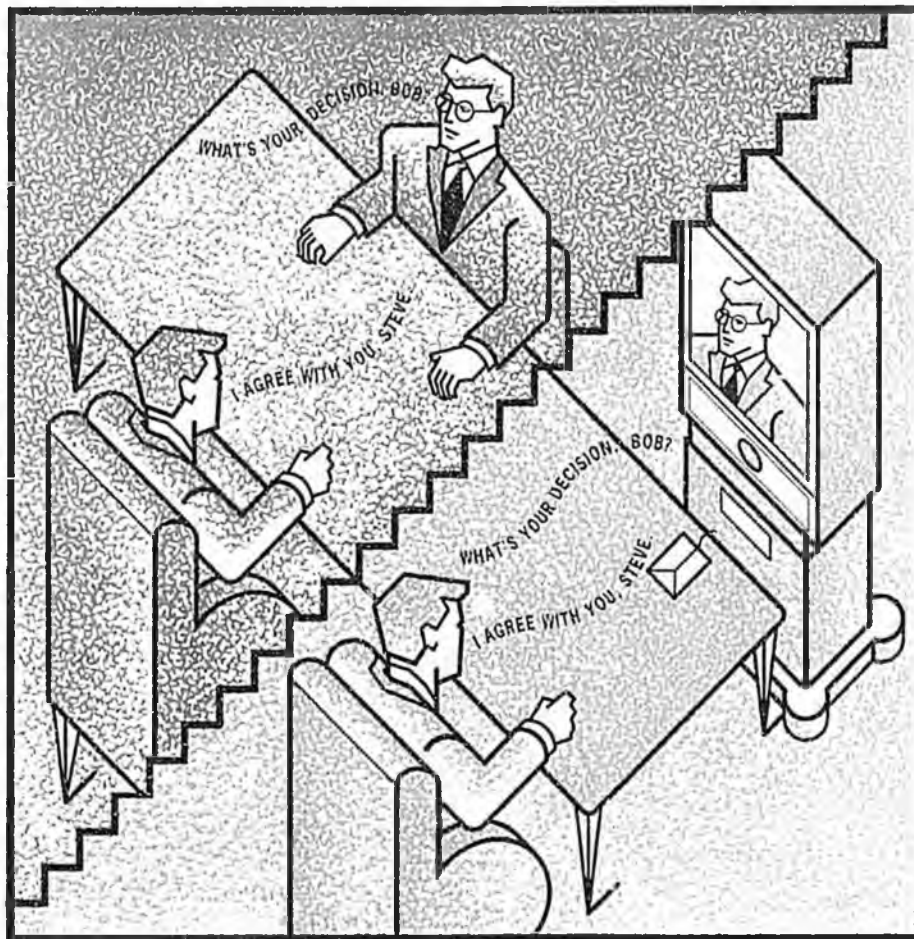
Comfortable Conversation in a MediaConference™

BEING THERE:

Hear and be heard clearly.

Communicate fully.

Talk comfortably in any environment.



BETTER THAN BEING THERE:

Hear and be heard clearly—with VideoTelecom TrueTalk™ full-duplex audio.

Communicate fully—because TrueTalk doesn't clip or cut, even when several people speak at once.

Talk comfortably in any environment—because TrueTalk picks up your voice at normal speaking level.

VideoTelecom's superior Audio Conferencing capability provides natural conversation in any work environment.



**VIDEOTELECOM'S
AUDIOCONFERENCING CAPABILITY**

TrueTalk™ audio system provides crystal-clear sound.

Built-in full-duplex audio capability lets participants talk freely and interrupt at will—with no clipping or cutting.

Automatic acoustic echo cancellation for superior audio in any meeting environment—no special site preparation.

Low-profile tabletop microphones pick up conversation-level voices.

Variable-bandwidth audio provides high-quality audio at all transmission rates.

Audio Bandwidth	Communication Bandwidth
8K bps	56/64K bps
12K bps	112/128K bps
32K or 64K bps	384K bps

Optional 7 kHz echo canceller for special high-performance audio needs.

Large room audio kit provides simple audio solution for classroom or other large room settings.

Speakerphone functionality gives you standalone audio capability.

Conduct audio-only conferences for superior-quality audioconferencing through your existing phone system (USA, Canada).

Audio-only participant add-on to videoconference allows instant input from colleagues anywhere (USA, Canada).

Specifications subject to change without notice.

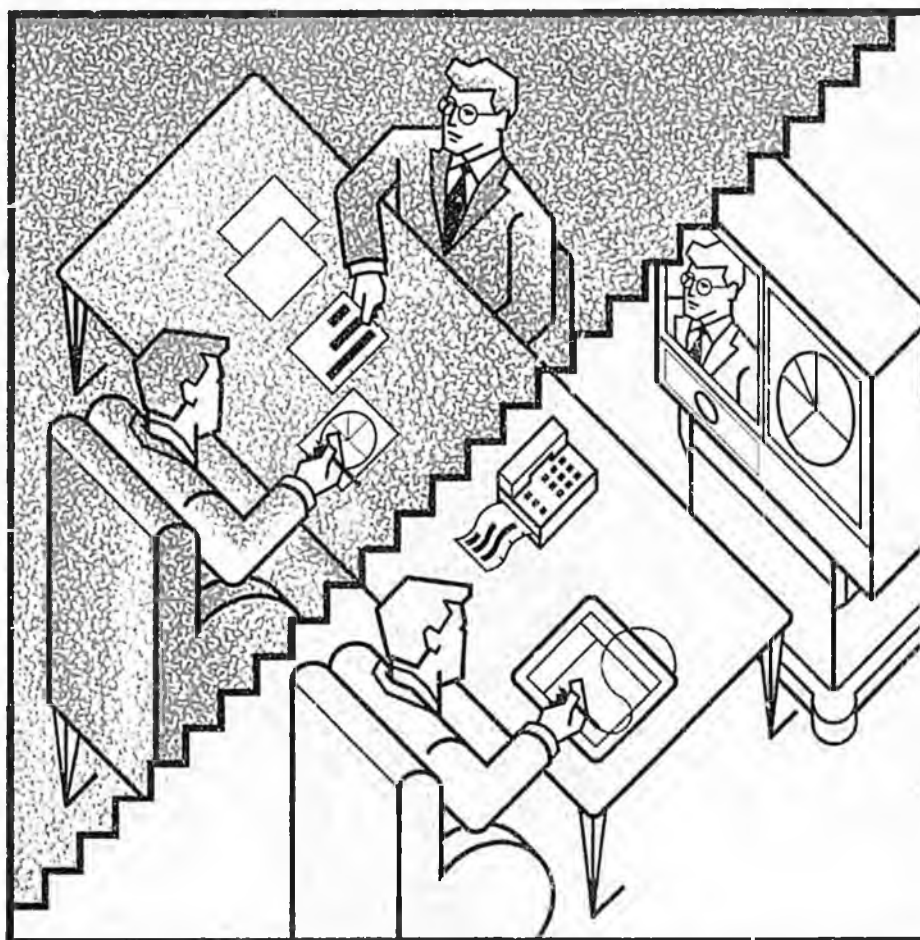
FIVE INTEGRATED ELEMENTS OF MEDIA CONFERENCING



MediaConference™

Writing, Drawing and Printing in a MediaConference™

- Exchange written documents.
- Mark up draft copies and save revisions.
- Walk away with revised versions.
- Project images for large audience viewing.
- Brainstorm at the whiteboard.



Better than Brain Teasers:

Exchange written documents—with in-band FAX, VideoTelecom Pen Pal Graphics™ send slide functions, or document stand viewing.

Mark up draft copies and save revisions—with Pen Pal Graphics interactive annotation.

Walk away with revised versions—using FAX or printer connection capabilities.

Project images for large audience viewing—with VideoTelecom PageView™.

Brainstorm at the whiteboard—interactively across long distances with Pen Pal Graphics electronic whiteboard.

On-line Conferencing is critical to the success of your business. VideoTelecom™



**VIDEOTELECOM'S
DOCUMENTCONFERRING
CAPABILITY**

Hard-copy document handling lets you exchange papers at a distance.

Group III facsimile port for in-band instant exchange of documents without leaving the room; no extra phone line needed.

Pen Pal Graphics with document stand to capture and send printed materials, slides, or objects.

Print materials for a permanent record of meeting decisions.

Group III facsimile port for in-band rapid exchange of documents without leaving the room; no extra phone line needed.

Parallel printer port for instant copies of computer or graphic information exchanged during a conference.

LAN card option for local area network connectivity to print to LAN-resident laser printer.

Electronic storage of images preserves a high-resolution record.

Pen Pal Graphics for storing images as PC files on built-in hard disk or to floppy diskettes.

LAN card option for storing images to a local area network storage server.

Real-time editing functions add a face-to-face productivity dimension.

Pen Pal Graphics for marking up layouts and graphics—or any video image—with real-time interactive annotation.

Electronic whiteboard lets you brainstorm interactively with distant colleagues.

On-line document editing using keyboard or mouse allows instant, complete changes.

Edited images can be printed or stored so everyone leaves the meeting with an up-to-date record.

Display images and annotation for viewing by everyone in the room.

Display Resolution

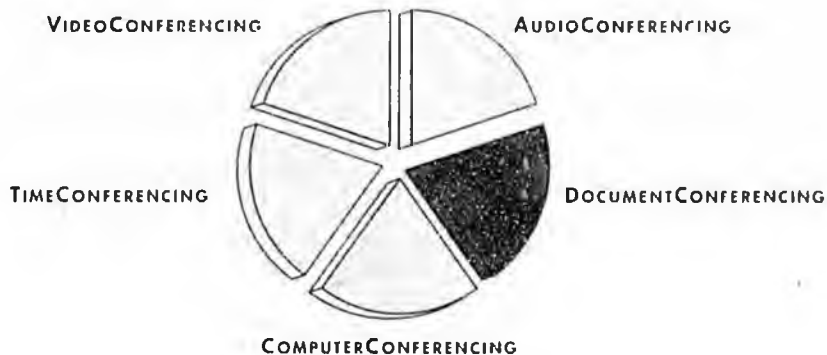
Pen Pal Graphics 512 pixels x 480 lines on monitor

VGA 640 pixels x 480 lines on monitor

PageView 640 pixels x 480 lines on monitor or overhead projector through VGA display panel.

Specifications subject to change without notice.

FIVE INTEGRATED ELEMENTS OF MEDIA CONFERRING



View high-resolution documents, spreadsheets, and computer-generated graphics or presentations.

Interactively manipulate files.

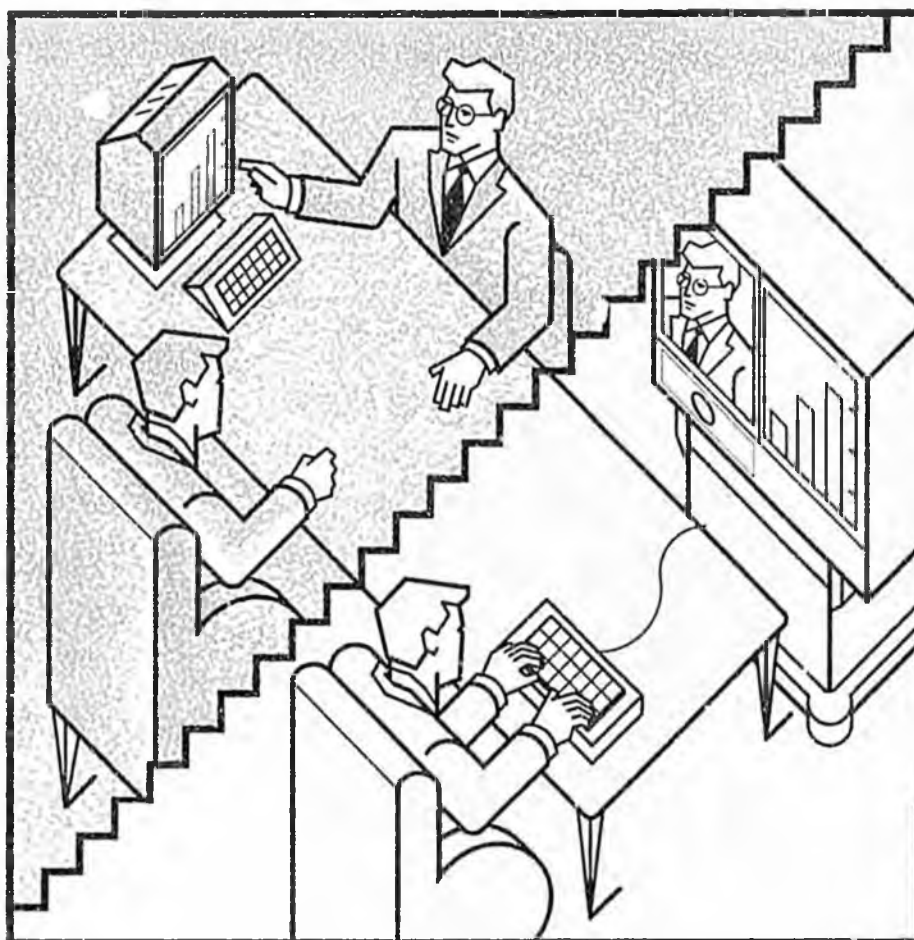
Project images for large audience viewing.

Retrieve files from your local area network.

Share keyboard and screen for real-time updating.

Print and review hard copies.

Walk away with updated data on floppy diskette.



View high-resolution documents, spreadsheets, and computer-generated graphics or presentations—with VGA format monitor output from built-in IBM PC AT-compatible computer.

Interactively manipulate files—with screen sharing across long distances.

Project images for large audience viewing—with PageView™ option.

Retrieve files from your local area network—with user-provided LAN card.

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Print and review hard copies—with direct-connect printer support.

Walk away with updated data on floppy diskette—using built-in 3 1/2" floppy disk drive.



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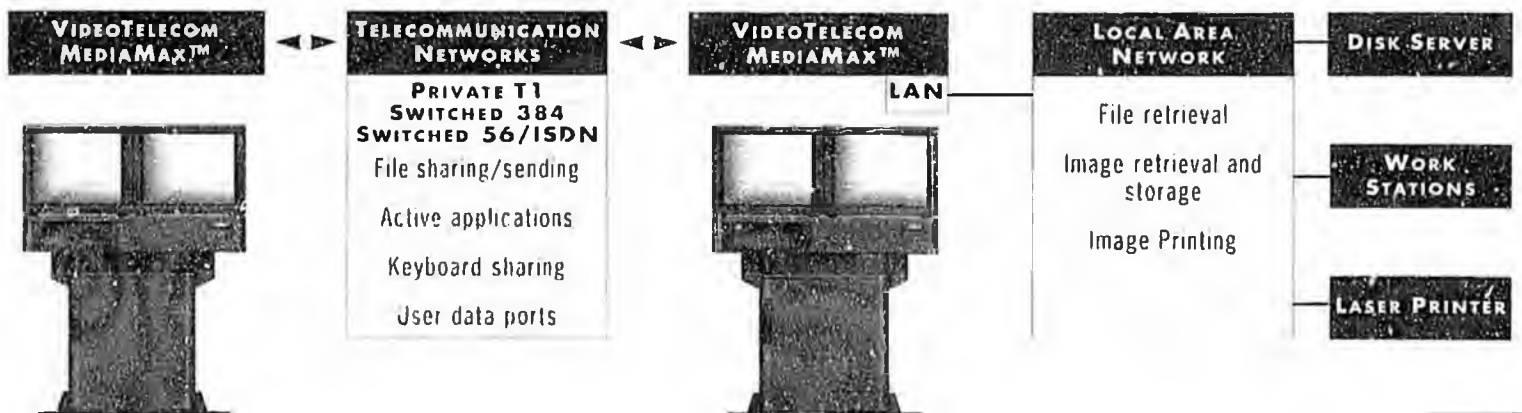
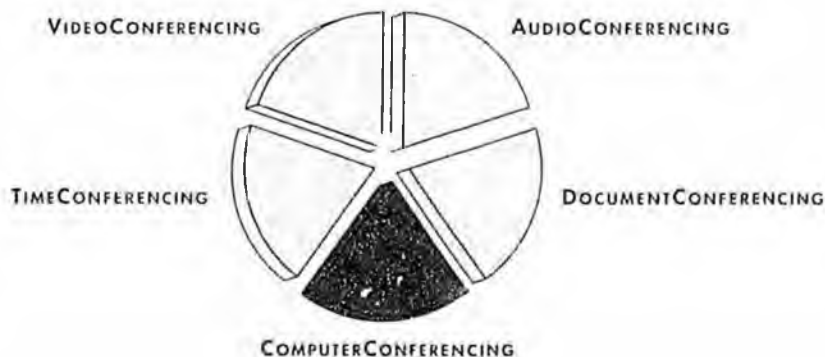
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FIVE INTEGRATED ELEMENTS OF MEDIA CONFERENCING





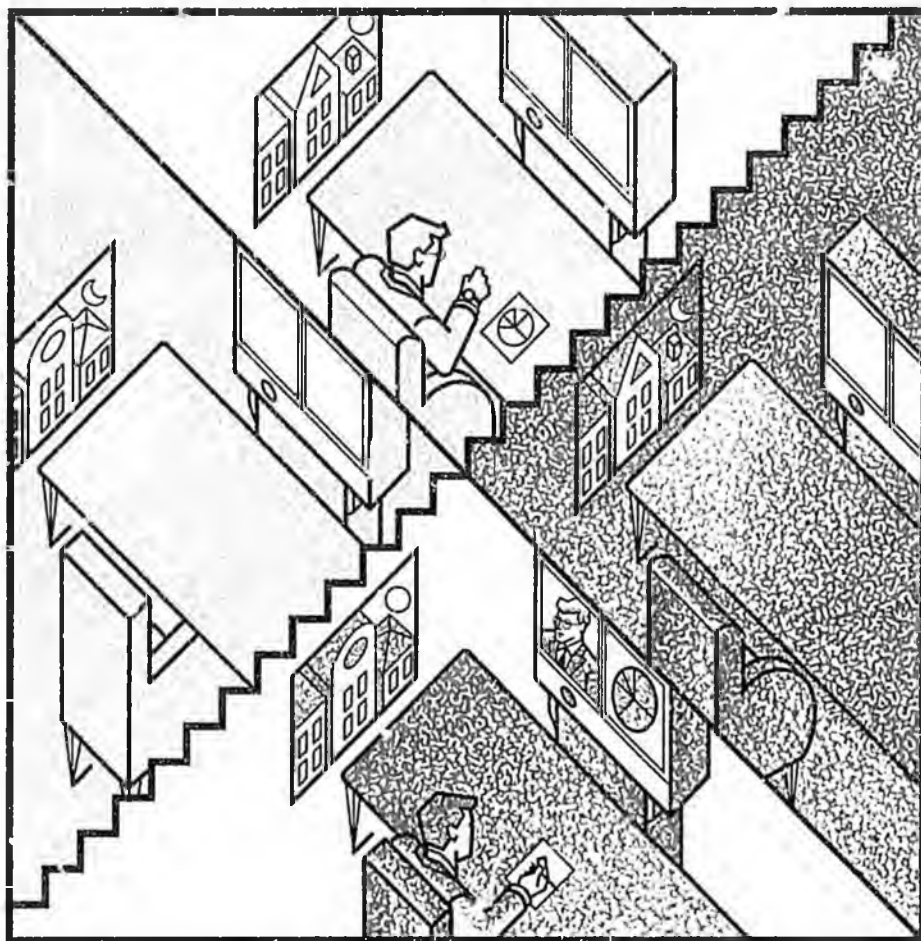
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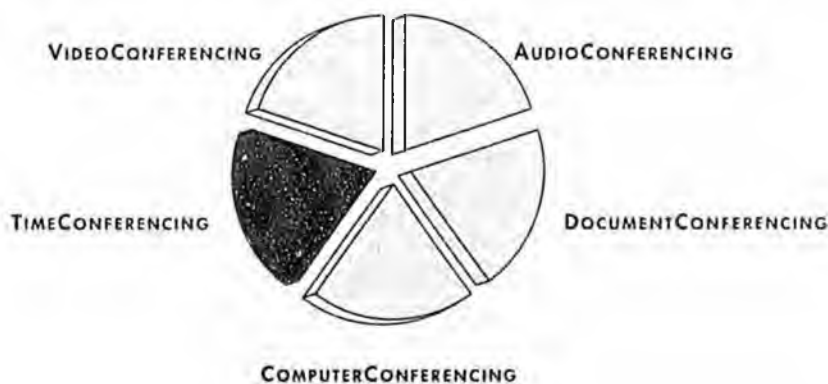
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Specifications subject to change without notice.

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3 3

FIRST COMMITTEE OF REFERRAL

DATE: 1/11/93

FURTHER: STATE AFFAIRS
FINANCE

Date of 5-Day Notice: 2/18/93
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: 2-23-93

CRA Committee considered SENATE BILL NO. 33

"An Act relating to grants for local emergency planning committees and emergency response organizations; and providing for an effective date."

and recommends:

replace with _____ CS SB 33 (CRA)

attaches amendment(s)

same title
 new title
 technical title change
(HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DEC SB 405		Φ	
DMVA SB 405		Φ	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Wick H. H. H.

OTHER RECOMMENDATIONS:

John L. Taylor No Rec.

Paul F. Zell

D. Pass

Chair: Signature and Recommendation



Department of Environmental Conservation

Position Paper

Bill No: Senate Bill 33

Approved:

John A. Sandor

Name: John A. Sandor

Title: Commissioner, Chairman of the SERC

Date: February 9, 1993

Bill Title: LEPC Grants

Senate Bill 33 would in part give DEC the authority to issue grants to local emergency planning committees (LEPCs) to form pursuant to AS 46.13.070. LEPCs are required under both State and federal law to prepare and periodically review emergency plans that prescribe the methods and procedures to be followed in the event of a release of a hazardous substance, including oil. LEPCs play a vital role in developing community awareness, training or community resources, and planning for hazardous substances emergencies in their areas.

Currently, DEC receives funding for the purposes of forming LEPCs however, when an LEPC is not directly connected to a municipal government, the Department has no way to pass the funding on to the LEPC. This legislation would simply allow DEC to grant the money directly to the organization for which its use is intended.

DEC and the State Emergency Response Commission (SERC), which much approve the formation of all LEPCs, both support the legislation.

For further information contact: **Janice Adair**
Assistant Commissioner/Legislative Liaison
465-5050

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 33

Revision Date: _____
 Title: Relating to grants for LEPC's
 Sponsor: Leman
 Requestor: Leman

Department Affected: Environmental Conservation
 BRU: Spill Prevention & Response
 Component: Program Development

COMPONENT SERIAL NO. 118 114

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING:

1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECPT	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTLA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: S None

ANALYSIS: (Attach a separate page if necessary.)
 This bill simply gives DEC and DMVA author ty to issue gran ts to LEPC's fo fromation and training purposes.
 Any funding of such grants would still be subj ected to the normal budgetary process.

Prepared by: Janice Adair
 Division: Commissioner's office

Phone : 465-5010
 Date : 1/26/93

Approved by Commissioner: *Janice Adair*
 Agency: Department of Environmental Conservation

Date: 1/26/93

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

MEMORANDUM

State of Alaska

Department of Environmental Conservation
Division of Spill Prevention and Response

TO: Janice Adair
Assistant Commissioner

DATE: January 26, 1993

THRU: Michael A. Conway
Director *MAC*

FILE NO: (serc\legpro\janice.33)

TELEPHONE NO: 465-5220

FROM: Camille Stephens *CSS*
SERC Program Coordinator

SUBJECT: SB 33 Questions

1. What have the LEPCs requested in terms of funding?

For FY '94, the Department has requested \$1.2 million in funding for forming and operating LEPCs. This figure was based on estimates provided by LEPCs and communities currently in the process of organizing a Committee that received funding during FY '93, and staff estimates of funding that would be required for the remaining areas of the state.

2. What are the funds for?

The purpose of the funds in FY '94 will be the same as in previous years, i.e. to organize LEPCs and carry out the Committees' state and federally mandated responsibilities, including: conducting a hazards analysis; develop a local hazardous substance emergency response plan; implement, test, and revise those plans; and, encourage efforts to reduce risks to the community from hazardous materials.

Currently the Department uses two means of transferring the funds to LEPCs. A Memorandum of Understanding is used if a local government agrees to accept and manage the funds on behalf of the LEPC. If the local government is unwilling to provide this service, or no local government exists to provide the service, the Department will manage the funds on behalf of the LEPC. Four of the 20 funding recipients in FY '93 are on collocation codes (Anchorage, Fairbanks, Copper River, and Prudhoe Bay).

Since LEPCs are State entities according to an Attorney General's opinion, and since a State agency does not typically give a grant to another State agency, grant authority will not provide the universal solution to the problem of transferring funds to LEPCs. The grant authority legislation (SB 33) would, however, give the Department an alternative to an MOU as the means of making the funds available to an LEPC, and would broaden the possible entities that could receive and manage the funds on behalf an LEPC to certain non-governmental entities (e.g., non-profit groups).

3. What criteria are use to allocate the funds to the LEPCs and communities?

Although the guidelines for funding proposals and award criteria have not been set for FY '94, the criteria listed in the March 19, 1992 memo are not likely to change.

4. Do we have guidelines or regulations for how the money is used?

Unchanged from March 19, 1992 memo. To add an additional comment, the funds are from the Response Fund, so use is limited by statutes governing that funding source.

5. Do we have any limits?

Unchanged from March 19, 1992 memo.

6. Do we pay for travel and per diem?

Unchanged from March 19, 1992 memo.

7. How do we check them? What checks and balances exist?

Unchanged from March 19, 1992 memo. Terms contained in the FY '93 funding agreements specify deliverables that must be completed.

8. What federal sanctions, if any, would we face if we did not have a SERC or LEPCs?

Unchanged from March 19, 1992 memo.

9. If we grant the money to an organization, what would we do if they did not form an LEPC?

Unchanged from March 19, 1992 memo.

10. What would the grant agreement look like?

Unchanged from March 19, 1992 memo.

11. Would we have regulations for this?

Unchanged from March 19, 1992 memo. (Note: Ohio, and possibly other states have an LEPC grant program and regulations. These may serve as useful models on which to base Alaska's program.)

12. Why don't the local governments contribute money, or do they contribute something?

As last year, some local governments provide in-kind services, but typically do not receive local funding. The SERC recognizes that participation of local government is critical to the success of the LEPC, and we are actively working to enhance the working relationship between these two entities.

13. Do we have any limit on the number of members on an LEPC?

The SERC has not imposed a limit on the number of members on an LEPC. As pointed out in the March 19, 1992 memo, the number of Committees is more the deciding factor with regard to funding levels for the program. The SERC recognizes that the State cannot provide support for an unlimited number of Committees and is rethinking the current approach to establishing new LEPCs. Fiscal sustainability will be a key factor in determining the program's ultimate future.

14. What if the local fire department was all a community could get to do this?

The statutory requirements for membership composition of an "LEPC" have not changed.

1. Kent, GPRP Program Manager

Funding Mechanism	Possible Recipients	Comments
MOU	Local Government	These are the only means currently used by the Department
Collocation Code	LEPC	
Grant	Non-profit Certain for-profit groups Local Government	Department needs grant authority as proposed in SB 33

8-LS0324E
Lauterbach
2/3/93

CS FOR SENATE BILL NO. 33 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to grants for local emergency planning committees and
2 emergency response organizations; and providing for an effective date."

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

4 * Section 1. AS 26.23.040(e) is amended by adding a new paragraph to read:

5 (12) to the extent that money is available from an appropriation for the
6 purposes of this paragraph,

7 (A) award grants for training local emergency planning
8 committees and the emergency response organizations that execute the plans
9 developed by the committees under AS 46.13.080 and 46.13.090; and

10 (B) in order to comply with 49 U.S.C. Appx. 1815(a)(3), make
11 funds available to local emergency planning committees for developing
12 emergency plans under AS 46.13.

13 * Sec. 2. AS 46.03.020 is amended by adding a new paragraph to read:

14 (14) award grants for the purposes of forming local emergency planning

1 committees under AS 46.13.070.

2 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 33

Revision Date: _____ Dept. Affected: DMVA
 Title: Grants for Local Emergency BRU: Disaster Planning and Control
Planning Committees Component: Hazardous Materials Response
 Sponsor: Sen. Leman
 Requestor: Sen. Leman COMPONENT SERIAL NO. 1211

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact \$ _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services
 Approved by Commissioner: *[Signature]* Hugh L. Cox III
 Agency: Military & Veterans Affairs

Phone: 465-4730
 Date: 10 Feb 93
 Date: 2/14/93

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Tues

FEB 11 1993

SENATOR LOREN LEMAN

Northwest Anchorage

311 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

TO: SENATOR RANDY PHILLIPS, Chairman
Senate Community and Regional Affairs

February 9, 1993

FROM: SENATOR LOREN LEMAN
Sponsor



Please schedule at your earliest convenience, SB 33:

"An Act relating to grants for local emergency planning committees and emergency response organizations; and providing for an effective date".

This bill authorizes the Department of Military and Veterans Affairs, Division of Emergency Services to award grants to local emergency planning committees and to emergency response organizations that execute emergency plans required under AS 46.13.080 and 46.13.090; and authorizes the Department of Environmental Conservation to award grants for the purpose of forming local emergency planning committees under AS 46.13.070.



SENATOR LOREN LEMAN

Northwest Anchorage

311 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

SPONSOR STATEMENT

SB33: An Act relating to grants for local emergency planning committees and emergency response organizations; and providing for an effective date.

PROPOSAL

SB 33 will allow the Department of Environmental Conservation to award grants to form local emergency planning committees and will allow the Department of Military and Veterans Affairs to award grants for disaster planning and response.

Further legal review of the Hazardous Materials Transportation Uniform Safety Act of 1990 revealed that the wording of SB 33 will not allow the state to use HMTUSA monies for planning grants. The Department of Military and Veterans Affairs, Division of Emergency Services would like to be able to transfer these funds to the LEPCs. Therefore, I recommend that the committee consider CSSB 33 which includes this language.

HISTORY

The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. ss 11001-11050 (1991) (Title III of the Superfund Amendments and Reauthorization Act of 1986), commonly known as SARA Title III, was passed largely in response to the chemical accident in 1984 at Bhopal, India.

SARA Title III has two distinct parts: an emergency planning mechanism and community right-to-know provisions. The emergency planning provisions require each state's governor to establish an emergency planning commission. The commission sets up emergency planning districts and appoints an emergency planning committee for each district. The committees are required to prepare emergency plans.

In 1990, the Legislature created the State Emergency Response Commission. The SERC has appointed to date 15 emergency planning committees.



Department of Environmental Conservation

Position Paper

Bill No: Senate Bill 33

Approved: John A. Sandor

Name: John A. Sandor

Title: Commissioner, Chairman of the SERC

Bill Title: LEPC Grants

Date: February 9, 1993

Senate Bill 33 would in part give DEC the authority to issue grants to local emergency planning committees (LEPCs) to form pursuant to AS 46.13.070. LEPCs are required under both State and federal law to prepare and periodically review emergency plans that prescribe the methods and procedures to be followed in the event of a release of a hazardous substance, including oil. LEPCs play a vital role in developing community awareness, training or community resources, and planning for hazardous substances emergencies in their areas.

Currently, DEC receives funding for the purposes of forming LEPCs however, when an LEPC is not directly connected to a municipal government, the Department has no way to pass the funding on to the LEPC. This legislation would simply allow DEC to grant the money directly to the organization for which its use is intended.

DEC and the State Emergency Response Commission (SERC), which much approve the formation of all LEPCs, both support the legislation.

For further information contact: **Janice Adair**
Assistant Commissioner/Legislative Liaison
465-5050

S B

35

SENATE COMMITTEE REPORT
 (FIRST COMMITTEE OF REFERRAL)

DATE: 1/11/93

FURTHER: RESOURCES

Date of 5-Day Notice: 2/18/93
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1/13/94

CRA Committee considered SENATE BILL NO. 35

"An Act providing immunity for the Alaska State Emergency Response Commission, the local emergency planning committees, the Hazardous Substance Spill Technology Review Council, and their members for official actions; and providing for an effective date."

and recommends:

replace with _____ CS _____ ()

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal

Department	Date	Zero	Fiscal
DEC	1/24/93	✓	

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Reed E. Reed Do Pass
Shawn J. Lewman

Reed E. Reed

OTHER RECOMMENDATIONS:

No Rec Admin L. Taylor
All Good - No Rec

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 35

Revision Date: _____
Title: Providing Immunity for members of the
SERC, LEPC's and HSSTRC
Sponsor: Senator Leman
Requestor: Senator Phillips

Department Affected: Environmental
Conservation
BRU: Spill Prevention & Response
Component: Government Preparedness

COMPONENT SERIAL NO. 1 1 9 2 1 3

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECPT	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:	NONE					
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Poe, Director *[Signature]*
Division: Information & Administrative Services

Phone: 465-5010
Date: 1/18/94

Approved by Commissioner: [Signature] *[Signature]*
Agency: Department of Environmental Conservation

Date: 1/18/94

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



Department of Environmental Conservation

Position Paper

Bill No: Senate Bill 35

Approved: _____

Name: *John A. Sandor*

Title: *Commissioner, Chairman of the SERC*

Bill Title: *SERC, LEPC, HSSTRC Immunity* Date: *February 9, 1993*

Senate Bill 35 would provide immunity for the Alaska State Emergency Response Commission (SERC), local emergency planning committees (LEPCs) established by the SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC) and their members from civil damages and costs resulting from any acts or omissions occurring within the course and scope of their official duties under AS 46.13, unless the act or omission constitutes gross negligence or intentional misconduct, or may be the subject of relief under an applicable federal law.

This would add a new section of AS 46.13 which at present does not address the question of the liability of the SERC, LEPCs or HSSTRC nor the personal liability of the members of these entities.

State officials and members of the public serve on the SERC, LEPCs, and the HSSTRC. In performing tasks related to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, and the management of hazardous substances, the individuals appointed to these entities serve to protect the health and welfare of the citizens of this state.

The potential exposure to liability arising from these statutorily authorized activities may dissuade qualified and otherwise interested members of the public from accepting appointments to the SERC, LEPCs and HSSTRC. In order for these entities to function effectively and to encourage the participation of qualified individuals, the Department of Environmental Conservation supports the amendment of AS 46.13 as provided by this legislation to provide immunity for these entities and their members for any act or omission occurring within the course and scope of their statutorily authorized activities, except for those acts or omissions which constitute gross negligence or intentional misconduct or which may be the subject of relief under applicable federal law.

For further information contact: *Janice Adair*
Assistant Commissioner/Legislative Liaison
465-5050

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 35

Revision Date: _____
 Title: Providing Immunity for members of the
SERC, LEPC's and HSSTRC
 Sponsor: Senator Leman
 Requestor: Senator Leman

Department Affected: Environmental
Conservation
 BRU: Spill Prevention & Response
 Component: Program Development

COMPONENT SERIAL NO. 1 | 8 | 1 | 4

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECPT	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTLA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS: NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-5010
 Date: 1/26/93

Approved by Commissioner: *Janice Adair*
 Agency: Department of Environmental Conservation

Date: 1/26/93

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



Alaska State Legislature

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair
Senator Robin Taylor, Vice Chair
Senator Loren Leman
Senator Al Adams
Senator Fred Zharoff

SESSION:
State Capitol
Juneau, Ak 99801-1182
(907) 465-4989

INTERIM:
P. O. Box 142
Eagle River, Ak 99577
(907) 694-4949

AGENDA

January 13, 1994
9:00 AM

Butrovich Room
Room 205

1. Call to Order (time and members present)
2. Change of Schedule SB 203 - Mandatory Municipal Police Services, has been rescheduled for January 20th.
3. SB 202 - Sale of State Water to Municipalities
Juneau: Senator Mike Miller - Sponsor Statement
Jerry Gallagher - Dept Natural Resources
Anchorage: Municipality of Anchorage
John Cowdry or Marco Pignalberi
4. SB 35 - Immunity For Actions Taken Under AS 46.13
Juneau: Senator Loren Leman and Staff, Annette Kreitzer
Teleconference Sites: Anchorage
Fairbanks
Wrangell
Petersburg
Ketchikan
Kenai
Haines
Mat Su
5. Committee discussion and motion to move bill and fiscal note with individual recommendations.
6. Adjourn



CITY MANAGER
POST OFFICE BOX 1397, KODIAK, ALASKA 99615
TELEPHONE (907) 486-8640
FAX (907) 486-8600

January 13, 1994

Senator Loren Leman
State Capital
Juneau, Alaska 99801-1182

FAX (907) 465-3810

Dear Senator Leman:

Thank you for the opportunity to comment on SB 35. The legislation is needed and has our complete support.

Sincerely,

CITY OF KODIAK

Gary Bloomquist
City Manager

GB/nej

cc: Senator Zharoff

DFH2206I TRANSACTION CSFG ABEND ATNI . BACKOUT SUCCESSFUL 10:30:41
BILL: SB 35 SHORT TITLE: IMMUNITY FOR ACTIONS TAKEN UNDER AS 46.13
BILL VERSION:
SPONSOR(S): SENATOR(S) LEMAN

CURRENT STATUS: (S) CRA STATUS DATE: 01/11/93
THEN RES

HEARING: (S) CRA JAN 13 10:00 AM

TITLE: "AN ACT PROVIDING IMMUNITY FOR THE ALASKA STATE EMERGENCY RESPONSE COMMISSION, THE LOCAL EMERGENCY PLANNING COMMITTEES, THE HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL, AND THEIR MEMBERS FOR OFFICIAL ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE."

01/11/93	24	(S)	PREFILE RELEASED 1/4/93
01/11/93	24	(S)	READ THE FIRST TIME - REFERRAL(S)
01/11/93	24	(S)	CRA, RESOURCES

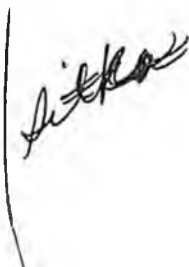
1/11/94

SHIRLEY:

Sites which I know will probably want to be added for C&RA Committee Meeting on
SB 35 (1/13/94)

Anchorage
Fairbanks
Wrangell/Petersburg
Ketchikan
Kenai
Haines
Mat-Su

Annette (X3711)



SB-35



CITY MANAGER
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8640
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January 13, 1994

Senator Loren Leman
State Capital
Juneau, Alaska 99801-1182

FAX (907) 465-3810

Dear Senator Leman:

Thank you for the opportunity to comment on SB 35. The legislation is needed and has our complete support.

Sincerely,

CITY OF KODIAK

Gary Bloomquist
City Manager

GB/nej

cc: Senator Zharoff

MEMORANDUM

STATE OF ALASKA
Department of Environmental Conservation
Division of Spill Prevention and Response

TO: Janice Adair
Special Assistant to the
Commissioner

DATE: March 19, 1992

Map
THRU: Lynn Tomich Kent, Chief *LTK*
Spill Prevention, Planning
and Management Section

FILE NO:

TELEPHONE NO: 465-5220

FROM: Amy Skilbred *AS*
SERC Coordinator

SUBJECT: Response to Questions from
Senate Committee

1. What have the LEPCs requested in terms of funding?

In FY '92, 11 LEPCs and 10 communities requested \$1,579,656 in proposals to DEC, submitted during the fiscal year. The Legislature appropriated \$600,000 for LEPC funding, and DEC provided an additional \$300,000 for LEPCs to conduct hazards analyses. LEPCs do not directly request funding from the Legislature.

For FY '93, DEC has requested \$1.2 million from the Response Fund for assistance to LEPCs. This figure is based on the assumption that more communities will have formed LEPCs, or be interested in forming LEPCs. Thus more communities would request funds.

2. What are the funds for?

LEPC funding is used: (1) to establish LEPCs; (2) to conduct hazards analyses on facilities with hazardous materials; (3) to write hazardous substance emergency response plans; (4) to implement, test, and revise those plans; and (5) reduce the risks to the community from hazardous materials.

The funds are used for operating expenses of the LEPC, purchase of computer equipment and supply needs, secretarial support for the organizations, and contractual work for the LEPC.

3. What criteria are used to allocate the funds to LEPCs and communities?

The criteria used to allocate the funds as set forth in the proposal guidelines are:

1. The risk in the area posed by potential emergency releases.
2. The number of people at risk in a particular area.
3. Resources already available to the particular planning committee and willingness to find additional funding sources.

4. Completeness of the application.
5. Working relationship with local governments, citizen advisory committees and State agencies.
6. Availability of other funding to supplement DEC funds.
7. Consideration of all applications received.

4. Do we have guidelines or regulations for how the money is used?

The guidelines for using the funds are fairly general. They must be used for hazardous substance planning by the LEPCs or the community. The funds were given to local communities through Memorandum of Understanding with the Department. Attached is an example of one of the Memoranda.

Due to LEPC criticisms of micro management on the part of the Department, the Memoranda of Understanding were pared down at the Commissioner's request to the minimum necessitated by law. What must be included in an MOU by law is not clear.

LEPCs and communities are given all of the funds up front.

5. Do we have any limits?

LEPCs and communities are to fulfill the terms of the MOUs.

6. Do we pay for travel and per diem?

LEPCs and communities can use funds for travel and per diem following borough travel/per diem procedures. We do not expect that much of the funds will be used to pay for travel and per diem to attend regular LEPC meetings. However, the funds will be used to pay travel and per diem for regional and statewide LEPC gatherings (such as the quarterly LEPC meetings that precede State Emergency Response Commission meetings).

7. How do we check on them? What checks and balances exist?

A final accounting is required by the MOU that says how the funds were spent.

There are limited checks and balances. All funds are given out up front pursuant to the MOUs. The LEPCs tell us how they have spent the funds, in accordance with the terms of the MOU. There is a fair amount of latitude in how LEPCs can spend the funds. (See number 4, similar question).

8. What federal sanctions, if any, would we face if we did not have a SERC or LEPCs?

There are no federal sanctions. However, if the State does not have a SERC or LEPCs, it may assume greater liability if a hazardous substance release occurred and there were no plans for how to handle such an emergency.

9. If we grant the money to an organization, what would we do if they did not form an LEPC?

Nothing, as long as they attempted to form an LEPC. There is no way to force local communities to form LEPCs.

10. What would the grant agreement look like?

The grant agreement would be similar to the current MOUs.

11. Would we have regulations for this?

At this point in time, we do not yet have any regulations for AS 46.13 (the State Statute implementing SARA Title III). Regulations to implement a grant program would be appropriate.

12. Why don't the local governments contribute money, or do they contribute something?

Several of the local governments have been contributing in kind services for several years (especially those LEPCs that have been around for some time).

One LEPC also received funding assistance from a facility within the LEPCD.

13. Do we have any limit on the number of members on an LEPC?

Thirteen categories of members are required by law. Many LEPCs, however, have more members. I do not believe that the number of the members has much bearing on how much the LEPC requests for funding (travel and per diem to attend meetings has never yet been requested).

The number of LEPCs is a more critical figure when trying to determine funding. At this point the SERC has designated 24 Local Emergency Planning Districts (LEPCDs) covering the State. We estimate that there may be 30 LEPCDs when LEPCs are created for each area. We are trying to hold the number of LEPCDs and LEPCs down because of funding and staffing resources to assist LEPCs.

14. What if the local fire department was all a community could get to do this?

Then the community would not have an LEPC. Both Federal and State statutes stipulate that a broad representation of the community must be represented on an LEPC.

g:\sppm\serc\correspo\janice.amy

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 20, 1993

Senator Loren Leman
State Capitol, Room 115
Juneau, AK 99801-1182

Re: Tort liability and emergency
response planning

Dear Senator Leman:

Last year, the Department of Law prepared a memorandum of advice concerning the potential tort liability associated with the emergency response planning activities of the State Emergency Response Commission, the local emergency planning committees, and the Hazardous Substance Spill Technology Review Council, and their members, 1992 Inf. Op. Att'y Gen. (Mar. 31; 663-91-0483). This memorandum reflects the current law in this area.

There are a couple of matters that should be updated. First, on page 3, the memorandum states that the State Emergency Response Commission has designated 25 emergency planning districts and appointed 11 local emergency planning committees. As of today, there are 26 districts and 15 committees.

Second, SB 35 does not provide immunity when an act or omission constitutes gross negligence or reckless misconduct. On pages 14 - 15 of the memorandum, there is a definition of "gross negligence" that is based upon a 1968 Alaska Supreme Court case, *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968). The *Leavitt* definition of gross negligence requires a choice of a course of action, either with knowledge of serious danger or with knowledge of facts that would disclose serious danger. The Alaska Pattern Civil Jury Instructions, last revised in 1988, use the *Leavitt* definition of gross negligence. However, in 1983, after *Leavitt*, the Alaska Supreme Court distinguished the concept of recklessness from gross negligence, and defined gross negligence to mean "a major departure from the standard of care." *Storrs v. Lutheran Hospitals and Homes Society of America, Inc.*, 661 P.2d 632, 634 (Alaska 1983). The *Storrs*' definition of gross negligence, therefore, is considerably broader than the *Leavitt* definition. Depending on the circumstances, either definition may be appropriate.

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☐ 1031 W. 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

✕ P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

Senator Loren Leman

January 20, 1993
Page 2

Please do not hesitate to contact us if we can be of further assistance with respect to this matter.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Marie Sansone*
Marie Sansone
Assistant Attorney General
Natural Resources Section -
Juneau

MS:lae

cc: Kris Lethin
Legislative Liaison
Office of the Governor

Janice Adair
Assistant Commissioner
Alaska Dep't of Environmental Conservation

MEMORANDUM

State of Alaska

Department of Law

TO: Hon. John A. Sandor
Commissioner
Dep't of Env'tl. Conservation

DATE: March 31, 1992

FILE NO: 663-91-0483

TEL NO: 465-3600

SUBJECT: Tort liability and
emergency response
planning

Marie Sansone

FROM: Marie Sansone
Assistant Attorney General
Natural Resources Section - Juneau

On behalf of the Alaska State Emergency Response Commission, you have asked whether the commission may delegate to a committee the authority to grant interim approval of emergency plans. The statutes that create the commission and specify its powers do not authorize the delegation of authority; therefore, the commission may not delegate interim approval authority.

You also requested our advice concerning the potential tort liability associated with response actions carried out in accordance with emergency plans. A number of statutes that provide immunity under specified circumstances are discussed below, as is AS 09.50.250(1), which establishes the "discretionary function exception" to state tort liability. In addition, in a memorandum dated October 29, 1990, the Department of Law advised you that the potential liability of the Alaska State Emergency Response Commission, the local emergency planning committees, and the Hazardous Substance Spill Technology Review Council and their members would be addressed in greater detail in connection with proposed immunity legislation. House Bill No. 407 and Senate Bill No. 359, which would provide immunity, were introduced in the legislature on January 16, 1992, and the potential tort liability of these entities and their members is discussed below. Conclusions and recommendations are found beginning on page 35.

BACKGROUND

The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11001--11050 (1991) (Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)), which provides the legal framework for emergency planning for extremely hazardous substances, was passed in response to the tragic chemical accident in 1984 at Bhopal, India. H.R. Rep. No. 99-253(I), 99th Cong., 1st Sess., Vol. 4, at 258 (1985), reprinted in 1986 U.S.C.C.A.N. 2835, 2932. SARA Title III has two distinct parts: an emergency planning mechanism and community right-to-know provisions. The emergency planning provisions

require the governor of each state to establish an emergency planning commission and to appoint to the commission persons with technical expertise in emergency response. The commission in turn sets up emergency planning districts and appoints an emergency planning committee for each district. Using information provided by facilities that store, use, or release certain chemicals, the local committees are required to prepare emergency plans. 42 U.S.C.A. §§ 11001--11005.

I. ADMINISTRATIVE ENTITIES ESTABLISHED BY AS 46.13

A. The Alaska State Emergency Response Commission and the Local Emergency Planning Committees

The Alaska State Emergency Response Commission (Alaska SERC), established as of September 24, 1990, by AS 46.13.010, is a continuation of the commission established on October 21, 1987, by Administrative Order No. 103. Sec. 25, ch. 190, SLA 1990. AS 46.13.020 prescribes its composition:

The commission consists of the commissioners of community and regional affairs, environmental conservation, fish and game, health and social services, labor, natural resources, public safety, and transportation and public facilities, or the designees of the commissioners, the adjutant general of the Department of Military and Veterans' Affairs or a designee, and seven members of the public to be appointed by the governor. . . .

Under SARA Title III, a state emergency response commission is required to establish emergency planning districts to facilitate the preparation and implementation of emergency response plans. Two state statutes govern district boundaries. Under AS 46.13.040(2), the Alaska SERC is given the authority to designate and revise as necessary district boundaries, using the boundaries of regions established by the Department of Environmental Conservation (DEC) under AS 46.04.200--46.04.210 for the state master and the regional master oil and hazardous substance discharge prevention and contingency plans (state master plan and regional master plans) and of political subdivisions where appropriate. Under AS 46.13.060, unless otherwise designated by the Alaska SERC, the boundaries for the districts are the regions designated by DEC for the regional master plans. The Alaska SERC has created 25 local emergency planning districts.

The Alaska SERC appoints the members of a local emergency planning committee (LEPC) for each district. Each LEPC

must include representatives from each of the following groups: elected state and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to SARA Title III (covered facilities). The Alaska SERC may revise its appointments to the LEPCs as it deems appropriate. In addition, interested persons may petition the commission to modify the membership of an LEPC. 42 U.S.C.A. § 11001(c)-(d); AS 46.13.040(5). Under SARA Title III, state emergency response commissions were required to establish an LEPC for each local emergency planning district by August 1987. 42 U.S.C.A. § 11001(c). The Alaska SERC has currently appointed 11 LEPCs for 25 districts, and thus is not in compliance with SARA Title III.

The Alaska SERC supervises and coordinates the activities of the LEPCs. 42 U.S.C.A. § 11001(a); AS 46.13.040(6). The duties of the LEPCs are prescribed throughout SARA Title III and in AS 46.13.080. Under SARA Title III, the LEPCs were required to develop emergency response plans for extremely hazardous substances by October 17, 1988, and to review the plans at least annually thereafter. 42 U.S.C.A. § 11003(a). SARA Title III requires each LEPC to submit its plans to the Alaska SERC for review and recommendations as may be necessary to ensure coordination with the plans of other districts. *Id.*, § 11003(e). State law requires in addition that the plans prepared by the LEPCs include procedures to be followed in the event of a hazardous substance release. AS 46.13.090(a)(2). Under AS 46.13.040(4) and AS 46.13.045(a), the Alaska SERC must review and approve the extremely hazardous substances and hazardous substances emergency plans.

The Alaska SERC also reviews and approves the state and regional master plans and the state, interjurisdictional, and local plans prepared under the Alaska Disaster Act, AS 26.23, to the extent the latter plans pertain to hazardous substance response. AS 26.23.215; AS 46.13.040(3)-(4). The Alaska SERC is directed to use the criteria established by AS 46.13.045¹ for

¹ AS 46.13.045 provides:

PLAN APPROVAL; INCIDENT COMMAND SYSTEMS.
(a) The commission shall review and exercise approval authority over local, interjurisdictional, regional, and state plans for hazardous substance discharge response, including plans prepared under AS 26.23, AS 46.04.200--46.04.210,
(continued...)

the review and approval of the various plans, and to adopt regulations to carry out the purposes of AS 46.13 and the emergency planning provisions of SARA Title III. AS 46.13.040(4) and (11).

B. The Hazardous Substance Spill Technology Review Council

The legislature established the Hazardous Substance Spill Technology Review Council (HSSTRC) in the Alaska SERC to assist in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and to make recommendations to state agencies regarding their use. AS 46.13.100--46.13.110. The HSSTRC consists of the commissioner of DEC, the adjutant general of the Department of Military and Veterans' Affairs (DMVA), a representative of the University of Alaska appointed by the governor, the governor's senior science advisor, a representative of the Prince William Sound Science Center appointed by the governor, and four members, appointed by the governor, with broad expertise in physical or biological science; oil technology, transportation, or management; fisheries; economics; environmental engineering; or law. The U.S. Coast Guard and the U.S. Environmental Protection Agency (EPA) may each appoint an employee to the council to represent their agencies as nonvoting members. AS 46.13.110(b).

¹ (...continued)
and this chapter.

(b) Before approving a plan, the commission shall ensure that the plan includes an incident command system that describes the respective roles of affected persons and agencies in a clear and specific manner and that the respective roles of state agencies are consistent with their statutory duties. The commission shall also ensure that the plans are well-integrated with related plans.

(c) To the extent consistent with other law, an incident command system approved under this section must provide the Alaska division of emergency services has a major role in mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a state response to an imminent or actual hazardous substance discharge.

The HSSTRC is charged with a variety of tasks related to hazardous substance research. The council recommends research topics to DEC; establishes DEC spill technology testing protocols; identifies research funding sources; makes proposals to the governor, the Alaska SERC, and other entities to encourage and fund discharge prevention and response; compiles and maintains information related to containment and cleanup technology, hazardous substances management, industry and government practices and laws, and DEC research; and performs other functions as requested by the Alaska SERC. AS 46.13.120.

II. EMERGENCY PLANS

A. Emergency Planning for Hazardous and Extremely Hazardous Substances Under AS 46.13 and SARA Title III

The emergency response plans prepared by the LEPCs establish the procedures to be followed in the event of a release of extremely hazardous substances as defined by federal law, plus the procedures to be followed in the event of a release of

hazardous substances as defined by state law.² Each plan must include:

(1) Identification of covered facilities, routes likely to be used to transport extremely hazardous substances, and additional facilities contributing or subjected to additional risk due to their proximity to covered facilities, such as hospitals or natural gas facilities;

(2) Procedures to be followed by facilities and local emergency and medical personnel to respond to a release of hazardous or extremely hazardous substances;

² Emergency planning under SARA Title III pertains to some 360 substances on EPA's List of Extremely Hazardous Substances, which is published at 40 C.F.R. Part 355 appendices A-B (1991). The list establishes threshold planning quantities for each substance. See 42 U.S.C.A. § 11002(a). Except for emergency notification procedures applicable to covered facilities, SARA Title III does not apply to the transportation or storage incident to transportation of extremely hazardous substances. 42 U.S.C.A. § 11047.

In contrast, AS 46.13.090(a)(2) requires that the emergency plans contain procedures to be followed in the event of a release of "hazardous substances." "Hazardous substance" is defined very broadly to mean:

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

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14) [Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)].

AS 46.03.826(5); see AS 46.13.900(3).

(3) Designation of a community emergency coordinator and facility emergency coordinators to make determinations necessary to implement the emergency plan;

(4) Procedures for notification of a release by the facility emergency coordinators to persons designated in the emergency plan and to the public;

(5) Methods for determining whether a release has occurred and the area or population likely to be affected;

(6) A description of available emergency equipment and facilities;

(7) Evacuation plans;

(8) Training programs for local emergency response and medical personnel; and

(9) Methods and schedules for emergency plan drills.

See 42 U.S.C.A. § 11003(c); AS 46.13.090(a). In addition, each plan must include an incident command system that describes the respective roles of affected persons and agencies. AS 46.13.090(b).

B. State and Regional Master Oil and Hazardous Substance Discharge Prevention and Contingency Plans

The Alaska SERC is responsible for reviewing and approving state and regional master plans prepared by DEC. AS 46.13.040(3)-(4); AS 46.04.200(c)(5); AS 46.04.210(b). These plans must:

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;³

³ AS 46.04.030 requires oil discharge prevention and contingency plans for oil terminal facilities, exploration and production facilities, pipelines, tank vessels, and oil barges. DEC is the only state agency that may approve, modify, or revoke these plans. AS 46.04.030(h).

(2) include an incident command system that specifies the responsibilities for the assessment, containment, and cleanup of oil or hazardous substance discharges on the part of DEC, DMVA Division of Emergency Services, and other state agencies; municipalities; federal agencies; operators of facilities; private parties whose property may be affected by a discharge; and other parties having an interest in or the resources to assist in containment and cleanup;

(3) include incident command systems for an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.080;⁴

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances; and

(5) designate locations where oil and hazardous substance emergency response supply and equipment storage depots should be established and where emergency response corps personnel should be available.

See AS 46.04.200--AS 46.04.210.

C. The State Emergency Plan and Local and Interjurisdictional Plans Prepared Under the Alaska Disaster Act

Under AS 46.13.040(3)-(4) and AS 46.13.045, the Alaska SERC is also responsible for reviewing and approving local, interjurisdictional, and state emergency plans for hazardous substance discharge response prepared under the Alaska Disaster Act, AS 26.23.⁵ The Alaska Disaster Act defines "disaster" to

⁴ AS 26.23 is the Alaska Disaster Act. AS 46.03.865 defines the authority of DEC in cases of emergency. AS 46.04.080 concerns the role of DEC and the Division of Emergency Services with respect to catastrophic oil discharges.

⁵ AS 26.23.215 clarifies the relationship between the emergency plans prepared under the Alaska Disaster Act and the other plans approved by the Alaska SERC:

(continued...)

include "the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, including . . . the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage." AS 26.23.900(1)(B).

AS 26.23.040(a) requires the Division of Emergency Services to prepare and maintain a state emergency plan. The plan may include measures for:

- (1) Preventing and minimizing injury and damage;
- (2) Prompt and efficient response;
- (3) Emergency relief;
- (4) Identification of geographical areas, municipalities, or villages especially vulnerable to a disaster;
- (5) Recommendations for zoning, building, and land use controls; safety measures for securing nonpermanent or semipermanent structures; and other preventive and preparedness measures;
- (6) Assistance to local officials in designing local emergency plans;

⁵ (...continued)

Relationship to other planning statutes. To the extent that the state emergency plan, interjurisdictional plans, and local plans prepared under this chapter relate to action required to avert damage from a release of oil or a hazardous substance, the plans must be substantially equivalent in relevant respects to the local emergency plans prepared under AS 46.13 and the state and regional master plans prepared by the Department of Environmental Conservation under AS 46.04.200--46.04.210, use the same incident command systems used in those plans, and be approved by the Alaska State Emergency Response Commission under AS 46.13.045.

(7) Authorization and procedures for the construction of temporary works designed to protect against or mitigate danger or loss;

(8) Organization of manpower and chains of command;

(9) Coordination of federal, state, and local disaster activities;

(10) Coordination of the state emergency plan with federal disaster plans; and

(11) Other matters necessary to carry out the Alaska Disaster Act.

See AS 26.23.040(a).

Each local and interjurisdictional disaster agency is required to prepare and keep current a disaster emergency plan for its area. AS 26.23.060(e). The state emergency plan and the local and interjurisdictional plans, insofar as they contain provisions relating to the release of oil or hazardous substances, must be substantially equivalent to the local emergency response plans prepared by the LEPCs and the state and regional master plans prepared by DEC, use the same incident command systems, and be approved by the Alaska SERC. AS 26.23.215.

DISCUSSION

To respond to your request for advice, the topics of discussion have been arranged in the following order: delegation of authority; preliminary definitions relating to tort liability; the status of the LEPCs for purposes of liability; immunity statutes; the effect on liability of the state of completion of the plans; personal liability of the members of the Alaska SERC, the LEPCs, and the HSSTRC; and overall conclusions and recommendations.

Your questions concerning the potential tort liability associated with response actions carried out during various stages of emergency response plan development and approval pose several difficulties. First, there are an infinite variety of circumstances under which a hazardous substance release could occur and under which an emergency response or the failure to respond could cause injury. While it's possible to outline the contours of tort law, the application of the law in any given circumstance to determine whether negligence exists and whether

liability will be imposed ultimately depends on the unique facts of each case. Even slight differences in facts may lead to different findings regarding liability and immunity. Moreover, the law of torts changes frequently as the Alaska Supreme Court and the state legislature create new rights and remedies. The following discussion therefore highlights a number of statutes which provide protection from liability under the specific circumstances described in the statutes. In some instances, these statutes protect only the governmental entity mentioned; in others, the statutes limit personal liability. Because there may be instances where these statutes would not apply, the statutory "discretionary function exception" to state tort liability (statutory sovereign immunity) and the common law "official immunity" for state officers are discussed at length.

A second difficulty posed by your request is that the Department of Law may provide advice only to state agencies and state officials. To the extent your request seeks advice concerning the liability of local governments, responders, and plan holders, it would be more appropriate for these entities to obtain advice from their own counsel. The potential liability of the LEPCs as state agencies, however, is discussed; and some background information is presented, although not analyzed, which concerns the liability of entities other than the state as these entities play an integral role in emergency planning.

I. DELEGATION OF AUTHORITY

In general, apart from ministerial functions, an administrative entity cannot delegate authority and functions which under the law may be exercised only by that entity. 73 C.J.S. Public Administrative Law and Procedure § 56 at 513 (1983). Unless authorized by statute, "administrative officers and agencies cannot delegate to a subordinate or another powers and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment; and subordinate officials have no power with respect to such duties." Id. at 513-14 (footnote omitted). See also 2 Am. Jur. 2d Administrative Law § 221, at 51 (1962).

The Alaska SERC is composed of nine department heads or their designees and seven members of the public appointed by the governor. AS 46.13.020. The public members serve at the pleasure of the governor for staggered terms of three years. AS 46.13.030. While the nine department heads may delegate their authority to designees, the seven public members may not do so. See City of Cordova v. Medicaid Rate Comm'n, 789 P.2d 346, 351-53 (Alaska 1990).

The Alaska SERC adopted bylaws on November 2, 1990, which provide for the establishment of committees. Under Article VIII, section 2, "The chair of the Commission may appoint persons other than Commission members or their designees to serve on committees." With respect to the approval of hazardous substance emergency response plans, Article IX, section 5, of the commission's bylaws states:

Any hazardous substance Emergency response plan subject to approval by the Commission under AS 46.13 shall first be referred to an appropriate committee for review, consideration, and its recommendation.

To facilitate the approval process, the Alaska SERC has proposed a procedure whereby an emergency response committee could grant interim approval or interim approval with conditions to the plans, pending review and approval by the full commission.

The statute which establishes the Alaska SERC and sets forth its powers and duties, AS 46.13, does not authorize the commission to delegate its powers and duties. Moreover, as discussed below at pages 23 to 28, the review and approval of emergency response plans is largely a discretionary function which requires the exercise of judgment. Based on established administrative law cited above, AS 46.13.020, which specifies the composition of the commission and requires that its seven public members be appointed by the governor, should be interpreted to require that the Alaska SERC function as a whole, with the benefit of the expertise and experience of all its members. Without statutory authorization, the Alaska SERC cannot delegate its power to approve emergency response plans to a committee.

II. PRELIMINARY DEFINITIONS RELATING TO TORT LIABILITY

SARA Title III authorizes citizen suits against a state governor or state emergency response commission, but not an LEPC,

for failure to comply with certain requirements of the Act.⁶
42 U.S.C.A. § 11046(a)(1)(C)-(D). SARA Title III also provides:

Nothing in this section [authorizing citizen suits] shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator [of EPA] or a State agency).

Id., § 11046(g). Thus, any person who believes he or she has been injured by an act or omission of the Alaska SERC or an LEPC or their members may file a tort claim in state court.

EPA, in a report entitled "Tort Liability in Emergency Planning," provides a helpful definition of the word "tort":

A tort is an action that harms another person, business, or group. It occurs when a person acts or fails to act, without right, and thus harms another directly or indirectly. A tort is an act for which a civil action for personal injuries or property damage [may be brought], rather than a criminal suit.

Each state, through its laws, regulations, and court decisions, recognizes certain rights of individuals and businesses. A state's tort law protects these rights by providing a means for a

⁶ SARA Title III authorizes citizen suits against a state governor or a state emergency response commission for failure to provide access to an emergency response plan, material safety data sheets, lists of hazardous chemicals, inventory forms, toxic chemical release forms, and follow up emergency notices and for failure to respond to a request for tier II information. 42 U.S.C.A. § 11046(a)(1)(C)-(D). The Act does not authorize financial penalties; however, a court may award the costs of litigation, including reasonable attorney's fees and expert witness fees, to the prevailing or substantially prevailing party. Id., § 11046(f).

SARA Title III also provides for criminal penalties against any person who knowingly and willfully discloses trade secrets entitled to protection under the Act. Id., § 11045(d)(2).

person or business to seek compensation for losses or harm caused by another.

EPA, Tort Liability in Emergency Planning 2 (Jan. 1989).

"Negligence" is the failure to use reasonable care. State v. Abbott, 498 P.2d 712, 725 (Alaska 1972). In a negligence case, the plaintiff must prove all four of the following elements:

(1) A duty requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks.

(2) A failure on his or her part to conform to the standard required.

(3) Proximate cause, that is, a reasonably close causal connection between the conduct and the resulting injury.

(4) Actual loss or damage.

Id.

Statutes which provide immunity often distinguish between negligence and gross negligence or intentional misconduct. "Gross negligence" or "reckless misconduct" occurs when one has full knowledge of the hazards he or she is creating, so as to evidence a reckless disregard of the possible consequences and an indifference to the rights of others. Leavitt v. Gillaspie, 443 P.2d 61, 65 (Alaska 1968). Gross negligence differs from ordinary negligence in several important respects:

[Reckless misconduct or gross negligence] differs from that form of negligence which consists in mere inadvertence, incompetence, unskillfulness, or a failure to take precautions to enable the actor adequately to cope with a possible or probable future emergency, in that reckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man. It differs not only from the above-mentioned form of negligence, but also from that negligence which consists in intentionally doing an act with knowledge that it contains a risk of harm to others, in that the actor to be

reckless must recognize that his conduct involves a risk substantially greater in amount than that which is necessary to make his conduct negligent. The difference between reckless misconduct and conduct involving only such a quantum of risk as is necessary to make it negligence is a difference in the degree of the risk, but this difference of degree is so marked as to amount substantially to a difference in kind.

Restatement (Second) of Torts § 500 comment g at 590 (1965),
quoted in id.

"Intentional misconduct" occurs when a person acts or fails to act, either for the purpose of causing harm to another or knowing that there is a substantial certainty of causing harm to another. See Restatement, supra.

The Alaska SERC, which is placed within DEC, and the HSSTRC, which is placed within the Alaska SERC, are state agencies. Any questions regarding the potential tort liability of these entities and their members must be answered with reference to state tort law concerning the liability of state agencies and state officials. The legal status of the LEPCs for purposes of tort liability requires further examination.

III. STATUS OF THE LEPCs AND LEPC MEMBERS FOR PURPOSES OF TORT LIABILITY

In a previous memorandum, we advised you that for purposes of receiving and expending money, LEPCs are state agencies. 1992 Inf. Op. Att'y Gen. (Jan. 23; 663-92-0131). However, an entity may be considered a state agency for one purpose but not another. Each circumstance requires an independent analysis. Alaska Commercial Fishing & Agricultural Bank v. O/S Alaska Coast, 715 P.2d 707, 709 n.5 (Alaska 1986). Applying the criteria listed in our prior memorandum, we conclude that the LEPCs are state agencies for purposes of tort liability.

For purposes of emergency planning, the Alaska SERC establishes the boundaries of the local emergency planning districts based on regional boundaries established by DEC for the regional master plans or where appropriate, based on the boundaries of political subdivisions. The Alaska SERC may revise the boundaries of the districts. Although SARA Title III permits the designation of existing political subdivisions as emergency planning districts, 42 U.S.C.A. § 11001(b), the state statute

does not designate existing political subdivisions as such, but merely provides that if the Alaska SERC deems it appropriate, the boundaries of the emergency planning districts may coincide geographically with the boundaries of the political subdivisions of the state. AS 46.13.040(2); AS 46.13.060.

The Alaska SERC appoints the members of the LEPCs and may revise the membership of the LEPCs. It also supervises and coordinates the activities of the LEPCs, and provides guidance, training, and funding for the LEPCs. See AS 46.13.040(5)-(6).

Under SARA Title III, the Alaska SERC is required to review and make recommendations to the LEPCs on the local emergency response plans; under AS 46.13, the Alaska SERC is further required to approve the plans. The Alaska SERC is required to ensure that the plans prepared by the LEPCs contain an incident command system and that the plans are well integrated with related emergency plans. This coordination promotes efficiency in emergency response actions at the local, state, and federal levels, and assures that the agencies involved will not be working at cross purposes. Any accident involving hazardous substances has the potential to impact the health and safety of communities far beyond the area immediately affected, as well as their environmental and economic well-being. Thus, the work performed by the LEPCs is part of a statewide, coordinated emergency planning effort.

The Alaska SERC plays a large role in emergency planning at the local level, and has a great deal of control over the LEPCs. SARA Title III does not authorize citizen suits against the LEPCs for their failure to meet the requirements of the Act, but rather, against the governor and the Alaska SERC. See 42 U.S.C.A. § 11046. Neither SARA Title III nor AS 46.13 impose emergency planning duties on the boroughs or municipalities. Based on the above, for purposes of tort liability, the LEPCs are state agencies.

Since the LEPCs are state agencies for purposes of tort liability, it follows that LEPC members are state officers for purposes of tort liability. EPA concluded:

A Local Emergency Planning Committee that is created by a State Emergency Response Commission and whose members are appointed by the state commission is also an agency of the state. If the members of the local committee are appointed by the state commission, then they represent the state rather than a city, county, or other political subdivision.

EPA, Tort Liability in Emergency Planning 10 (1989).

With respect to the individual members of LEPCs, EPA found that

[m]any Local Emergency Planning Committee members serve in a dual capacity as a member of the committee and as an employee of the political subdivision (city fire service, police department, or emergency management agency)

Depending upon the circumstances . . . the court could conclude that the actions of the committee member were outside his role and authority as a committee member, but were within his capacity as a local governmental employee. Actions outside their committee role could be viewed by the courts as acts of the local governmental employer. This distinction could result in a determination that the local government, for example, was liable for the act of the employee rather than the state which appointed the individual to the committee. Committee members should therefore understand their authorized role and responsibilities.

Many local committee members are self-employed, employed by or represent a private business or non-profit corporation, or are a private citizen who is not employed. The actions of these local committee members would be considered state actions on behalf of the state as long as:

- (1) The local committee members are appointed by the state commission;
- (2) The state commission has the necessary state authority to appoint local committee members;
- (3) Both the state commission and the local committee are agencies of the state;
- (4) State law recognizes the local committee members as agents of the state; and
- (5) The committee member is acting within the scope of his authority.

Under these circumstances, the state courts would ordinarily perceive suits against local committee members as suits in their official capacity or suits against the state and such suits would not subject the individual to personal liability.

Id. at 11.

The EPA report, thus, supports the conclusion that provided the members of the LEPCs are acting within the scope of their statutory authority under SARA Title III and AS 46.13.080, they are state officers for purposes of tort liability and immunity.

IV. IMMUNITY STATUTES

A. Limitation of Liability for Negligence in Response Actions, AS 46.03.822

AS 46.03.822 imposes strict liability on certain persons for various costs incurred as a result of a release of hazardous substances.⁷ Subsection (h) provides the state and local governments immunity from liability under AS 46.03.822 in connection with certain response actions:

The state, a municipality, or a village is not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, or the village constitute gross negligence or intentional misconduct.

AS 46.03.822(h).

⁷ For purposes of this statute, "hazardous substances" is defined in AS 46.03.826(5), quoted above in footnote 2 on page 6.

B. Limitation of Liability for Negligence in Response
Actions for Certain Oil and Hazardous Substance
Discharges, AS 46.08.160

AS 46.08.160 limits the liability of the state, employees of the state, and members of the DMVA Oil and Hazardous Substance Response Corps for costs and damages resulting from actions taken in response to certain oil and hazardous substance discharges.⁸ AS 46.08.160 provides:

The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100--46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct.

This statute applies to (1) a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a), (2) a discharge of oil or hazardous substances declared an emergency

⁸ For purposes of this statute, "hazardous substances" is defined in AS 46.08.900(6) to mean:

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601--9657 [CERCLA]; "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less.

"Oil" is defined as:

petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity.

AS 46.08.900(7).

under AS 46.03.865, (3) discharges declared an emergency by the governor under AS 26.23, (4) discharges or potential discharges that the commissioner of DEC reasonably believes may qualify under categories (1)-(3) above, and (5) discharges or potential discharges that the commissioner reasonably believes pose an imminent and substantial threat to public health or welfare or to the environment. AS 46.08.130(b).

C. Limited Liability for Response Action Contractors,
AS 46.03.823 and AS 46.03.825

Third, under certain circumstances, AS 46.03.823 limits the liability of "response action contractors" whose acts or omissions are not contrary to a response plan or order by a state agency having jurisdiction over the release. This statute applies only to response action contractors as that term is defined in AS 46.03.826(11).⁹ Similarly, under certain circumstances, AS 46.03.825 limits the liability of oil spill response action contractors. However, AS 46.03.825 is repealed effective July 1, 1992. Secs. 10, 12, ch. 92, SLA 1991.

⁹ AS 46.03.826(11) defines "response action contractor" as:

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

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

(C) a person who acts as a volunteer and is engaged in a response action.

Effective July 1, 1992, AS 46.03.826(11) is repealed. AS 46.03.823(g) is also repealed and reenacted, and will contain in subsection (g)(3) this definition of response action contractor, with the exception of subparagraph (C) relating to volunteers, which is omitted. Secs. 7, 12, ch. 92, SLA 1991.

D. Limited Liability for Responding to Disaster,
AS 09.65.091

AS 09.65.091(a) limits the liability of persons providing equipment or services at the request of a government agency during a declared state of emergency:

A person who provides equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other governmental agency during a state of emergency declared by an authorized representative of the state or local government is not liable for the death of or injury to any person or damage to any property caused by that person's actions, except when the trier of facts finds that the person acted intentionally, recklessly, or with gross negligence.

E. Limitation on Liability for Emergency Aid, AS 09.65.090

Under certain circumstances, AS 09.65.090 limits the liability associated with rescue and emergency care, and states:

(a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) A member of an organization that exists for the purpose of providing emergency services is not liable for civil damages for injury to a person that results from an act or omission in providing first aid, search, rescue, or other emergency services to the person, regardless of whether the member is under a preexisting duty to render assistance, if the member provided the service while acting as a volunteer member of the organization; in this paragraph, "volunteer" means a person who is paid not more than \$10 a day and a total of not more than \$500 a year, not including ski lift tickets and reimbursement for expenses actually incurred, for providing emergency services.

. . . .

(d) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

F. Immunity From Suits Against Incorporated Units of Local Government, AS 09.65.070(c)-(d)

In 1977, the legislature enacted a broad immunity statute, AS 09.65.070, which protects local governments. For purposes of immunity, a municipality is defined as "a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality," AS 01.10.060, and includes a public corporation established by a municipality. AS 09.65.070(e)(1). A "village" is an "unincorporated community where at least 25 people reside as a social unit." AS 09.65.070(e)(2).

This statute contains a "discretionary function exception" which has been interpreted by the Alaska Supreme Court in the same manner as the state discretionary function exception. See Urethane Specialties, Inc. v. City of Valdez, 620 P.2d 683, 687-88 (Alaska 1980). There is, however, one important difference: AS 09.50.250 applies only to the state; AS 09.65.070(d) protects a municipality as well as its agents, officers, and employees.

AS 09.65.070 provides in part:

(c) No action may be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort . . . and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.

(d) No action for damages may be brought against a municipality or any of its agents, officers or employees if the claim

(1) is based on a failure of the municipality, or its agents, officers, or employees, when the municipality is neither owner nor lessee of the property involved,

(A) to inspect property for a violation of any statute, regulation or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made; or

(C) to abate a violation of any statute, regulation or ordinance, or a hazard to health or safety discovered on property inspected;

(2) is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based upon the grant, issuance, refusal, suspension, delay or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

(4) is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis; or

(5) is based upon the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements.

All of these provisions could come into play with respect to emergency response actions, and provide local governments and their employees, officers, and agents considerable protection from tort liability.

G. The "Discretionary Function Exception" to State Tort Liability, AS 09.50.250(1)

The legislature created a cause of action for tort claims against the state in AS 09.50.250, and provided limited statutory immunity for discretionary functions. AS 09.50.250(1) provides:

A person or corporation having a . . . tort claim against the state may bring an action against the state in the superior court However, an action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused.

In the many cases construing this statute, the Alaska Supreme Court has emphasized the second clause, the "discretionary function exception," when a state agency is sued. See, e.g., Aspen Exploration Corp. v. Sheffield, 739 P.2d 150, 155 (Alaska 1987).

Before determining whether statutory immunity applies in any given case, it is first necessary to determine whether the state is liable in the absence of immunity. Division of Corrections v. Neakok, 721 P.2d 1121, 1125 (Alaska 1986). The court adopted the following three-part test for determining whether the state will be immunized: (1) did the state have a duty to take some action; (2) was the state's duty, if any, owed to the plaintiff; and, (3) if the state is liable under the first two requirements, is the state immunized by AS 09.50.250(1) because the actions or inactions complained of were discretionary? Adams v. State, 555 P.2d 235, 239-40 (Alaska 1976).

1. An actionable duty of care is owed to the public

A duty of care may be imposed by the common law or by statute, or it may arise from the voluntary assumption of responsibility. See Adams, 555 P.2d at 240-41. Whether an actionable duty of care exists is a public policy question involving the following factors:

The foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the

extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.

D.S.W. v. Fairbanks North Star Borough School Dist., 628 P.2d 554, 555 (Alaska 1981). When the public is the intended beneficiary of a duty of care, the duty of care extends to anyone foreseeably endangered by the state's conduct. Neakok, 721 P.2d at 1125-32, 1136.

With respect to emergency response plans, the various statutes which require emergency planning impose a duty of care on the Alaska SERC and the LEPCs. The public is the intended beneficiary of the plans, and it is foreseeable that in the absence of emergency plans or in the event of deficient plans, people could be injured and property damaged.¹⁰ The state could thus be found liable if the duty of care is breached. The final prong of the analysis is to determine whether the discretionary function exception would provide immunity.

2. The discretionary function exception

The court has often remarked that when there is negligence, liability is the rule, immunity the exception. See, e.g., Japan Air Lines Co., Ltd. v. Alaska, 628 P.2d 934, 937 (Alaska 1981) (JAL). In State v. Abbott, 498 P.2d 712 (Alaska 1972), the first case to interpret the discretionary function language, the court adopted the "planning versus operational" or "discretionary versus ministerial" test. Application of the "planning-operational" distinction regarding levels of decision-making involves "delicate degrees of judgmental values," State v. I'Anson, 529 P.2d 188, 194 (Alaska 1974), and must take into account the underlying purposes of the discretionary function exception. Abbott, 498 P.2d at 721-22.

¹⁰ For example, the House Conference Report on SARA Title III states, "The Senate amendment and House amendment both establish programs to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals." H.R. Conf. Rep. No. 99-962, 99th Cong., 2d Sess. 281 (1986), reprinted in 1986 U.S.C.C.A.N. 2835, 3374. See also Williams v. Leybold Technologies, Inc., ___ F. Supp. ___, 1992 WL 26730 at 3 (N.D. Cal. 1992).

The discretionary function exception recognizes (1) the need to preserve separation of powers by limiting judicial re-examination of decisions made by other branches of government; (2) the fact that the courts are not equipped to investigate and balance all the factors that go into an executive or legislative decision; and (3) the public interest in preventing the enormous and unpredictable liability that would result from judicial reexamination of the decisions of other branches of government. Id. Decisions regarding funding and the allocation of scarce resources are generally considered to be made at the policy level and, therefore, are likely to be immune. Industrial Indemnity Co. v. State, 669 P.2d 561, 564-65 (Alaska 1983).

However, not all decisions involving an element of discretion fall within the discretionary function exception. Waincott v. State, 642 P.2d 1355, 1356 (Alaska 1982). Moreover, policy decisions cannot be implemented negligently. Johnson v. State, 636 P.2d 47, 65 (Alaska 1981). In contrast to discretionary acts, operational or ministerial acts are those which concern routine, everyday matters, not requiring evaluation of broad policy factors. I'Anson, 529 P.2d at 194.

Application of the planning-operational test has proven difficult, and has resulted in numerous appellate decisions. The following examples may help illustrate the difference between planning and operational decisions.

Not immune: Once initial policy decision was made to maintain the Seward Highway during the winter by salting, sanding, and plowing, district engineer's decisions on how to allocate personnel and machinery were not immune. Abbott, 498 P.2d at 722. Negligent placement of highway signs and road stripes was not immune. I'Anson, 529 P.2d at 193-94. Negligent performance of hotel inspection by state fire officials was not immune. (By voluntarily undertaking fire inspection, upon discovery of extreme life hazard, state assumed a common law duty to protect occupants). Adams, 555 P.2d 240-44. Upon discovery of safety violations at pipe installation site, the Department of Labor's failure to take actions which would have prevented electrocution of worker was not immune. Wallace v. State, 557 P.2d 1120, 1124 (Alaska 1976). The state's negligent design of a runway at the Anchorage airport was not immune. JAL, 628 P.2d at 938. Once the policy decision had been made to reconstruct an overlapping road and railroad crossing, the approval of the reconstruction plans and the failure to place a sign at the crossing warning bicyclists of the particular hazard presented by the crossing were operational level decisions and not immune. Johnson, 636 P.2d at 64-66. The state's failure to control a dangerous parolee or warn his potential victims was not immune.

Neakok, 721 P.2d at 1132-35. The City of Kotzebue was not immune when city police failed to respond to a telephone call in which caller identified himself, his location, and the likely scene of the crime, and informed police that he intended to kill a friend of his. City of Kotzebue v. McLean, 702 P.2d 1309, 1313-15 (Alaska 1985).

Immune: The state did not undertake to inspect hotel and abate fire hazards; and therefore, was immune. State v. Jennings, 555 P.2d 248, 250 (Alaska 1976). Decisions whether or not to designate intersection which was at considerable distance from school as a school safety zone or to undertake any other safety measures were discretionary and therefore immune. Jennings v. State, 566 P.2d 1304, 1311-13 (Alaska 1977). Decision to issue warning against fly-by-night operators who install highly flammable insulation was immune, but decisions regarding contents of warning were not immune. Urethane Specialties v. City of Valdez, 620 P.2d 683, 688 (Alaska 1980). Decision to install flashing amber and red light instead of red, amber, and green traffic light was immune. Wainscott, 642 P.2d at 1357. Decision whether or not to install guardrail was immune. Industrial Indemnity, 669 P.2d at 563. Decision not to use dust control procedures on the Dalton Highway was immune. Freeman v. State, 705 P.2d 918, 920 (Alaska 1985). Decision to order removal of fence encroaching into right-of-way following disastrous storm was immune, but not the manner in which the fence was removed. Gates v. City of Tenakee Springs, 822 P.2d 455 (Alaska 1991).

3. Conclusion

The decision to undertake emergency planning is an immune policy decision. Executive implementation of a policy decision is immune "if the decisionmaker is authorized to consider basic political, social or economic policy factors and in fact considers them." Freeman, 705 P.2d at 920. Alaska SERC decisions are high level executive branch decisions which require the exercise of judgment. The emergency planning performed by the LEPCs likewise involves a significant amount of discretion. Some of the planning decisions concern funding and the allocation of personnel. To a great extent, the decisions of the Alaska SERC and the LEPCs are likely to be immune.¹¹

¹¹ Only two cases were found in which an action has been brought against a state emergency response commission, neither of which involves tort liability. In Ohio Chamber of Commerce v.

(continued...)